

## Chapter 13A

# Qualifying for authorisation under the Act



## 13A.1 Application and purpose

### Application

13A.1.1 G

(1) This chapter applies to an *EEA firm* that wishes to exercise an entitlement to establish a *branch* in, or provide *cross border services* into, the *United Kingdom* under a *Single Market Directive* or the *auction regulation*. (The *Act* refers to such an entitlement as an *EEA right* and its exercise is referred to in the *Handbook* as "passporting".) (See ■ SUP App 3 (Guidance on passporting issues) for further *guidance* on passporting.)

The chapter does not, apart from in ■ SUP 13A.6G (rules which an incoming *EEA firm* will be subject to), and ■ SUP 13A Annex 1 and Annex 2, provide guidance in relation to an *EEA firm* that is a *Solvency II firm* or to Gibraltar firms treated as *Solvency II firms*. *Solvency II firms* and those Gibraltar firms should consult the relevant parts of the *PRA Rulebook* and the *PRA website* at: <http://www.bankofengland.co.uk/pr/Pages/authorisations/passporting/notifying.aspx> as the *PRA* is the *appropriate UK regulator*.

(2) This chapter also applies to:

(a) a *Treaty firm* that wishes to exercise rights under the *Treaty* in respect of *regulated activities*, those rights not being covered by passporting rights provided by the *Single Market Directives*, and qualifies for *authorisation* under Schedule 4 to the *Act* (Treaty Rights); and

(b) a *UCITS qualifier*, that is, an *operator*, *trustee* or *depository* of a recognised *collective investment scheme*, constituted in another *EEA State*, and which qualifies for *authorisation* under Schedule 5 to the *Act* (Persons concerned in collective investment schemes).

(3) The provisions implementing the *Single Market Directives* are within the coordinated field (see ■ PERG 2.9.18G (1)). So, where an *incoming ECA provider* intends to provide *electronic commerce activity* that consists of activities that fall within one of the *Single Market Directives*, the passporting requirements on exercising an *EEA right* in this chapter will apply.

13A.1.2 G

This chapter does not apply to:

(1) an *EEA firm* that wishes to carry on in the *United Kingdom* activities which are outside the scope of its *EEA right* and the scope of a *permission* granted under Schedule 4 to the *Act*; in this case the *EEA firm* requires a "top-up permission" under Part 4A of the *Act* (see the *appropriate UK regulator's website*

[www.fca.org.uk/firms/authorisation/apply-authorisation](http://www.fca.org.uk/firms/authorisation/apply-authorisation) for the *FCA* and [www.bankofengland.co.uk/pru/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pru/Pages/authorisations/newfirm/default.aspx) for the *PRA*); or

- (2) [deleted]
- (3) a *Treaty firm* that wishes to provide *electronic commerce activities* into the *United Kingdom*; or
- (4) a *market operator* that operates a *regulated market* or an *MTF* in an *EEA State* other than the *UK* and wishes to make appropriate arrangements so as to facilitate access to and use of its system by remote users or participants in the *UK*. See ■ SUP App 3.6.25 G for *guidance*.

13A.1.3 G

- (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a *Gibraltar firm* is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:
  - (a) [deleted]
  - (aA) [deleted]
  - (b) authorised in *Gibraltar* under the *CRD*; or
  - (c) authorised in *Gibraltar* under the *IDD*; or
  - (d) authorised in *Gibraltar* under the *MiFID*; or
  - (e) authorised in *Gibraltar* under the *UCITS Directive*; or
  - (f) authorised in *Gibraltar* under *AIFMD*.
  - (g) authorised in *Gibraltar* under the *MCD*
- (1A) Similarly, an *EEA firm* which:
  - (a) has satisfied the *Gibraltar establishment conditions* and has established a *branch* in the *UK*; or
  - (b) has satisfied the *Gibraltar service conditions* and is providing *cross border services* into the *UK*;

is treated as having satisfied the *establishment conditions* or *service conditions* (as appropriate) under Schedule 3 to the *Act*. Regulations 4 to 7 of the *EEA Passport Rights Regulations* will apply to the establishment of the *branch* or the provision of *cross border services*.
- (2) *Credit institutions, insurance intermediaries, investment firms, management companies, AIFMs* and *MCD credit intermediaries* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in this chapter to *EEA State* or *EEA right* include references to *Gibraltar* and the entitlement under the *Gibraltar Order* where appropriate.
- (3) [deleted]

Purpose

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- (1) This chapter explains how an *EEA firm* and a *Treaty firm* can qualify for *authorisation* under Schedules 3 and 4 to the *Act* and how a *UCITS qualifier* is *authorised* under Schedule 5 to the *Act*.
- (2) This chapter also provides *guidance* on Schedule 3 to the *Act* for an *incoming EEA firm* that wishes to establish a *branch* in the *United Kingdom* instead of, or in addition to, providing *cross border services* into the *United Kingdom* or vice versa.

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- (1) *EEA firms* should note that this chapter only addresses the procedures which the *appropriate UK regulator* will follow under the *Act*. So, an *EEA firm* should consider this *guidance* in conjunction with the requirements with which it will have to comply in its *Home State*.
- (2) The *guidance* in this chapter represents the *appropriate UK regulator's* interpretation of the *Single Market Directives*, the *auction regulation*, the *Act* and the secondary legislation made under the *Act*. The *guidance* is not exhaustive and should not be seen as a substitute for a *person* consulting the legislation or taking legal advice.



## 13A.2 EEA firms and Treaty firms

**13A.2.1** **G** A person will only be an *EEA firm* or a *Treaty firm* if it has its head office in an *EEA State* other than the *United Kingdom*. *EEA firms* and *Treaty firms* are entitled to exercise both the right of establishment and the freedom to provide services under the *Treaty*. The difference, however, is that an *EEA firm* has a right to passport under a *Single Market Directive* or the *auction regulation*, whereas a *Treaty firm* carries on activities for which the right to carry on those activities does not fall within the scope of a *Single Market Directive* or the *auction regulation*. An *EEA firm* may also be a *Treaty firm* if it carries on such activities. A person may be a *Treaty firm*, where, for example, it carries on business that includes *regulated activities*, the right to carry on which does not fall within the scope of the *Single Market Directive* or the *auction regulation* under which it is entitled to exercise an *EEA right*.

(1) [deleted]

(2) [deleted]

**13A.2.2** **G** An *EEA firm* may passport those activities which fall within the scope of the relevant *Single Market Directive* or the *auction regulation* as long as they are included in its *Home State authorisation*.

## 13A.3 Qualifications for authorisation under the Act

### EEA firms

**13A.3.1** **G** Section 31 of the *Act* (Authorised persons) states that an *EEA firm* is *authorised* for the purposes of the *Act* if it qualifies for *authorisation* under Schedule 3 to the *Act* (EEA Passport Rights). Under paragraph 12 of Part II of that Schedule, an *EEA firm* that is an *EEA pure reinsurer*, or an *EEA firm* that has received authorisation under article 18 of the *auction regulation*, qualifies for *authorisation* without condition. Other than those two types of *EEA firm*, an *EEA firm* qualifies for *authorisation* if:

- (1) it is seeking to establish a *branch* in the *United Kingdom* in exercise of an *EEA right* and satisfies the *establishment conditions* (see ■ SUP 13A.4.1 G and ■ SUP 13A.4.2 G); or
- (2) it is seeking to provide *cross border services* into the *United Kingdom* in exercise of an *EEA right* and satisfies the *service conditions* (see ■ SUP 13A.5.3 G).

**13A.3.1A** **G** If an *EEA MiFID investment firm* seeks to use a *tied agent* established in the *UK*, the *EEA MiFID investment firm* will be treated as if it were seeking to establish a *branch* and must satisfy the *establishment conditions* (see ■ SUP 13A.4.1 G).

**13A.3.1C** **G** (1) Under paragraph 15A(1) of Part II of Schedule 3 to the *Act*, an *EEA UCITS management company* intending to exercise an *EEA right* to provide *collective portfolio management services* for a *UCITS scheme* must, before it undertakes that activity, obtain the *FCA's* approval to manage that *UCITS scheme*. *Firms* should use the application form set out in ■ SUP 13A Annex 3 R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom) for this purpose.

(1A) If the *firm's* immediate group includes a *PRA-authorised person*, the *FCA* will give the *PRA* a copy of the application referred to in (1).

(2) If the *FCA* refuses the application referred to in (1), it will give a notice to the *firm* and the *firm's Home State regulator* in accordance with paragraph 15A of Part II of Schedule 3 to the *Act*. Before refusing an application, the *FCA* will consult with the *firm's Home State regulator*.

(3) Under paragraph 15B(1) of Part II of Schedule 3 to the Act, if any representations are made to the FCA by a firm to which the notice referred to in (2) has been given, the FCA is required to decide whether to withdraw that notice. If the FCA decides not to withdraw that notice it must give the firm a decision notice.

(4) [deleted]

13A.3.1D G For details of the FCA's procedures for the giving of notices see ■ DEPP 2 (Statutory notices and allocation of decision making).

13A.3.2 G (1) On qualifying for authorisation, subject to ■ SUP 13A.3.1CG (1), an EEA firm (except for an EEA firm that has received authorisation under article 18 of the auction regulation) will have permission to carry on each permitted activity (see (3) below) which is a regulated activity.

(2) [deleted]

(3) The permitted activities of an EEA firm (except for an EEA firm that has received authorisation under article 18 of the auction regulation) are those activities identified in the consent notice, regulator's notice or notice of intention. Those permitted activities may include activities that are within the scope of a Single Market Directive but which are unregulated activities in the United Kingdom.

(3A) An EEA firm that received authorisation under article 18 of the auction regulation has permission to carry on bidding in emissions auctions.

