

Chapter 13

Exercise of passport rights by UK firms

13.6 Changes to branches

- 13.6.1** G (1) Where a *UK firm* is exercising an *EEA right*, other than under the *CRD*, and has established a *branch* in another *EEA State*, any changes to the details of the branch are governed by the *EEA Passport Rights Regulations*.
- (2) References to regulations in this section are to the *EEA Passport Rights Regulations*.
- (3) (a) A *UK firm* which is not an *authorised person* should note that, under regulation 18, contravention of the prohibition imposed by regulation 11(1), 13(1) or 15(1) is an offence.
- (b) It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.
- (4) Where a *UK MiFID investment firm* exercises an *EEA right* under *MiFID* and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are also governed by *MiFID RTS 3A* and *MiFID ITS 4A*.
- 13.6.2** G *UK firms* should note that if a *branch* in another *EEA State* ceases to provide services, this may represent a change in *requisite details* or, if the *firm* is passporting under the *Solvency II Directive*, the *relevant EEA details* or *relevant UK details*.
- 13.6.3** G *UK firms* should also note that changes to the details of *branches* may lead to changes to the *applicable provisions* to which the *UK firm* is subject. These changes should be communicated to the *UK firm* by the *Host State regulator*.
- 13.6.4** G **Firms passporting under CRD and the UCITS Directive.**
If a *UK firm* has exercised an *EEA right*, under the *CRD* or the *UCITS Directive*, and established a *branch* in another *EEA State*, regulation 11(1) states that the *UK firm* must not make a change in the *requisite details* of the *branch* (see ■ SUP 13 Annex 1), unless it has satisfied the requirements of regulation 11(2), or, where the change arises from circumstances beyond the *UK firm's* control, regulation 11(3) (see ■ SUP 13.6.10 G).
- 13.6.5** G Where the change arises from circumstances within the control of the *UK firm*, the requirements in regulation 11(2) are that:

- (1) the *UK firm* has given notice to the *appropriate UK regulator* and to the *Host State regulator* stating the details of the proposed change;
- (2) the *appropriate UK regulator* has given the *Host State regulator* a notice informing it of the details of the change; and
- (3) either the *Host State regulator* has informed the *UK firm* that it may make the change, or the period of one *month* beginning with the day on which the *UK firm* gave the *Host State regulator* the notice in (1) has elapsed.

Firms passporting under MiFID

13.6.5A G If a *UK firm* has exercised an *EEA right* to establish a *branch* under *MiFID*, it must not make a change in the *requisite details* of the *branch* (see ■ SUP 13 Annex 1AR), use, for the first time, a *tied agent* established in the *EEA State* in which the *branch* is established, or cease to use a *tied agent* established in the *EEA State* in which the *branch* is established, unless it has satisfied the requirements of regulation 11A(2) (see ■ SUP 13.6.5B G).

13.6.5B G The requirements of regulation 11A(2) are that:

- (1) the *UK firm* has given a notice to the *appropriate UK regulator* stating the details of the proposed change; and
- (2) the period of one *month* beginning with the day on which the *UK firm* gave the notice has elapsed.

13.6.5C G A *UK MiFID investment firm* is also required to notify the *FCA* of changes to a *branch* or *tied agent* in accordance with:

- (1) article 7 (Information to be notified concerning the change of branch or tied agent particulars) of *MiFID RTS 3A*;
- (2) article 18 (submission of the change of branch particulars notification) of *MiFID ITS 4A*; and
- (3) article 19 (submission of the change of the tied agent particulars notification) of *MiFID ITS 4A*.

13.6.5D G If any of the details in a *branch passport notification* change, a *UK MiFID investment firm* is required to notify the *FCA* by completing the form in Annex VI of *MiFID ITS 4A*.

[Note: article 18(1) of *MiFID ITS 4A*]

13.6.5E G If any of the details in a *tied agent passport notification* change, a *UK MiFID investment firm* is required to notify the *FCA*, by completing the form in Annex VII of *MiFID ITS 4A*.

