

## STATUTORY INSTRUMENTS

# 2013 No. 1773

## The Alternative Investment Fund Managers Regulations 2013

### [<sup>F1</sup>PART 4

#### Operating conditions for external valuers, full-scope AIFMs and depositaries

##### Textual Amendments

- F1** Regulations revoked (14.12.2023 for the revocation of reg. 79) by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), [Sch. 1 Pt. 2](#) (with s. 1(4)); S.I. 2023/1382, reg. 2(c)(vi)

##### Valuation

**24.**—(1) An external valuer must carry out the valuation function described in [<sup>F2</sup>section 3.9 of the Investment Funds sourcebook] impartially, and with all due skill, care and diligence.

(2) An external valuer may not delegate such valuation function to a third party.

(3) If the FCA considers the appointment of an external valuer does not comply with the implementing provisions, the FCA may require that another external valuer be appointed instead.

(4) Any liability of a full-scope UK AIFM to an AIF managed by it, or to an investor of such an AIF, arising out of the AIFM's responsibility for the proper valuation of AIF assets, the calculation of the net asset value of the AIF and the publication of that net asset value, is not affected by the appointment by the AIFM of an external valuer in respect of that AIF.

(5) Irrespective of any contractual arrangements that provide otherwise, an external valuer is liable to the AIFM of an AIF in respect of which the external valuer is appointed for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

##### Textual Amendments

- F2** Words in [reg. 24\(1\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), [7\(1\)](#) (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

##### Disqualification of external valuer

**25.**—(1) If it appears to the FCA that an external valuer has failed to comply with an implementing provision applicable to it, it may disqualify the valuer from acting as an external valuer, or from so acting for any particular class of AIFs.

(2) If the FCA proposes to disqualify a valuer under this section, it must give the valuer a warning notice.

(3) If the FCA decides to disqualify a valuer—

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- (a) it must give the valuer a decision notice; and
  - (b) the valuer may refer the matter to the Tribunal.
- (4) The FCA may remove any disqualification imposed under this regulation if satisfied the disqualified person will in future comply with the implementing provisions.

### **Approval for delegation of functions by full-scope UK AIFMs**

**26.**—(1) A full-scope UK AIFM may not delegate its functions of portfolio management or risk management for an AIF to an undertaking, and that undertaking may not sub-delegate such function to another undertaking, unless—

- (a) the undertaking to whom the functions are to be delegated or sub-delegated falls within paragraph (2); or
  - (b) the FCA has approved such delegation or sub-delegation.
- (2) An undertaking falls within this paragraph if it is—
- (a) authorised or registered for the purpose of asset management; and
  - (b) subject to supervision in relation to its asset management function.
- (3) An application for approval under paragraph (1)(b)—
- (a) must be made in such manner as the FCA may direct; and
  - (b) must contain or be accompanied by such information as the FCA may reasonably require for the purposes of determining the application.
- (4) At any time after receiving an application and before determining it, the FCA may require the applicant to provide it with such further information as it considers necessary to enable it to determine the application.
- (5) An application under paragraph (3) must be determined by the FCA within one month of receiving the completed application.
- (6) The FCA may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within two months of receiving the application.
- (7) If the FCA proposes to refuse an application under paragraph (3) it must give the applicant a written notice.
- (8) If the FCA decides to refuse an application under paragraph (3)—
- (a) it must give the applicant a written notice explaining its reasons for the decision; and
  - (b) the applicant may refer the matter to the Tribunal.

### **Revocation of approval for delegation**

- 27.**—(1) The FCA may revoke its approval granted under regulation 26.
- (2) If the FCA proposes to revoke its approval it must give the applicant a warning notice.
- (3) If the FCA decides to revoke its approval—
- (a) it must give the applicant a decision notice; and
  - (b) the applicant may refer the matter to the Tribunal.

### **Liability following delegation**<sup>F3</sup>...

**28.**—(1) Irrespective of any contractual arrangements that provide otherwise, any liability of a full-scope UK AIFM to an AIF it manages, or to an investor of such an AIF, is not affected by—

- (a) the delegation of functions by the AIFM to a third party (“a delegate”);

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(b) any sub-delegation of such functions by the delegate to another person (“a sub-delegate”);  
or

(c) any further sub-delegation of such functions by a sub-delegate.

(2) A delegate or sub-delegate which has delegated or sub-delegated such functions must review on an ongoing basis the services provided by the person to whom functions have been delegated or sub-delegated.

#### Textual Amendments

**F3** Words in [reg. 28](#) heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 7\(2\)](#) (as amended by [S.I. 2019/325, reg. 58](#)); 2020 c. 1, Sch. 5 para. 1(1)

#### Depository liability: general provisions

**29.**—(1) This regulation and regulations 30 to 32 apply in relation to the depository of a UK AIF managed by a full-scope UK AIFM or <sup>F4</sup>a Gibraltar AIFM].

(2) Any obligation or liability of a depository under regulation 30 or 31 to the investors of the AIF may be invoked directly or indirectly through the AIFM, depending on the nature of the legal relationship between the depository, the AIFM and the investors.