(4) The permission will be treated as being on terms equivalent to those appearing in the consent notice, regulator's notice, notice of intention or (in respect of an EEA firm that has received authorisation under article 18 of the auction regulation) to those appearing in the authorisation granted to the EEA firm under article 18 of the auction regulation. For example, it will reflect any limitations or requirements which are included in the firm's Home State authorisation.

13A.3.3 G An EEA firm which has qualified for authorisation is referred to in the Handbook as an incoming EEA firm.

**Treaty firms**  
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13A.3.4 G Under section 31 of the Act, a Treaty firm is authorised for the purposes of the Act if it qualifies for authorisation under Schedule 4 (Treaty Rights), that is:

- (1) the Treaty firm is seeking to carry on a regulated activity; and
- (2) the conditions set out in paragraph 3(1) of Schedule 4 to the Act are satisfied.

13A.3.5 G On qualifying for authorisation a Treaty firm will have permission to carry on each permitted activity which is a regulated activity. This permission will be

treated on the same terms as those which apply to the *Treaty firm's Home State authorisation*. For example, it will reflect any limitations or requirements which are included in the *firm's Home State authorisation*.

**13A.3.6** G The effect of paragraph 5(1) and 5(2) of Schedule 4 to the Act is that a *Treaty firm* which qualifies for *authorisation* under that Schedule must, at least seven days before it carries on any of the *regulated activities* covered by its *permission*, give the *appropriate UK regulator* written notice of its intention to do so. Failure to do so is a criminal offence under paragraph 6(1) of that Schedule.

**13A.3.6A** G Where the *PRA* receives a notification, it will give a copy to the *FCA*, and where the *FCA* receives a notification, it will give a copy to the *PRA* where relevant.

**13A.3.7** D

- (1) A written notice from a *Treaty firm* under paragraph 5(2) of Schedule 4 to the Act must be:
  - (a) addressed for the attention of the authorisations team in the *PRA* or *FCA*, as appropriate; and
  - (b) delivered to the *appropriate UK regulator* by one of the methods in (2).
- (2) The written notice may be delivered by:
  - (a) *post* to either of the following addresses, as appropriate:
    - (i) the address for notices to the *FCA*: The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN; or
    - (ii) the address for notices to the *PRA*: The Prudential Regulation Authority, 20 Moorgate, London, EC2R 6DA; or
  - (b) leaving the application at the address in ■ SUP 13A.3.9 G below and obtaining a time-stamped receipt; or
  - (c) hand delivery to a member of the authorisations team in the *PRA* or *FCA*, as appropriate.

**13A.3.8** G The written notice required by paragraph 5(2) of Schedule 4 to the Act should be accompanied by confirmation of the *Treaty firm's* authorisation from the *Home State regulator*, as referred to in paragraph 3(2) of Schedule 4 to the Act.

**13A.3.9** G (1) For further information, a *Treaty firm* should contact the *FCA* and/or *PRA* authorisations teams using the details provided on that regulator's website.

**13A.3.10** G

- (1) The *guidance* in ■ PERG 2 is relevant to *Treaty firms* to help them determine if they require *authorisation* under the Act.
- (2) A *Treaty firm* which qualifies for *authorisation* is referred to in the *Handbook* as an *incoming Treaty firm*.

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UCITS qualifiers

- 13A.3.12 **G** Under Schedule 5 to the Act (Persons concerned in collective investment schemes), a *person* who for the time being is an *operator, trustee or depositary* of a *scheme* which is a *recognised scheme* under section 264 of the Act is an *authorised person*. Such a *person* is referred to in the Handbook as a *UCITS qualifier*.
- 13A.3.13 **G** A *UCITS qualifier* has *permission* under paragraph 2 of Schedule 5 to the Act, to carry on, as far as is appropriate to the capacity in which it acts in relation to the *scheme*:
- (1) the *regulated activity of establishing, operating or winding up a collective investment scheme*; and
  - (2) any activity in connection with, or for the purposes of, the *scheme* (including the *regulated activity of managing a UCITS*).
- 13A.3.14 **G** A *UCITS qualifier* should refer to *COLLG* or to the following sections of *COLL* for requirements for *recognised schemes*:
- (1) ■ *COLL 9.2.1 G* for *guidance* on notifications;
  - (2) ■ *COLL 9.2.1 G* for *guidance* on information and documentation requirements; and
  - (3) ■ *COLL 9.4* which includes *rules* on what facilities need to be maintained.



## 13A.4 EEA firms establishing a branch in the United Kingdom

### The conditions for establishing a branch

- 13A.4.1 G (1) Before an *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) exercises an *EEA right* to establish a *branch* in the *United Kingdom*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1) of Part II of Schedule 3 to the *Act*.
- (2) For the purposes of paragraph 13(1)(b)(iii) of Part II of Schedule 3 to the *Act*, the information to be included in the consent notice has been prescribed under regulation 2 of the *EEA Passport Rights Regulations*.

- 13A.4.1A G An *EEA UCITS management company* may not exercise an *EEA right* to provide *collective portfolio management services* for a *UCITS scheme* from a *branch* in the *United Kingdom* until approved by the *FCA* to do so (see ■ SUP 13A.3.1C G).

- 13A.4.2 G [deleted]

- 13A.4.3 G For the purposes of paragraph 13(2)(b) of Part II of Schedule 3 to the *Act*, the *applicable provisions* may include the *appropriate UK regulator's rules*. The *EEA firm* is required to comply with relevant *rules* when carrying on a *passported activity* through a *branch* in the *United Kingdom* as well as with relevant *UK legislation*.

- 13A.4.3A G *Guidance* on the matters that are reserved to a *firm's Home State regulator* is located in ■ SUP 13A Annex 2.

### The notification procedure

- 13A.4.4 G (1) When the *appropriate regulator* receives a consent notice from the *EEA firm's Home State regulator*, it will, under paragraphs 13(2)(b), (c) and 13(3) of Part II of Schedule 3 to the *Act*, notify the *applicable provisions* (if any)

within two *months* of the notice date.

- (1A) The notice date is:
  - (a) for a *MiFID investment firm*, the date on which the *Home State* gave the consent notice; and
  - (b) in any other case, the date on which the *appropriate UK regulator* received the consent notice.
- (2) Although the *appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA firm* passporting under *MIFID* or *AIFMD*, these provisions are set out in ■ SUP 13A Annex 1 (Application of the Handbook to Incoming EEA Firms).

**13A.4.4-A** G When the *FCA* receives a consent notice from the *EEA firm's Home State regulator* in respect of a *EEA firm* within paragraph 5(i) of Part I of Schedule 3 to the *Act*, it will, under paragraph 13(3A);

- (1) notify the *firm* of the *applicable provisions* (if any); and
- (2) use the information received from the *EEA firm's Home State regulator* to enter the necessary information into the *Financial Services Register*.

**13A.4.4-B** G When the *appropriate UK regulator* receives a consent notice from the *EEA firm's Home State regulator* in respect of an *EEA firm* within paragraph 5(e) of Part I of Schedule 3 to the *Act*, it will, under paragraph 13(3C):

- (1) acknowledge receipt; and
- (2) notify the *EEA firm's Home State regulator* of the *applicable provisions* (if any),

before the end of the period of one *month* beginning with the *day* on which the *appropriate UK regulator* received the consent notice.

**13A.4.4A** G

- (1) Where the *PRA* receives a consent notice, it will give a copy to the *FCA* without delay, and where the *FCA* receives a consent notice it will give a copy to the *PRA*, where relevant, without delay.
- (2) In a case where the *FCA* is the *appropriate UK regulator*, the consent of the *PRA* is required for any notification by the *FCA* which relates to:
  - (a) a *PRA-regulated activity*;
  - (b) a *PRA-authorised person*; or
  - (c) a *person* whose immediate group includes a *PRA-authorised person*.

**Auction regulation bidding: notification rule and applicable provisions**

**13A.4.5** R An *incoming EEA firm* that is exercising an *EEA right* under the *auction regulation* to establish a branch in the *United Kingdom* must submit the

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form in ■ SUP 13A Annex 4 R prior to its establishment of that branch or whenever possible thereafter.

13A.4.6

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The sole purpose of the notification in ■ SUP 13A.4.5 R is to enable the *FSA* to supervise the *UK* branch of the *incoming EEA firm's* compliance with the *applicable provisions* on an ongoing basis. The *applicable provisions* that apply to that branch are set out in ■ SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).



## 13A.5 EEA firms providing cross border services into the United Kingdom

### Is the service provided within the United Kingdom?

**13A.5.1** **G** There is *guidance* for *UK firms* in ■ SUP Appendix 3.6 on when a service is provided cross border. *EEA firms* may find this of interest although they should follow the guidance of their *Home State regulators*.

**13A.5.2** **G** An *EEA firm* (other than an *EEA firm* that received authorisation under article 18 of the *auction regulation*) should note that the requirement under the *Single Market Directives* to give a notice of intention to provide *cross border services* applies whether or not:

- (1) it has established a *branch* in the *United Kingdom*; or
- (2) those *cross border services* are *regulated activities*.

### The conditions for providing cross border services into the United Kingdom

- 13A.5.3** **G**
- (1) Before an *EEA firm* (other than an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) exercises an *EEA right* to provide *cross border services* into the *United Kingdom*, the *Act* requires it to satisfy the *service conditions*, as set out in paragraph 14 of Part II of Schedule 3 to the *Act*.
  - (2) For the purposes of paragraph 14(1)(b) of Part II of Schedule 3 to the *Act*, the information to be contained in the regulator's notice has been prescribed under regulation 3 of the *EEA Passport Rights Regulations* and in the case of *CRD*, the information has been prescribed in the technical standards issued pursuant to and under Article 39 of the *CRD*.
  - (3) An *EEA UCITS management company* may not exercise an *EEA right* to provide *collective portfolio management services* for a *UCITS scheme* on a *cross border services* basis until approved by the *FCA* to do so (see ■ SUP 13A.3.1C G).
  - (4) An *EEA firm* that has received authorisation under article 18 of the *auction regulation* is not subject to the *service conditions* in its exercise of an *EEA right* under the *auction regulation* to provide services in the *United Kingdom*. The notification procedure in ■ SUP 13A.5.4 G does not apply to it and it does not need to notify the *FCA* prior to providing services into the *United Kingdom* because there are presently no *applicable provisions* that apply in these

circumstances. Instead, its provision of these services is supervised by its *Home State regulator*.