[Note: article 19(1) of *MiFID ITS 4A*]

13.6.5F G If a UK MiFID investment firm closes a branch or stops using a tied agent, it is required to notify the FCA using the form in Annex X of MiFID ITS 4A.
 [Note: articles 18(4) and 19(4) of MiFID ITS 4A]

- 13.6.5G** G
- (1) Each of the forms in MiFID ITS 4A referred to in ■ SUP 13.6.5DG to ■ SUP 13.6.5FG is replicated in ■ SUP 13 Annex 1AR.
 - (2) These versions should be used for the purposes of notifications to the FCA.
 - (3) The forms should be submitted in accordance with ■ SUP 13.8.1R.

Firms passporting under the IDD

- 13.6.9A** G
- (1) If a UK firm has exercised an EEA right under the IDD and established a branch in another EEA State, the UK firm must not make any material change to the relevant details of the branch (see ■ SUP 13 Annex 1R), unless it has satisfied the requirements in regulation 17(C)(2).
 - (2) The requirements in regulation 17(C)(2) are that:
 - (a) the UK firm has given a notice to the appropriate UK regulator stating the details of the proposed change; and
 - (b) the period of one month, beginning with the date on which the UK firm gave the notice, has elapsed.

Firms passporting under AIFMD

- 13.6.9C** G
- (1) If a UK firm has exercised an EEA right under AIFMD and established a branch in another EEA State, the UK firm must not make a material change in the requisite details of the branch or the identity of the AIFs it manages in the EEA State in which it has established a branch (see ■ SUP 13 Annex 1), unless:
 - (a) it has complied with regulation 17A(4) for a planned change; or
 - (b) it has complied with regulation 17A(5) for an unplanned change.
 - (2) The requirements in regulation 17A(4) for a planned change are that:
 - (a) the UK firm has given notice to the FCA stating the details of the proposed change; and
 - (b) either the FCA:
 - (i) has consented to the change; or
 - (ii) has not objected to the change in the period of one month beginning on the day on which the UK firm gave notice.
 - (3) The requirements in regulation 17A(5) for an unplanned change are that:
 - (a) the UK firm has given notice to the FCA immediately after an unplanned change has occurred; and
 - (b) the FCA has consented to the change.

Firms passporting under the MCD

- 13.6.9D **G**
- (1) A *UK firm* which has exercised an *EEA right* deriving from the *MCD* to establish a *branch*, must not make any material changes to the *requisite details* of the *branch* unless it has complied with the requirements in regulation 17(B)(2).
 - (2) The requirements in regulation 17(B)(2) are that
 - (a) the *UK firm* has given notice to the *FCA* stating the details of the proposed change; and
 - (b) the period of one *month* beginning with the day on which the *UK firm* gave notice has elapsed.
 - (3) Paragraph (1) does not apply to changes occasioned by circumstances beyond the control of the *UK firm*.

Changes arising from circumstances beyond the control of a UK firm

- 13.6.10 **G**
- (1) If the change arises from circumstances beyond the *UK firm's* control, the *UK firm* is required by regulation 11(3) or regulation 13(3) to give a notice to the *appropriate UK regulator* and to the *Host State regulator* stating the details of the change as soon as reasonably practicable;
 - (2) The *appropriate UK regulator* believes that for a change to arise from circumstances beyond the control of a *UK firm*, the circumstances should be outside the control of the *firm* as a whole and not just the *branch* in the *EEA State*.
 - (3) This *guidance* is not applicable to *MiFID investment firms*, *firms* passporting under the *MCD* or *IDD* or *AIFMs*.

The process

13.6.11 **G** When the *appropriate UK regulator* receives a notice from a *UK firm* other than a *MiFID investment firm* (see ■ SUP 13.6.5 G (1) and ■ SUP 13.6.7 G (1)), a *UK firm* exercising an *EEA right* under the *MCD* (see ■ SUP 13.6.9D G), a *UK firm* exercising an *EEA right* under the *IDD* (see ■ SUP 13.6.9AG) or an *AIFM* (see ■ SUP 13.6.9C G) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one *month* from the day on which it received the notice.