(3) For the purposes of regulations 30 to 32, the provision of services as specified by <sup>F5</sup>the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 by a designated system (within the meaning of regulation 2(1) of those Regulations)], or the provision of similar services by a third-country securities settlement system, is not to be considered a delegation of custody functions.

#### Textual Amendments

**F4** Words in [reg. 29\(1\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 8\(1\)\(a\)](#) (as amended by [S.I. 2019/325, reg. 58](#)); 2020 c. 1, Sch. 5 para. 1(1)

**F5** Words in [reg. 29\(3\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 8\(1\)\(b\)](#) (as amended by [S.I. 2019/325, reg. 58](#)); 2020 c. 1, Sch. 5 para. 1(1)

#### Depository liability for loss of financial instruments held in custody

**30.**—(1) This regulation applies where a financial instrument held in custody in accordance with <sup>F6</sup>rule 3.11.21 of the Investment Funds sourcebook] by the depository or a third party to whom the custody has been delegated or sub-delegated is deemed to have been lost under Article 100 of the Commission Delegated Regulation.

(2) Subject to paragraphs (3) and (4), the depository must return a financial instrument of the identical type or the corresponding amount to the AIF, or the AIFM acting on behalf of the AIF, without undue delay.

(3) The depository is not required to comply with the obligation in paragraph (2) if it can prove that the loss arose as a result of an external event beyond the depository's reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

(4) The depository is not required to comply with the obligation in paragraph (2) if it can prove that—

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- (a) the lost financial instrument was held in custody by a third party;
  - (b) the depositary had delegated its functions to the third party in accordance with [<sup>F7</sup>rule 3.11.28 of the Investment Funds sourcebook];
  - (c) a written contract between the depositary and the third party—
    - (i) expressly transfers the obligation in paragraph (2) to the third party; and
    - (ii) enables the AIF, or the AIFM acting on behalf of the AIF, to make a claim against the third party in respect of the loss of the financial instrument, or for the depositary to make such a claim on their behalf; and
  - (d) a written contract between the depositary and the AIF, or the AIFM acting on behalf of the AIF, expressly allows a transfer of the depositary's obligation in paragraph (2) and establishes an objective reason for the transfer.
- (5) A third party (“A”) to which custody of a financial instrument has been delegated and to which the obligation in paragraph (2) has been transferred in accordance with paragraph (4) is not required to return a financial instrument of the identical type or corresponding amount to the AIF, or the investors of the AIF, if it can prove that—
- (a) the lost financial instrument was held in custody by another third party (“B”);
  - (b) A had sub-delegated its functions to B in accordance with [<sup>F8</sup>rule 3.11.28 of the Investment Funds sourcebook];
  - (c) a written contract between A and B—
    - (i) expressly transfers from A to B the obligation to return a financial instrument of the identical type or corresponding amount to the AIF, or the investors of the AIF; and
    - (ii) enables the AIF, or the AIFM acting on behalf of the AIF, to make a claim against B in respect of the loss of the financial instrument, or for the depositary to make such a claim on their behalf; and
  - (d) a written contract between A and the depositary expressly allows a transfer of A's obligation to return a financial instrument of the identical type or corresponding amount to the AIF, or the investors of the AIF, and establishes an objective reason for the transfer.
- (6) Irrespective of any contractual arrangements that provide otherwise, but subject to paragraphs (4) and (5) and regulation 32(2), the obligation of the depositary under paragraph (2) or of a third party as referred to in paragraph (4)(c) or (5)(c) is not affected by any delegation by the depositary or sub-delegation by the third party of the functions referred to in [<sup>F9</sup>rules 3.11.21 and 3.11.23 of the Investment Funds sourcebook].

<sup>F10</sup>(7) .....

Textual Amendments	
<b>F6</b>	Words in reg. 30(1) substituted (31.12.2020) by <a href="#">The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328)</a> , regs. 1(3), <b>8(2)(a)</b> (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
<b>F7</b>	Words in reg. 30(4)(b) substituted (31.12.2020) by <a href="#">The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328)</a> , regs. 1(3), <b>8(2)(b)</b> (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
<b>F8</b>	Words in reg. 30(5)(b) substituted (31.12.2020) by <a href="#">The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328)</a> , regs. 1(3), <b>8(2)(c)</b> (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

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- F9** Words in reg. 30(6) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **8(2)(d)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Reg. 30(7) omitted (1.1.2024) by virtue of The Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023 (S.I. 2023/1410), regs. 1(2), **9(4)**

**Modifications etc. (not altering text)**

- C1** Reg. 30 excluded (31.12.2020) by Regulation (EU) 760/2015, Art. 29(2) (as amended by The Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/336), regs. 1(3), **34(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1))

**Depository liability for other losses**

**31.**—(1) If an AIF, or investors of an AIF, have suffered losses other than the loss by the depository or a third party to which custody has been delegated or sub-delegated of financial instruments held in custody in accordance with [<sup>F11</sup>rule 3.11.21 of the Investment Funds sourcebook], the depository is liable to the AIF, or investors of the AIF, if the losses are a result of the depository's negligent or intentional failure to comply with an implementing provision that applies to it.