### The notification procedure

- 13A.5.4** G (1) Unless the *EEA firm* (other than an *EEA firm* that received authorisation under article 18 of the *auction regulation*) is passporting under the *IDD*, if the *appropriate UK regulator* receives a regulator's notice or, where no notice is required, is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the *appropriate UK regulator* will, under paragraphs 14(2) and 14(3) of Part II of Schedule 3 to the *Act*, notify the *EEA firm* of the *applicable provisions* (if any) within two *months* of the *day* on which the *appropriate UK regulator* received the regulator's notice or was informed of the *EEA firm's* intention.
- (1A) When the *FCA* receives a regulator's notice from the *EEA firm's Home State regulator* that the *EEA firm* intends to exercise its *EEA right* to provide *cross border services* under the *IDD*, it will, under paragraph 14(3A) of Part II to Schedule 3 to the *Act*:
- (a) acknowledge receipt; and
  - (b) notify the *EEA firm's Home State regulator* of the *applicable provisions* (if any).
- (2) Although the *appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA Firm* passporting under *MIFID* or *AIFMD* these provisions are set out in ■ SUP 13A Annex 1 (Application of the Handbook to Incoming EEA Firms).
- 13A.5.4-A** G When the *FCA* receives a consent notice from the *EEA firm's Home State regulator* in respect of a *firm* within paragraph 5(i) of Part I of Schedule 3 to the *Act*, it will, under paragraph 14(3ZA), use the information received from the *EEA firm's Home State regulator* to enter the necessary information into the *Financial Services Register*.
- 13A.5.4A** G Where the *PRA* receives a notice, it will give a copy to the *FCA* without delay and where the *FCA* receives a notice, it will give a copy to the *PRA* without delay, where relevant.
- 13A.5.5** G An *EEA firm* (other than an *EEA UCITS management company*) that has satisfied the *service conditions* in paragraph 14 of Part II of Schedule 3 to the *Act* is entitled to start providing *cross border services* into the *United Kingdom*. In the case of an *EEA UCITS management company*, *FCA* approval must first be obtained, as explained in ■ SUP 13A.5.3 G (see also ■ SUP 13A.3.1C G). However, an *EEA firm* that wishes to start providing *cross border services* but has not yet received notification of the *applicable provisions* may wish to contact the authorisations team in the *FCA* or *PRA*, as appropriate (see ■ SUP 13A.8.1G (2)).



## 13A.6 Which rules will an incoming EEA firm be subject to?

- 13A.6.1** G (1) ■ SUP 13A Annex 1 summarises how the *Handbook* applies to *incoming EEA firms*.
- (2) ■ SUP 13A Annex 2 summarises the matters that are reserved to a *firm's Home State regulator*.
- 13A.6.2** G An *incoming EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation* and only provides services in the *United Kingdom*) or *incoming Treaty firm* carrying on business in the *United Kingdom* must comply with the *applicable provisions* (see ■ SUP 13A.4.4 G, ■ SUP 13A.4.4-BG, ■ SUP 13A.4.6 G, and ■ SUP 13A.5.4 G) and other relevant *UK* legislation. For example where the business includes:
- (1) business covered by the Consumer Credit Act 1974, then an *incoming EEA firm* or *incoming Treaty firm* must comply with the provisions of that Act; or
- (2) effecting or carrying out contracts covering motor vehicle third party liability risks as part of direct *insurance business*, then an *incoming EEA firm* or *incoming Treaty firm* is required to become a member of the Motor Insurers' Bureau.
- 13A.6.3** G (1) In particular, an *EEA firm* (other than an *EEA pure re-insurer*) or *Treaty firm* must comply with the *applicable provisions* in ■ SUP 10A and 10C (Approved persons). An *EEA firm* or *Treaty firm* should also refer to ■ SUP 10A.1 and 10C.1 (Application) which sets out the territorial provisions of the *approved persons* regime.
- (2) An *EEA firm* or *Treaty firm* which is an *EEA relevant authorised person* should also refer to ■ SUP 10C (FCA senior management regime for approved persons in relevant authorised persons).
- 13A.6.4** G Under the *EEA Passport Rights Regulations*, references in section 60 of the Act (applications for approval for persons to perform controlled functions) to "the authorised person concerned" include:
- (1) an *EEA MiFID investment firm* whose *Home State regulator* has given a consent notice under paragraph 13 of Schedule 3 to the Act (see ■ SUP 13A.4.1G (1) and ■ SUP 13A.4.2 G) or a regulator's notice under paragraph 14 of that Schedule (see ■ SUP 13A.5.3G (1)), and which will

be the *authorised person* concerned if the *EEA firm* qualifies for *authorisation* under that Schedule; and

- (2) any other *EEA firm* with respect to which the *appropriate UK regulator* has received a consent notice or regulator's notice under paragraph 13 of Schedule 3 to the *Act* (see ■ SUP 13A.4.1G (1) and ■ SUP 13A.4.2 G) or a regulator's notice under paragraph 14 of that Schedule (see ■ SUP 13A.5.3G (1)), and which will be the *authorised person* concerned if the *EEA firm* qualifies for *authorisation* under that Schedule.

13A.6.5 G ■ SUP 13A Annex 1 does not apply to *incoming ECA providers* acting as such.



## 13A.6A Enhanced supervision of EEA firms passporting under the IDD

### 13A.6A.1 G

- (1) The split of responsibility (between *Home* and *Host States*) for ensuring compliance with *IDD* requirements is as follows.
  - (a) For incoming EEA *branches*:
    - (i) the *Host State* is responsible in relation to the obligations in Chapter V (Information requirements and conduct of business rules) and Chapter VI (Additional requirements in relation to insurance-based investment products) (see article 7(2) of the *IDD*); and
    - (ii) the *Home State* is responsible in relation to all other obligations.
  - (b) For *EEA firms* providing *cross border services*, the *Home State* is responsible in relation to all *IDD* obligations.
- (2) However, under article 7(1) of the *IDD*, if an *IDD insurance intermediary's primary place of business* is in a *Host State*, the *Host* and *Home State regulators* may agree that the *Host State regulator* will act as if it were the *Home State regulator* with regard to certain provisions. Those provisions are Chapters IV (Organisational requirements), V (Information requirements and conduct of business rules), VI (Additional requirements in relation to insurance-based investment products) and VII (Sanctions and other measures) of the *IDD*. This sort of *Home* and *Host State regulator* agreement is referred to as an Article 7(1) *IDD Agreement*.

### 13A.6A.2 G

Where the *FCA* is a *Host State regulator* it may enter into an article 7(1) *IDD Agreement* in respect of an *incoming EEA firm*. The *FCA* is given this power by section 203A of the *Act* subject to the conditions set out in that section. If the *FCA* enters into such an agreement, the *EEA firm* will be subject to enhanced supervision by the *FCA* to the extent specified in the agreement.



## 13A.7 Top-up permission

- 13A.7.1** **G** If a *person* established in the *EEA*:
- (1) does not have an *EEA right*;
  - (2) does not have *permission* as a *UCITS qualifier*; and
  - (3) does not have, or does not wish to exercise, a *Treaty right* (see ■ SUP 13A.3.4 G to ■ SUP 13A.3.11 G);
- to carry on a particular *regulated activity* in the *United Kingdom*, it must seek *Part 4A permission* from the *appropriate UK regulator* to do so (see the *appropriate UK regulator's website*: [www.fca.org.uk/firms/authorisation/apply-authorisation](http://www.fca.org.uk/firms/authorisation/apply-authorisation) for the *FCA* and [www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx) for the *PRA*). This might arise if the activity itself is outside the scope of the *Single Market Directives*, or where the activity is included in the scope of a *Single Market Directive* but is not covered by the *EEA firm's Home State authorisation*. If a *person* also qualifies for *authorisation* under Schedules 3, 4 or 5 to the *Act* as a result of its other activities, the *Part 4A permission* is referred to in the *Handbook* as a *top-up permission*.
- 13A.7.2** **G** Where the *appropriate UK regulator* grants a *top-up permission* to an *incoming EEA firm* to carry on *regulated activities* for which it has neither an *EEA right* nor a *Treaty right*, the *appropriate UK regulator* is responsible for the prudential supervision of the *incoming EEA firm*, to the extent that the responsibility is not reserved to the *incoming EEA firm's Home State regulator*.
- 13A.7.3** **G** [deleted]
- 13A.7.4** **G** For *guidance* on how to apply for *Part 4A permission* under the *Act*, see the *appropriate UK regulator's website*: <http://www.fca.org.uk/firms/about-authorisation/getting-authorised> for the *FCA* and [www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx) for the *PRA*. If an *EEA firm* or *Treaty firm* wishes to make any subsequent changes to its *top-up permission*, it can make an application for variation of that *permission* (see ■ SUP 6 (Applications to vary and cancel *Part 4A permission*)).



## 13A.8 Sources of further information

- 13A.8.1** **G** For further information on *UK* regulation, an *EEA firm*, a *Treaty firm* or a *UCITS qualifier* should contact the authorisations team in the *FCA* or *PRA*, if and when appropriate. To contact the *FCA* and/or *PRA* authorisations teams, please see the details provided on that regulator's website.