- 13.6.12 **G** If the *appropriate UK regulator* consents to the change, then under regulations 11(5) and 13(5) it will:
- (1) give a notice to the *Host State regulator* informing it of the details of the change; and
 - (2) inform the *UK firm* that it has given the notice, stating the date on which it did so.

13.6.12A **G** Where the *PRA* is the *appropriate UK regulator*, it will consult the *FCA* before deciding whether to give consent to a change (or proposed change)

and where the *FCA* is the *appropriate UK regulator*, it will consult the *PRA* before deciding whether to give consent in relation to a *UK firm* whose immediate group includes a *PRA-authorised person*.

- 13.6.15 **G** If the *appropriate UK regulator* refuses to consent to a change, then under regulations 11(6) and 13(6):
- (1) the *appropriate UK regulator* will give notice of the refusal to the *UK firm*, stating its reasons and giving an indication of the *UK firm's* right to refer the matter to the *Tribunal* and the procedures on such a reference; and
 - (2) the *UK firm* may refer the matter to the *Tribunal*.

- 13.6.16 **G** Standard forms are available from the *FCA* and *PRA* authorisations teams (see ■ SUP 13.12 (Sources of further information)) to give the notices to the *appropriate UK regulator* described in ■ SUP 13.6.5 G (1), ■ SUP 13.6.5B G, ■ SUP 13.6.7 G (1), ■ SUP 13.6.8 G and ■ SUP 13.6.10 G (1).

The process: MiFID investment firms

- 13.6.17 **G**
- (1) When the *FCA* receives a notice from a *UK MiFID investment firm* (see ■ SUP 13.6.5BG (1)), it is required by regulation 11A(3) to inform the relevant *Host State regulator* of the proposed change as soon as reasonably practicable.
 - (2) The *FCA* is required to use the forms in Annex XI, Annex XII or Annex XIII of *MiFID ITS 4A*, as applicable.
 - (3) The *firm* in question may make the change once the period of one *month* beginning with the day on which it gave notice has elapsed.

The process: AIFMs

- 13.6.18 **G**
- (1) When the *FCA* receives a notice from an *AIFM* (see ■ SUP 13.6.9C G) for a planned change and such change means the *AIFM* no longer complies with *AIFMD*, the *FCA* must inform the *AIFM* without undue delay that:
 - (a) the *FCA* objects to the change, including reasons for its decision; and
 - (b) the *AIFM* must not implement the change.

In these circumstances the *AIFM* may refer the matter to the *Tribunal*.
 - (2) If a planned change is implemented or an unplanned change takes place and results in the *AIFM* no longer complying with an implementing provision of *AIFMD*, the *FCA* must:
 - (a) take steps to ensure that the *AIFM* complies with that provision or ceases to exercise the *EEA right*; and
 - (b) give notice to the *AIFM* with reasons for taking such steps.

In these circumstances, the *AIFM* may refer the matter to the *Tribunal*.

(3) If a planned change is implemented or an unplanned change takes place and results in no change to the *AIFM's* compliance with an implementing provision, the *FCA* must:

- (a) give a notice to the *Host State regulator* informing it of the change; and
- (b) inform the *firm* that it has given the notice, stating the date on which it did so.

The process: MCD

13.6.19

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When the *FCA* receives a notice from a *UK firm* exercising an *EEA right* under the *MCD* it will, under regulation 17(B)(3), inform the relevant *Host State regulator* of the proposed change as soon as reasonably practicable. The *UK firm* in question may make the change once a period of one *month* has elapsed beginning with the day on which it gave notice.

The process: the IDD

13.6.20

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- (1) When the *appropriate UK regulator* receives a notice from a *UK firm* exercising an *EEA right* under the *IDD* it will, under regulation 17(C)(3), inform the *Host State regulator* of the proposed change as soon as reasonably practicable, and in any event, within one *month* of receiving the notice from the *UK firm*.
- (2) The *UK firm* may make the change once a period of one *month* has elapsed beginning with the *day* on which it gave notice.