## Application of the Handbook to Incoming EEA Firms

1. The table below summarises the application of the *Handbook* to an *incoming EEA firm*. Where the table indicates that a particular module of the *Handbook* may apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to *incoming ECA providers*. These should refer to COBS 1 Annex 1 Part 3 section 7 for guidance on how COBS applies to them. The table does not apply to *EEA pure reinsurers* or to an *EEA firm* in relation to its exercise of an *EEA right* under the *auction regulation* to provide services in the *United Kingdom*.

2. In some cases, the application of the *Handbook* depends on whether responsibility for a matter is reserved under an *EU instrument* to the *incoming EEA firm's Home State regulator*. Guidance on the reservation of responsibility is contained in SUP 13A Annex 2 (Matters reserved to a Home State regulator). Guidance on the territorial application of MiFID is contained in PERG 13.6 and PERG 13.7 and SUP 13A Annex 2.

3. For an *incoming EEA firm* which has permission for *cross-border services* only, many parts of the *Handbook* apply only if the *firm* carries on *regulated activities* in the *United Kingdom*. Those parts of the *Handbook* will therefore not apply if the *firm* confines its activities to those within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*, or which would not be regarded as carried on in the *United Kingdom*. Further guidance may be found in PERG 2.4 (Link between activities and the *United Kingdom*) and PERG 2.9.15 G to PERG 2.9.17 G (Overseas persons).

4. An *EEA firm* that exercises an *EEA right* under the *auction regulation* to establish a branch in the *United Kingdom* to provide *auction regulation bidding* is subject to a limited set of requirements in the *Handbook* that apply to that activity. These are the *rules* listed in paragraph 2.6A of SYSC 1 Annex 1, GEN 4 and SUP (in particular, the *money laundering reporting function* in SUP 10A and requirements to notify the FCA). Aside from this note, the table does not apply to those firms.

5. An *EEA firm* that exercises an *EEA right* under MiFID to carry on *MiFID business bidding* is subject to the *applicable provisions* relating to its carrying on of *MiFID business* and any applicable *EU regulations*.

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
PRIN	<p>The <i>Principles</i> apply only in so far as responsibility for the matter in question is not reserved by an <i>EU instrument</i> to the <i>firm's Home State regulator</i> (PRIN 3.1.1 R (1)).</p> <p>For an <i>incoming EEA firm</i> which is a <i>CRD credit institution</i> without a <i>top-up permission</i>, <i>Principle 4</i> does not apply.</p>	<p>The <i>Principles</i> do not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (PRIN 3.1.1 R (2)).</p> <p>The <i>Principles</i> have limited application for activities which are not carried on from a <i>UK establishment</i> (see PRIN 3.1.1 R).</p> <p>Otherwise, see column (2).</p>
SYSC	<p>SYSC 1 and SYSC 1 Annex 1 (Application of SYSC 2 and SYSC 3) contain application provisions only. SYSC 2 and SYSC 3 apply only to an <i>insurer</i>, a <i>managing agent</i> and the <i>Society</i> as set out in SYSC 1 Annex 1.1.1R, which include the following exceptions:</p>	<p>SYSC 2 and SYSC 3 do not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (SYSC 1 Annex 1.1.1 R). SYSC 2 and SYSC 3 have limited application for activities which are not carried on from a <i>UK es-</i></p>

(1) SYSC 2.1.1 R (1) and SYSC 2.1.2 G do not apply;

(2) SYSC 2.1.3 R to SYSC 2.2.3 G apply, but only in relation to allocation of the function in SYSC 2.1.3 R (2) and SYSC 2.1.3AR(2) and only in so far as responsibility for the matter in question is not reserved by an EU instrument to the *firm's Home State regulator*; and

(3) SYSC 3 applies, but only in so far as responsibility for the matter in question is not reserved by an EU instrument to the *firm's Home State regulator*. SYSC 1 Annex 1, Part 1, 1.8 R(Where?) further restricts the territorial application of SYSC 1 to SYSC 3 for an *incoming EEA firm*. Further guidance is contained in SYSC 2.1.6 G, Question 12. SYSC 18 applies to the extent that the Public Interest Disclosure Act 1998 applies to the *firm*.

The *common platform requirements* in SYSC 4 - 10 apply as set out in Part 2 of SYSC 1 Annex 1 (Application of the common platform requirement).

SYSC 1 Annex 1 row 2.6F provides that the *common platform requirements* do not apply to an *incoming EEA AIFM branch*, except the *AIFMD Host State requirements* and certain requirements regarding *financial crime*.

SYSC 1 Annex 1.2.7G reminds *EEA MiFID investment firms* that they must comply with the *common platform record-keeping requirements* in relation to a *branch* in the *United Kingdom*.

SYSC 1 Annex 1, Part 2, 2.7AG provides guidance on the application of the *common platform requirements* to the *UK branch* of an *EEA UCITS management company*.

SYSC 9 applies to activities carried on from an establishment in the *United Kingdom*, unless another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case the *common platform record-keeping requirements* apply with that wider scope in relation to the activity described in that *rule* (SYSC 1 Annex 1.2.17R).

SYSC 10A applies to an *incoming EEA AIFM* and an *EEA MiFID investment firm*.

establishment (see SYSC 1 Annex 1.1.1 R (2A)).

Otherwise, see column (2).

The *common platform requirements* in SYSC 4 - SYSC 10 apply as set out in SYSC 1 Annex 1.2.2R.

SYSC 10A - SYSC 17 do not apply.

SYSC 18 applies.

SYSC 19A, 19B, 19C, 19D, 19E and 19F do not apply.

SYSC 28 does not apply.

	<p>SYSC 12 does not apply (SYSC 12.1.3 R).</p> <p>SYSC 13 does not apply (SYSC 13.1.1 G).</p> <p>SYSC 14 does not apply (SYSC 14.1.1 R).</p> <p>SYSC 15 does not apply (SYSC 15.1.1 G).</p> <p>SYSC 16 does not apply (SYSC 16.1.1 G).</p> <p>SYSC 17 does not apply (SYSC 17.1.1 G).</p> <p>SYSC 18 applies.</p> <p>SYSC 19A, 19B , 19C and 19D do not apply.</p> <p>SYSC 19F applies to a <i>MiFID investment firm</i> unless it is a <i>UCITS investment firm</i> or an <i>AIFM investment firm</i>.</p> <p>SYSC 19F.2 applies to <i>insurance distribution activities</i> carried on from an establishment in the <i>United Kingdom</i>.</p> <p>SYSC 28 does not apply.</p>	
COCON	<p>COCON applies to <i>employees of firms</i> which are <i>relevant authorised persons</i>. See COCON 1.1 for detailed rules on the application of COCON.</p>	Does not apply.
COND	<p>COND does not apply if the <i>firm</i> does not have, or apply for, a <i>top-up permission</i>.</p> <p>Otherwise, the threshold conditions apply in a limited way</p> <p>(1)in the case of a <i>top-up permission</i> under Part 4A of the <i>Act</i> (that is, a <i>permission</i> to carry on <i>regulated activities</i> in addition to those permitted through its <i>authorisation</i> under Schedule 3 to the <i>Act</i> (EEA Passport Rights)); and</p> <p>(2) the exercise of the <i>FCA's</i> powers under sections 55J and 55L of the <i>Act</i> in relation to the <i>top-up permission</i>. (COND 1.2.4 G)</p>	As column (2).
APER	<p>APER applies to <i>approved persons</i> other than <i>relevant authorised persons</i> (APER 1.1A.1G). See below under SUP 10 as to whether <i>controlled functions</i> are performed, and approval therefore required.</p>	Not relevant because SUP 10A does not apply.
FIT	<p>FIT applies to a <i>firm</i> wishing to establish a <i>branch</i> in the <i>United Kingdom</i> or to apply for a <i>top-up permission</i> in respect of any application that it makes for the approval of a <i>person</i> to perform a <i>controlled function</i> (FIT 1.1). See SUP 10A and SUP 10C below as to whether such approval is required.</p>	Does not apply.

	<i>FIT</i> applies in a limited way in relation to an incoming <i>MiFID investment firm</i> (see FIT 1.2.4A G).	
<i>GEN</i>	<i>GEN</i> applies (GEN 1.1, GEN 1.2, GEN 2.1, GEN 4.1, GEN 5.1 and GEN 6.1). However, (a) GEN 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> (GEN 4.1.1 R (3)), and (b) GEN 6 only applies to business that can be regulated under sections 137A and 137G of the Act (The FCA's General rules) and (The PRA's General rules), respectively. It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by an <i>EU instrument</i> . Only GEN 4.5 applies in relation to <i>MiFID or equivalent third country business</i> (see GEN 4.1.1 R). The FCA has supervisory responsibility in respect of a <i>branch</i> of a <i>MiFID investment firm</i> under article 44(8) of the <i>MiFID Org Regulation</i> relating to the prohibition on using the name of a <i>competent authority</i> to suggest its endorsement of the <i>firm's</i> products or services.	<i>GEN 4</i> does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (see GEN 4.1.1 R).  Otherwise, as column (2) except in relation to article 44(8) of the <i>MiFID Org Regulation</i> .
<i>FEES</i>	Applies to the extent a firm is required to pay a fee in regards to carrying out any <i>regulated activity</i> in the <i>UK</i> . FEES 3.2.7R applies in relation to <i>incoming data reporting services providers</i> .	Does not apply in relation to <i>regulated activity</i> in the <i>UK</i> FEES 3.2.7R applies in relation to <i>incoming data reporting services providers</i>
<i>GENPRU</i>	Does not apply.	Does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .
<i>BIPRU</i>	<i>EEA firms</i> that are <i>CAD investment firms</i> are subject to the prudential standards of their home state regulator (BIPRU 1.1.7 R). However, BIPRU 12 applies to an <i>EEA firm</i> that is an <i>IFPRU investment firm</i> or <i>BIPRU firm</i> as respects the activities of its <i>UK branch</i> , but in relation to <i>liquidity risk</i> only.	Does not apply if the has only for and does not carry on in the .
<i>IFPRU</i>	<i>EEA firms</i> that are <i>investment firms</i> (as defined in the <i>EU CRR</i> ) are subject to the <i>EU CRR</i> as implemented by their home state regulator (IFPRU 1.1.5 R).	Does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .
<i>MIPRU</i>	MIPRU 1 (Application and general provisions) does not apply unless the <i>firm</i> has a <i>top-up permission</i> .  MIPRU 2 (Responsibility for insurance distribution and MCD credit intermediation) does not apply unless the <i>firm</i> has a <i>top-up permission</i> .	As column (2)



	<p>MIPRU 3 (Requirement to hold professional indemnity insurance) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p> <p>MIPRU 4 (Requirement to hold capital resources) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p> <p>See MIPRU 4.1.2 G for more detailed guidance.</p> <p>MIPRU 5 (Insurance distributors and home finance providers using insurance distribution or home finance mediation services) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p>	
INSPRU	INSPRU does not apply.	INSPRU does not apply.
IPRU(FSOC)	Does not apply because an <i>incoming EEA firm</i> cannot be a <i>friendly society</i> (IPRU(FSOC) 1.1).	Does not apply because an <i>incoming EEA firm</i> cannot be a <i>friendly society</i> (IPRU(FSOC) 1.1).
IPRU(INV)	<p>IPRU(INV) does not apply unless the <i>firm</i>:</p> <p>(1) has a <i>top-up permission</i>;</p> <p>(2) is an <i>authorised professional firm, investment management firm, members' adviser, personal investment firm, securities and futures firm, service company or underwriting agent</i>; and</p> <p>(3) is not a <i>lead regulated firm, a media firm or a BIPRU investment firm</i>.</p> <p>(IPRU(INV) 1.1.1R and 1.2R)</p>	As column (2).
COBS	Guidance on the territorial application of COBS is contained in COBS 1 Annex 1 Part 3.	Guidance on the territorial application of COBS is contained in COBS 1 Annex 1 Part 3.
ICOBS	ICOBS applies except to the extent necessary to be compatible with European law. Guidance on the territorial application of ICOBS is contained in ICOBS 1 Annex 1 Part 4.	ICOBS 8.4 and parts of ICOBS 8.2 apply except to the extent necessary to be compatible with European law. Other chapters of ICOBS do not apply, except to the extent necessary to be compatible with European law. Guidance on the territorial application of ICOBS is contained in ICOBS 1 Annex 1 Part 4.
MCOB	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> or another <i>EEA State</i> at the time that the activity is carried on, but see the territorial scope in MCOB 1.3.1AR and MCOB 1 Annex 5.	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> at the time that the activity is carried on but see MCOB 1.3.4 R (Distance contracts entered into from an establishment in another <i>EEA State</i> ), MCOB 1.3.1AR and MCOB 1 Annex 5.
CASS	CASS does not apply with respect to the <i>firm's passported activities</i> unless the <i>firm</i> is an <i>insurer</i> (CASS 1.2.3 R (2)).	As column (2).

MAR	<p>[deleted] [deleted] [deleted] <b>MAR 4 (Endorsement of the Take-over Code)</b> Applies to <i>firms</i> whose <i>permission</i> includes, or ought to include, any <i>designated investment business</i>, except as set out in MAR 4.4.1 R. <b>MAR 5 (Multilateral Trading Facilities)</b> Does not apply (MAR 5.1.1 R). <b>MAR 8 (Benchmarks)</b> Applies only to <i>firms</i> whose <i>top-up permission</i> includes <i>providing information in relation to a regulated benchmark</i>. <b>MAR 10 (Commodity derivative position limits and controls, and position reporting)</b> Position limits apply in relation to position limits set by the <i>FCA</i> in accordance with MAR 10.2.2D. Position reporting applies to a member, participant or a <i>client</i> of a <i>UK trading venue</i> in accordance with MAR 10.4.10D.</p>	<p>[deleted] [deleted] [deleted] <b>MAR 4 (Endorsement of the Take-over Code)</b> Does not apply (MAR 4.4.1 R (4)(b)). <b>MAR 5 (Multilateral Trading Facilities)</b> Does not apply (MAR 5.1.1 R). <b>MAR 8 (Benchmarks)</b> As column (2) As column (1)</p>
TC	<p>TC applies, but only in so far as responsibility for any matter it covers is not reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i>.</p>	<p>TC Appendix 1 sets out the activities to which TC applies. TC Appendix 2 sets out the sourcebook's territorial scope. TC Appendix 3 sets out the limitations on TC App 2.</p>
SUP	<p><b>SUP 1A (The FCA's approach to supervision)</b> Applies, but contains only <i>guidance</i>. <b>SUP 2 (Information gathering by the FCA or PRA on its own initiative)</b> The application of this chapter is the same as for <i>Principle 11</i> (see under <i>PRIN</i> above). <b>SUP 3 (Auditors)</b> Applies to the <i>firm</i> (and its auditor) only if the <i>firm</i> has a <i>top-up permission</i>. <b>SUP 4 (Actuaries)</b> Does not apply. <b>SUP 5 (Skilled persons)</b> Applies only if the <i>firm</i> is required by the <i>FCA</i> or <i>PRA</i> to provide a report under section 166 of the <i>Act</i> (Reports by skilled persons).</p>	<p><b>SUP 1A (The FCA's approach to supervision)</b> As column (2). <b>SUP 2 (Information gathering by the FCA or PRA on its own initiative)</b> As column (2) <b>SUP 3 (Auditors)</b> As column (2) <b>SUP 4 (Actuaries)</b> Does not apply. <b>SUP 5 (Skilled persons)</b> As column (2).</p>

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<p><b>SUP 6 (Applications to vary and cancel Part 4A permission)</b></p> <p>Applies only if the <i>firm</i> has a <i>top-up permission</i></p>	<p><b>SUP 6 (Applications to vary and cancel Part 4A permission)</b></p> <p>As column (2).</p>
<p><b>SUP 7 (Individual requirements)</b></p> <p>Applies only if the <i>firm</i> has a <i>top-up permission</i>. It contains only <i>guidance</i> on the exercise of the <i>FCA's</i> powers under sections 55J and 55L of the <i>Act</i>. The <i>FCA</i> has similar, but more limited, powers of intervention under Part 13 of the <i>Act</i> in relation to the <i>permission</i> of the <i>firm</i> under Schedule 3 to the <i>Act</i> (see EG 8).</p>	<p><b>SUP 7 (Individual requirements)</b></p> <p>As column (2).</p>
<p><b>SUP 8 (Waiver and modification of rules)</b></p> <p>Applies only if the <i>firm</i> wishes to apply for, or consent to, or has been given, a <i>waiver</i> of the <i>appropriate regulator's</i> rules (SUP 8.1.1 R).</p>	<p><b>SUP 8 (Waiver and modification of rules)</b></p> <p>As column (2).</p>
<p><b>SUP 9 (Individual guidance)</b></p> <p>Applies only if the <i>firm</i> wishes to obtain individual <i>guidance</i> from the <i>FCA</i> or if the <i>FCA</i> gives the <i>firm</i> individual <i>guidance</i> on its own initiative (SUP 9.1.1 G).</p>	<p><b>SUP 9 (Individual guidance)</b></p> <p>As column (2).</p>
<p><b>SUP 10A (Approved persons)</b></p> <p>Applies, but the applicable <i>controlled functions</i> are limited. See SUP 10A.1 (Application) for more detailed <i>guidance</i>. SUP 10A applies in a limited way in relation to an <i>incoming EEA firm</i> that is a <i>Solvency II firm</i> (see SUP 10A.1.8 G).</p>	<p><b>SUP 10A (Approved persons)</b></p> <p>Does not apply (SUP 10A.1.6 R).</p>
<p><b>SUP 10B (Approved Persons)</b></p> <p>Does not apply</p>	<p><b>SUP 10B (Approved Persons)</b></p> <p>As column (2)</p>
<p><b>SUP 10C (FCA senior management regime for approved persons in relevant authorised persons)</b></p>	<p>Applies to <i>EEA incoming firms</i> which are <i>EEA relevant authorised persons</i>, but the applicable <i>controlled functions</i> are limited. See SUP 10C.1 (Application) for more detailed <i>guidance</i>.</p>
<p><b>SUP 11 (Controllers and close links)</b></p> <p>Does not apply (SUP 11.1.1 R (2)).</p>	<p><b>SUP 11 (Controllers and close links)</b></p> <p>Does not apply (SUP 11.1.1 R (2)).</p>
<p><b>SUP 12 (Appointed representatives)</b></p> <p>Applies only if the <i>firm</i> has <i>permission</i> to carry on <i>designated investment business, insurance distribution activity or mortgage mediation activity</i> and wishes to appoint, or has appointed, an <i>appointed representative</i> (SUP 12.1.1 R (1)).</p>	<p><b>SUP 12 (Appointed representatives)</b></p> <p>As column (2).</p>
<p><b>SUP 13 (Exercise of passport rights by UK firms)</b></p>	<p><b>SUP 13 (Exercise of passport rights by UK firms)</b></p>

Does not apply.

**SUP 13A (Qualifying for authorisation under the Act)**

SUP 13A applies to the *firm* if it:

(1) is considering carrying on activities in the *United Kingdom* which may fall within the scope of the Act and is seeking *guidance* on whether it needs a *top-up permission*; or

(2) is, or is considering, applying to the *appropriate regulator* to carry on *regulated activities* in the *United Kingdom* under a *top-up permission*; or

(3) is, or is considering, establishing a *branch* or providing *cross-border services* into the *United Kingdom* using *EEA rights*.

**SUP 14 (Incoming EEA Firms: Changing detail and cancelling qualifications for authorisation)**

Applies.

**SUP 15 (Notifications to the FCA or PRA)**

Applies in full if the *firm* has a *top-up permission*. Otherwise, the application is modified as set out in SUP 15 Annex 1.

**SUP 16 (Reporting requirements)**

Parts of this chapter may apply if the *firm* has a *top-up permission* or if the *firm* is:

- (a) a *bank*; or
- (c) an *OPS firm*; or
- (e) an *insurer* with *permission* to effect or carry out *life policies*; or
- (f) a *firm* with *permission* to establish, operate or wind up a *personal pension scheme* or a *stakeholder pension scheme*; or
- (g) a *firm* with *permission* to carry on *MIFID business*, advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.

(SUP 16.1)

**SUP 17 (Transaction reporting)**

Does not apply.

**SUP 13A (Qualifying for authorisation under the Act)**

As column (2).

**SUP 14 (Incoming EEA Firms: Changing detail and cancelling qualifications for authorisation)**

Applies.

**SUP 15 (Notifications to the FCA or PRA)**

Does not apply if the *firm* has *permission* only for *cross border services* and does not carry on *regulated activities* in the *United Kingdom* (SUP 15 Annex 1).

Otherwise, as column (2).

**SUP 16 (Reporting requirements)**

Parts of this chapter may apply if the *firm* has a *top-up permission* or if the *firm* is:

- (b) an *OPS firm*; or
- (d) an *insurer* with *permission* to effect or carry out *life policies*; or
- (e) a *firm* with *permission* to establish, operate or wind up a *personal pension scheme* or a *stakeholder pension scheme*; or
- (f) a *firm* with *permission* to advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.

(SUP 16.1)

**SUP 17 (Transaction reporting)**

	<p>A <i>MiFID investment firm</i> (other than a <i>collective portfolio management investment firm</i>) reports transactions executed wholly or partly through its <i>branch</i> to the <i>competent authority</i> of its <i>Home State</i> unless otherwise agreed by that <i>competent authority</i> and the <i>FCA</i>, in which case it will report to the <i>FCA</i>.</p>	Does not apply.
	<p><b>SUP 18 (Transfers of business)</b></p> <p>SUP 18.4 does not apply. SUP 18.1, SUP 18.2 and SUP 18.3 may be relevant if the <i>firm</i> proposes to transfer the whole or part of its business by an <i>insurance business transfer scheme</i> or to accept such a transfer or proposes to accept certain transfers of <i>insurance business</i> taking place outside the <i>United Kingdom</i>.</p>	<p><b>SUP 18 (Transfers of business)</b></p> <p>As column (2).</p>
<p><b>SUP App 2 (Insurers: Scheme of operations)</b></p> <p>Does not apply (SUP App 2.1.1 R).</p>	<p><b>SUP App 2 (Insurers: Scheme of operations)</b></p> <p>Does not apply (SUP App 2.1.1 R).</p>	
<p><i>PROD</i></p>	<p>Applies in respect of the <i>rules</i> which implement article 24(2) <i>MiFID</i> and articles 9 and 10 of the <i>MiFID Delegated Directive</i> in relation to the activities of a <i>branch</i> within the territory of the <i>UK</i>.</p>	Does not apply.
<p><i>DEPP</i></p>	<p><i>DEPP</i> applies and contains a description of the <i>FCA's</i> procedures for taking statutory notice decisions, the <i>FCA's</i> policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the <i>Act</i> has been given or the <i>FCA</i> is considering giving.</p>	<p><i>DEPP</i> applies and contains a description of the <i>FCA's</i> procedures for taking statutory notice decisions, the <i>FCA's</i> policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the <i>Act</i> has been given or the <i>FCA</i> is considering giving.</p>
<p><i>DISP</i></p>	<p>Generally applies (DISP 1.1.1 G) .</p> <p>In relation to <i>MiFID business</i> carried on from the <i>branch</i> of an <i>EEA firm</i>, the provisions in <i>DISP</i> relating to <i>MiFID complaints</i> generally apply (subject to some limitations, see DISP 1.1A.7R), as do the directly applicable provisions of the <i>MiFID Org Regulation</i> relating to complaints handling.</p> <p>For an <i>incoming EEA AIFM branch</i> <i>DISP</i> applies (subject to some limitations, see DISP 1.1.3 R), except for an <i>incoming EEA AIFM branch</i> of an <i>AIF</i> that is a <i>body corporate</i> (and not a <i>collective investment scheme</i>), including where the <i>body corporate</i> is an <i>ELTIF</i> when <i>DISP</i> does not apply.</p>	<p>Generally does not apply (DISP 1.1.1 G).</p> <p>However, <i>DISP</i> applies (subject to some limitations, see DISP 1.1.3R and DISP 1.1.5R) to:</p> <p>(a) an <i>incoming EEA firm</i> which is a <i>UCITS management company</i> managing a <i>UCITS scheme</i>; or</p> <p>(b) an <i>AIFM</i> managing an <i>authorised AIF</i> or a <i>UK ELTIF</i> other than a <i>body corporate</i> that is not a <i>collective investment scheme</i>.</p>

<p>COMP</p>	<p>Applies, except in relation to the <i>passported activities</i> of a <i>MiFID investment firm</i>, an <i>IDD insurance intermediary</i>, a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i>, an <i>MCD mortgage credit intermediary</i> and an <i>incoming AIFM</i> carrying on either <i>AIFM management functions</i> for an <i>unauthorised AIF</i> or non-core services under article 6.4 of <i>AIFMD</i> (see the definition of "<i>participant firm</i>"). However, a <i>firm</i> specified above may be able to apply for <i>top-up cover</i> in relation to its <i>passported activities</i> (see COMP 14 (Participation by EEA Firms)).</p>	<p>Does not apply in relation to the <i>passported activities</i> of a <i>MiFID investment firm</i>, an <i>IDD insurance intermediary</i>, an <i>MCD mortgage credit intermediary</i> or a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> or an <i>incoming EEA AIFM</i> regarding <i>AIFM management functions</i> carried on for an <i>unauthorised AIF</i> or non-core services under article 6.4. Applies in relation to the <i>passported activities</i> of a <i>UCITS management company</i> in relation to the management of a <i>UCITS scheme</i> and of an <i>AIFM</i> in relation to the management of an <i>authorised AIF</i>. Otherwise, <i>COMP</i> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-UK activities (see COMP 5).</p>
<p>COLL</p>	<p>A. The following provisions of <i>COLL</i> apply to an <i>EEA UCITS management company</i> providing <i>collective portfolio management services</i> for a <i>UCITS scheme</i>:</p> <ul style="list-style-type: none"> <li>(a) <i>COLL 6.6A.2 R</i> (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its Unitholders);</li> <li>(b) <i>COLL 6.6A.4 R</i> (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);</li> <li>(c) <i>COLL 6.6A.5 R</i> (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);</li> <li>(d) <i>COLL 12.3.4 R</i> (Provision of documentation to the FSA: EEA UCITS management companies);</li> <li>(e) the <i>fund application rules</i> (see <i>COLL 12.3.5 R</i> (COLL fund rules under the management company passport: the fund application rules));</li> <li>(f) <i>COLL 12.3.6 R</i> (Requirement to make information available to the public or the FSA);</li> <li>(g) <i>COLL 12.3.7 G</i> (EEA UCITS management companies: compliance with FSA rules); and</li> <li>(h) <i>COLL 12.3.8 G</i> (EEA UCITS management companies: conduct of business rules).</li> </ul> <p>An <i>EEA UCITS management company</i> providing <i>collective portfolio man</i></p>	<p>For an <i>EEA UCITS management company</i> providing <i>collective portfolio management services</i> for a <i>UCITS scheme</i>, as column (2)A.(d), (e), (f) and (g) and the other parts of <i>COLL</i> specified.</p> <p>For an <i>incoming EEA AIFM</i>, as column (2) B.</p>

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	<p>agement services for a <i>UCITS</i> scheme should be aware that it will be expected to comply with the above <i>rules</i> in relation to all aspects of the functioning of the relevant <i>UCITS</i> scheme where, for example, the <i>firm</i>:</p> <p>(a) [deleted]</p> <p>(b) wishes to apply for an <i>authorisation order</i> to establish an <i>AUT</i>, <i>ACS</i> or <i>ICVCas</i> a <i>UCITS</i> scheme; or</p> <p>(ba) is the <i>management company</i> of a <i>UCITS</i> scheme that wishes to exercise an <i>EEA right</i> to market its <i>units</i> in another <i>EEA State</i>; or</p> <p>(c) is the <i>operator</i> of a <i>recognised scheme</i>.</p> <p>B. Subject to <b>FUND 1.1.2 R</b>, <i>COLL</i> applies to an <i>incoming EEA AIFM</i> as relevant.</p>	
<b>FUND</b>	<p><b>FUND 3.8</b> (Prime brokerage firms) applies to an <i>incoming EEA AIFM branch</i>.</p> <p><b>FUND 10</b> (Operating on a cross-border basis), provides guidance for an <i>incoming EEA AIFM branch</i>.</p>	Does not apply, except <b>FUND 10</b> (Operating on a cross border basis) which provides guidance for an <i>EEA AIFM</i> managing an <i>AIF</i> on a services basis or <i>marketing</i> an <i>AIF</i> using the <i>marketing</i> passport under <i>AIFMD</i> .
<b>CREDS</b>	Does not apply.	Does not apply.
<b>PROF</b>	<i>PROF</i> applies only if the <i>firm</i> is an <i>authorised professional firm</i> .	As column (2).
<b>REC</b>	Does not apply.	Does not apply.
<b>CONC</b>	<b>CONC</b> applies except to the extent necessary to be compatible with European law.	As column (2)
[FCA]	Provisions on the territorial application of <b>CONC</b> are contained in <b>CONC 1.2.5 R</b> and <b>CONC 1.2.6 R</b>	
<b>LR</b>	<p><b>LR</b> (Listing Rules)</p> <p>May apply if the <i>firm</i> is applying for <i>listing</i> in the <i>United Kingdom</i>, is a <i>listed issuer</i> in the <i>United Kingdom</i>, is a <i>sponsor</i> or is applying for approval as a <i>sponsor</i>.</p>	<p><b>LR</b> (Listing Rules)</p> <p>As column (2).</p>
<b>PR</b>	<p><b>PR</b> (Prospectus Rules)</p> <p>May apply if the <i>firm</i> makes an <i>offer of transferable securities to the public</i> in the <i>United Kingdom</i> or is seeking the <i>admission to trading</i> of <i>transferable securities</i> on a <i>regulated market</i> situated or operating in the <i>United Kingdom</i>.</p>	<p><b>PR</b> (Prospectus Rules)</p> <p>As column (2).</p>
<b>DTR</b>	<p><b>DTR</b> (Disclosure Guidance and Transparency Rules)</p> <p>May apply if the <i>firm</i> is an <i>issuer</i>, any class of whose <i>financial instruments</i></p>	<p><b>DTR</b> (Disclosure Guidance and Transparency Rules)</p> <p>As column (2).</p>

have been *admitted to trading* on a *regulated market*, or are the subject of an application for *admission to trading* on a *regulated market*, other than *issuers* who have not requested or approved admission of their *financial instruments* to trading on a *regulated market*.

EG

EG describes the FCA's approach to exercising the main enforcement powers given to it by FSMA and by other legislation. EG is a Regulatory Guide and as such does not form part of the Handbook.

EG (Enforcement Guide) As column (2).

CONRED

Applies to a *firm* which made a *personal recommendation* in relation to an Arch cru fund, after which a *consumer* made an investment in the Arch cru fund, and to which the suitability requirements (specified at paragraph 5.1R of the instructions in CONRED 2 Annex 13 ) applied (CONRED 2.1.1R).

Does not apply

**Notes to Annex 1**

Note 1:

*PRA-authorised persons* should also refer to the relevant parts of the *PRA Rulebook*.

Note 2: The effect of article 35(1) and 35(8) of *MiFID* (when read with article 1(3) of *MiFID*) is that if an *EEA MiFID investment firm* establishes a *branch* in the *UK* exercising an *EEA right* under *MiFID* or *CRD*, the *FCA* has supervisory responsibility for the services and activities provided or performed by the *branch* within the *UK* in relation to the *rules* implementing articles 24, 25, 27 and 28 of *MiFID*.



## Matters reserved to a Home State regulator

### Introduction

1. The application of certain provisions in the *Handbook* to an *incoming EEA firm* or *incoming Treaty firm* depends on whether responsibility for the matter in question is reserved to the *firm's Home State regulator*. This annex contains *guidance* designed to assist such *firms* in understanding the application of those provisions. This annex is not concerned with the *FCA* or the *PRA's* rights to take enforcement action against an *incoming EEA firm* or an *incoming Treaty firm*, which, in the case of the *FCA*, are covered in the Enforcement Guide (*EG*), or with the position of a *firm* with a *top-up permission*.

### Requirements in the interest of the general good

2. The *Single Market Directives*, and the *Treaty* (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the *Home State regulator*. To summarise, the *FCA* or *PRA*, as *Host State regulator*, is entitled to impose requirements with respect to activities carried on within the *United Kingdom* if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the *Single Market Directives*:
  - (1) the *Single Market Directives* expressly reserve responsibility for the prudential supervision of a *MiFID investment firm*, *CRD credit institution*, *UCITS management company* *AIFM* or passporting *Solvency II firm* to the *Firm's Home State regulator* in respect of prudential matters within the scope of the respective *Single Market Directives*. The *IDD* and the *MCD* reach the same position without expressly referring to the concept of prudential supervision. Accordingly, the *FCA*, as *Host State regulator*, is entitled to regulate only the conduct of the firm's business (in the case of the *IDD*, business conducted through a *branch*) within the *United Kingdom*;
  - (2) there is no explicit "general good" provision in *MiFID* or *AIFMD*. Rather, the responsibilities for a *Host State regulator* under *MiFID* are contained in paragraphs 8 to 10 and under *AIFMD* are contained in paragraphs 11G to 11J;
  - (3) [deleted]
  - (4) for a *MiFID investment firm* including a *CRD credit institution* which is a *MiFID investment firm*), the protection of *clients' money* and *clients' assets* is reserved to the *Home State regulator* under *MiFID*; and
  - (5) responsibility for participation in compensation schemes for *CRD credit institutions* and *MiFID investment firm* is reserved in most cases to the *Home State regulator* under the *Deposit Guarantee Directive* and the *Investor Compensation Directive*.
3. It is necessary to refer to the case law of the European Court of Justice to interpret the concept of the "general good". To summarise, to satisfy the general good test, *Host State* rules must come within a field which has not been harmonised at *EU* level, satisfy the general requirements that they pursue an objective of the general good, be non-discriminatory, be objectively necessary, be proportionate to the objective pursued and not already be safeguarded by rules to which the *firm* is subject in its *Home State*.

### Application of SYSC 2 and SYSC 3

4. SYSC 2 and SYSC 3 only apply to an *insurer*, a *managing agent* and the *Society*. See paragraph 8 below for a discussion of how the *common platform requirements* apply. SYSC 2.1.1 R and SYSC 2.1.2 G do not apply for a relevant *incoming Treaty firm*. The *FCA* considers that it is entitled, in the interests of the general good, to impose the requirements in SYSC 2.1.3 R to SYSC 2.2.3 G (in relation to the allocation of the function in SYSC 2.1.3 R (2)) and

SYSC 3 on an *incoming EEA firm* and an *incoming Treaty firm*; but only in so far as they relate to those categories of matter responsibility for which is not reserved to the *firm's Home State regulator*.

5. Should the *FCA* or *PRA* become aware of anything relating to an *incoming EEA firm* or *incoming Treaty firm* (whether or not relevant to a matter for which responsibility is reserved to the *Home State regulator*), the *PRA* or *FCA* may disclose it to the *Home State regulator* in accordance with any directive and the applicable restrictions in Part 23 of the Act (Public Record, Disclosure of Information and Co-operation).
6. This Annex represents the *FCA's* views, but a *firm* is also advised to consult the relevant *EU* instrument and, where necessary, seek legal advice. The views of the European Commission in the banking and insurance sectors are contained in two Commission Interpretative Communications (Nos. 97/C209/04 and C(1999)5046).

7. [deleted]

Application of the common platform requirements in SYSC to *EEA MiFID investment firms*

8. Whilst the *common platform requirements* (located in SYSC 4 - SYSC 10) do not generally apply to *incoming EEA firms* (but for *EEA UCITS management companies*, see 8A below), *EEA MiFID investment firms* must comply with the *common platform record-keeping requirements* in relation to a *branch* in the *United Kingdom* and SYSC 10A (Recording telephone communications and electronic communications).

Application of SYSC to *EEA UCITS management companies*

- 8A. SYSC 1 Annex 1 (Detailed application of SYSC), Part 2, 2.7AG provides guidance on the application of the *common platform requirements* to the *UK branch* of an *EEA UCITS management company*.

Requirements under MiFID

9. Article 34(1) of *MiFID* prohibits Member States from imposing additional requirements on a *MiFID investment firm* in relation to matters covered by *MiFID* if the *firm* is providing services on a cross-border basis. Such firms will be supervised by their *Home State regulator*.
10. Article 35(8) of *MiFID* requires the *FCA* as the *Host State regulator* to apply certain obligations to an *incoming EEA firm* with an establishment in the *UK*. In summary, these are articles:
  - (1) 24 of *MiFID* (General principles and information to clients);
  - (1A) 25 of *MiFID* (Assessment of suitability and appropriateness and reporting to clients);
  - (2) 27 of *MiFID* (execution of orders on terms most favourable to the client);
  - (3) 28 of *MiFID* (client order handling rules);

; and

In addition, the *FCA* assumes responsibility for supervision of articles 14 to 26 of *MiFIR* although article 14 of *RTS 22* permits a *firm* to report transactions executed wholly or partly through its *branch* to the *competent authority* of its *Home State* unless otherwise agreed by that *competent authority* and the *FCA*. The remaining obligations under *MiFID* and *MiFIR* are reserved to the *Home State regulator* other than requirements in *MAR 10.2* in relation to *commodity derivative* position limits.

11. *MiFID* is more highly harmonising than other *Single Market Directives*. Article 4 of Directive 2006/73 permitted Member States to impose additional requirements only where certain tests were met. The *FSA* made certain requirements that fell within the scope of Article 4, some of which have been retained by the *FCA*, for example in *COBS*. *MiFID* retains an ability for Member States to impose additional requirements in the areas of client assets and investor protection. The *FCA* has made some further requirements which fall within the scope of these provisions. These requirements apply to an *EEA MiFID investment firm* with an establishment in the *United Kingdom* as they apply to a *UK MiFID investment firm*, in the circumstances contemplated by article 35(8) *MiFID*.

[FCA/  
PRA]

Requirements under the UCITS Directive

- 11A Article 19(8) of the *UCITS Directive* prohibits an *EEA State* from imposing additional re

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[FCA]	quirements on a <i>management company</i> providing <i>collective portfolio management services</i> for a <i>UCITS</i> in its territory on a cross-border basis by establishing a <i>branch</i> or under the freedom to provide <i>cross border services</i> in respect of the subject matter of the <i>UCITS Directive</i> , except in the cases expressly permitted (see 11C below).
11B [FCA]	<p>A <i>management company</i> which provides <i>collective portfolio management services</i> on a cross-border basis by establishing a <i>branch</i> in another <i>EEA State</i> or under the freedom to provide services must comply with the <i>rules</i> of the <i>UCITS Home State</i> which relate to the constitution and functioning of the <i>UCITS</i>. Where the <i>UCITS Home State</i> is the <i>United Kingdom</i>, the applicable <i>rules</i> that the <i>EEA UCITS management company</i> must comply with are as follows:</p> <ol style="list-style-type: none"> <li>(1) <a href="#">COLL 12.3.4 R</a> (Provision of documentation to the FCA:EEA UCITS management companies);</li> <li>(2) the <i>fund application rules</i> (see <a href="#">COLL 12.3.5 R</a> (COLL fund rules under the management company passport: the fund application rules)); and</li> <li>(3) <a href="#">COLL 12.3.6 R</a> (Requirement to make information available to the public or the FCA).</li> </ol>
11C [FCA]	<p>A <i>management company</i>, however, which provides <i>collective portfolio management services</i> from a <i>branch</i> in another <i>EEA State</i>, is obliged under article 17(4) to comply with the applicable rules of the <i>Host State regulator</i> drawn up under article 14(1) that require a <i>management company</i> to:</p> <ol style="list-style-type: none"> <li>(1) act honestly and fairly in conducting its business activities in the best interests of the <i>UCITS</i> it manages and the integrity of the market;</li> <li>(2) act with due skill, care and diligence, in the best interests of the <i>UCITS</i> it manages and the integrity of the market;</li> <li>(3) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;</li> <li>(4) try to avoid conflicts of interests and, when they cannot be avoided, to ensure that the <i>UCITS</i> it manages is fairly treated; and</li> <li>(5) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.</li> </ol>
11D [FCA]	<p>The <i>rules</i> implementing the requirements set out in paragraph 11C (1) to (5) are as follows:</p> <ol style="list-style-type: none"> <li>(1) <a href="#">SYSC</a>, to the extent indicated in column A+ (Application to management company) of Part 3 of <a href="#">SYSC 1 Annex 1</a> (Detailed application of <a href="#">SYSC</a>); and</li> <li>(2) <a href="#">COBS</a>, to the extent indicated at paragraph 9.1 of Part 3 of <a href="#">COBS 1 Annex 1</a> (Application).</li> <li>(3) <a href="#">COLL 6.6A.2 R</a> (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its Unitholders) (<i>branch</i> only);</li> <li>(4) <a href="#">COLL 6.6A.4 R</a> (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes) (<i>branch</i> only); and</li> <li>(5) <a href="#">COLL 6.6A.5 R</a> (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company) (<i>branch</i> only).</li> </ol> <p>Territorial application of the <i>Handbook</i></p> <p>The auction regulation</p>
11E[FCA/ PRA]	<p>Where an <i>incoming EEA firm</i> exercises an <i>EEA right</i> under the <i>auction regulation</i> to provide services or establish a <i>branch</i> in the <i>United Kingdom</i>, it is carrying on <i>auction regulation bidding</i>. Authorisation and supervision of a <i>firm</i> under the <i>auction regulation</i> are almost exclusively matters reserved to the <i>Home State regulator</i>. The only requirements which the <i>FCA</i> has applied as <i>Host State regulator</i> under the <i>auction regulation</i> in respect of <i>auction regulation bidding</i> is on a <i>UK branch</i> in relation to safeguards against money laundering and financial crime as well as a statutory status disclosure obligation and requirements to notify the <i>FCA</i> (see Note 4 of SUP 13A Annex 1 G).</p>

11F [FCA] An *incoming EEA firm* that carries on *MiFID business bidding* is exercising an *EEA right* under *MiFID* and is subject to the *applicable provisions* relating to its carrying on of *MiFID business*. The respective responsibilities of the *Home State regulator* and *Host State regulator* are the same as under *MiFID*.

Requirements under *AIFMD*

11G [FCA] Article 33(5) of *AIFMD* prohibits *Host States* from imposing additional requirements on an *AIFM* to matters covered by *AIFMD* if the *firm* is managing an *AIF* on a cross-border basis by establishing a *branch* or providing *cross-border services* to manage an *AIF* in that *EEA State*, except as expressly permitted (see 11H below).

11H [FCA] Under article 45(2) (Responsibility of competent authorities in Member States) of *AIFMD* the supervision of an *AIFM's* compliance with articles 12 (General principles) and 14 (Conflicts of interest) are the responsibility of the *Host State* of the *AIFM* where the *AIFM* manages and/or markets an *AIF* through a *branch* in that *EEA State*.

11I [FCA] As a result, an *incoming EEA AIFM branch* is required to comply with the *AIFMD Host State requirements* (as set out below):

- (a) FUND 3.8;
- (b) SYSC 4.1.2CR;
- (c) SYSC 10.1.22 R to SYSC 10.1.26 R; and
- (d) COBS 2.1.4 R.

11J [FCA] Under article 32(5) of *AIFMD*, arrangements in point (h) of Annex IV of *AIFMD* for the *marketing of AIFs* is subject to the laws and supervision of the *Host State* of the *AIFM*.

11K [FCA] A *full-scope EEA AIFM* that is *marketing* an *AIF* in the *UK* using the *marketing passport* should have regard to the *financial promotions* regime, as explained in PERG 8.37.5G (2) (*Communications with investors in relation to draft documentation*).

Requirements under the *MCD*

11L Under article 34(2) of the *MCD*, ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the *MCD* by *incoming EEA branches* is the responsibility of the *Host State*. Responsibilities for ensuring compliance with all other obligations are the responsibility of the *Home State*.

11M Ensuring compliance with the obligations in the *MCD* by *EEA firms* providing *cross border services* is the responsibility of the *Home State*.

Requirements under the *IDD*

11N Under article 7(2) of the *IDD*, ensuring compliance with the obligations in Chapter V (articles 17 – 25) and Chapter VI (articles 27 – 30) of the *IDD* by *incoming EEA branches* is the responsibility of the *Host State*. Subject to article 7(1) (see 11P below), ensuring compliance with all other obligations is the responsibility of the *Home State*.

11O Subject to article 7(1) (see 11P below), ensuring compliance with the obligations in the *IDD* by *EEA firms* providing *cross border services* is the responsibility of the *Home State*.

11P Under article 7(1) of the *IDD*, if an *IDD insurance intermediary's primary place of business* is in a *Host State*, the *Home* and *Host State regulators* may agree that the *Host State regulator* will act as if it were the *Home State regulator*. This is only with regard to the provisions of Chapters IV, V, VI and VII of the *IDD* (see guidance in SUP 13A.6A).

12. [deleted]

13. Examples of how SYSC 3 and/or the common platform provisions apply in practice.

- (1) The Prudential Standards part of the *Handbook* do not apply to an *insurer* which is an *incoming EEA firm*. Similarly, SYSC 3 does not require such a *firm*:
  - (a) to establish systems and controls in relation to financial resources (SYSC 3.1.1 R); or
  - (b) to establish systems and controls for compliance with that Prudential Standards part of the *Handbook* (SYSC 3.2.6 R); or

- (c) to make and retain records in relation to financial resources (SYSC 3.2.20 R and SYSC 9.1.1 R to 9.1.4 G).
- (2) The Conduct of Business sourcebook (COBS) applies to an *incoming EEA firm*. Similarly, SYSC 3 and SYSC 4-10 do require such a *firm*, to the extent provided by SYSC 1 Annex 1:
  - (a) to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of COBS (SYSC 3.1.1 R and SYSC 4.1.1 R);
  - (b) to establish systems and controls for compliance with the applicable sections of COBS (SYSC 3.2.6 R and SYSC 6.1.1 R); and
  - (c) to make and retain records in relation to those aspects of the conduct of its business (SYSC 3.2.20 R and SYSC 9.1.1 R to 9.1.4 G).

See also Question 12 in SYSC 2.1.6 G for guidance on the application of SYSC 2.1.3 R (2)



## EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom

Under paragraph 15A(1) of Part II of Schedule 3 to the *Act*, an *EEA UCITS management company* intending to exercise an *EEA right* to provide *collective portfolio management* services for a *UCITS scheme* must, before it undertakes that activity, obtain the *FCA's* approval to manage that *UCITS scheme*. *Firms* should use the application form below for this purpose. *Firms* may cross refer to other sources where the information has already been provided to the *FCA*.

### Application by an EEA UCITS management company to manage one or more UCITS schemes established in the United Kingdom (paragraph 15A(1) of Part II of Schedule 3 to the Financial Services and Markets Act 2000).

Name and registered address of <i>management company</i> :	
Contact details for the person submitting the application (including telephone number and email address):	
<i>EEA State</i> in which <i>management company</i> is authorised:	
Details of <i>competent authority</i> providing authorisation of the <i>management company</i> :	
Set out details of the scope of authorisation of the <i>management company</i> including the type of funds for which authorisation to manage has been obtained and any limitations that apply to the authorisation:	
Name of each <i>UCITS scheme</i> to which this application for approval relates:	
Is the <i>management company</i> authorised to manage the type of <i>UCITS scheme</i> to which this approval relates? If not provide details:	
Has the <i>management company</i> submitted the information required by COLL 12.3.4 R (Provision of documentation to the <i>FCA</i> :EEA UCITS management companies), including the depositary agreement and information on delegation arrangements? Provide details:	
Signed by:	
Title:	
Dated:	
When completed send this form to:	
Investment Funds Team	
The Financial Conduct Authority	
12 Endeavour Square	
London	

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E20 1JN.

Or electronically to: [recognisedcis@fca.org.uk](mailto:recognisedcis@fca.org.uk)



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## **Passporting: Emissions Trading. Notice of intention to exercise the right of establishment in the United Kingdom**

This annex consists of only one or more forms. Forms can be completed online now by visiting:  
[www.fca.org.uk](http://www.fca.org.uk)

The forms are also to be found through the following address: *Passporting: Emissions Trading. Notice  
of intention to exercise the right of establishment in the United Kingdom - SUP 13A Annex 4 R*