(2) Irrespective of any contractual arrangements that provide otherwise, any liability of the depository to the AIF, or to investors of the AIF, under paragraph (1) is not affected by any delegation by the depository of the functions referred to in [<sup>F12</sup>rules 3.11.21 and 3.11.23 of the Investment Funds sourcebook].

**Textual Amendments**

- F11** Words in reg. 31(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **8(3)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in reg. 31(2) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **8(3)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**Depository liability and third country custodians**

**32.**—(1) This regulation applies where—

- (a) the law of a third country requires certain financial instruments to be held in custody by a local entity; and
- (b) there is no local entity that satisfies the delegation requirements in [<sup>F13</sup>rule 3.11.28(4)(b) of the Investment Funds sourcebook].

(2) The depository is not required to comply with the obligation in regulation 30(2) in relation to the financial instruments mentioned in paragraph (1)(a) if—

- (a) the rules or instruments of incorporation of the AIF concerned expressly allow for a discharge of the obligation;
- (b) the investors of the AIF were informed of the discharge and of the circumstances justifying the discharge prior to their investment;
- (c) the AIF, or the AIFM on behalf of the AIF, instructed the depository to delegate the custody of the financial instruments to a local entity;
- (d) a written contract between the depository and the AIF, or the AIFM acting on behalf of the AIF, expressly allows for such a discharge; and

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- (e) a written contract between the depositary and the local entity expressly transfers the obligation of the depositary to the local entity and enables the AIF, or the AIFM acting on behalf of the AIF, to make a claim against the local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

<sup>F14</sup>(3) .....

#### Textual Amendments

- F13** Words in [reg. 32\(1\)\(b\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **8(4)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F14** [Reg. 32\(3\)](#) omitted (1.1.2024) by virtue of [The Financial Services and Markets Act 2023 \(Consequential Amendments\) Regulations 2023 \(S.I. 2023/1410\)](#), regs. 1(2), **9(5)**

#### Modifications etc. (not altering text)

- C2** [Reg. 32](#) excluded (31.12.2020) by [Regulation \(EU\) 760/2015](#), Art. 29(2) (as amended by [The Long-term Investment Funds \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/336\)](#), regs. 1(3), **34(3)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1))

### Management of third country AIFs

**33.** A full-scope UK AIFM may manage a third country AIF that is not marketed in [<sup>F15</sup>the United Kingdom or Gibraltar] only if appropriate cooperation arrangements are in place between the FCA and the supervisory authorities of the third country where the AIF is established in order to ensure an efficient exchange of information that enables the FCA to carry out its duties in accordance with [<sup>F16</sup>the Financial Services and Markets Act 2000, these Regulations, and any EU tertiary legislation made under the directive which forms part of retained EU law].]

#### Textual Amendments

- F15** Words in [reg. 33](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **8(5)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in [reg. 33](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **8(5)(b)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

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### **Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 2(1)(c) words inserted by [S.I. 2013/1797 Sch. 1 para. 2\(2\)\(c\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. This amendment is omitted (20.2.2019) by virtue of [S.I. 2019/328, reg. 20\(3\)\(a\)\(ii\)](#) without ever being in force)
- reg. 2(4) inserted by [S.I. 2013/1797 Sch. 1 para. 2\(3\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)
- reg. 5A amendment to earlier affecting provision [S.I. 2013/1797 Sch. 1 para. 2\(5\)](#) by [S.I. 2019/328 reg. 20\(3\)\(b\)](#) (This S.I. is amended by [S.I. 2019/325, reg. 58](#); This amendment not applied to legislation.gov.uk. The original amendments by [S.I. 2013/1797](#) are prospective)
- reg. 5A inserted by [S.I. 2013/1797 Sch. 1 para. 2\(5\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)
- reg. 88A amendment to earlier affecting provision [S.I. 2013/1797 Sch. 1 para. 2\(6\)](#) by [S.I. 2019/328 reg. 20\(3\)\(c\)](#) (This S.I. is amended by [S.I. 2019/325, reg. 58](#); This amendment not applied to legislation.gov.uk. The original amendments by [S.I. 2013/1797](#) are prospective)
- reg. 88A substituted for reg. 8 by [S.I. 2013/1797 Sch. 1 para. 2\(6\)](#) (This amendment not applied to legislation.gov.uk. This amendment is omitted (20.2.2019) by virtue of [S.I. 2019/328, reg. 20\(3\)\(c\)](#) without ever being in force)
- reg. 29(1)(b) substituted by [S.I. 2013/1797 Sch. 2 para. 3\(3\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 68.6 of the directive as the date when the national regimes set out in Articles 36 and 42 of the directive are to be terminated. No such date has as yet been specified)
- reg. 49(c) and word inserted by [S.I. 2013/1797 Sch. 1 para. 2\(10\)\(d\)](#) (This amendment not applied to legislation.gov.uk. This amendment is omitted (20.2.2019) by virtue of [S.I. 2019/328, reg. 20\(3\)\(e\)](#) without ever being in force)
- reg. 49(c) omitted by [S.I. 2013/1797 Sch. 2 para. 3\(5\)\(c\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 68.6 of the directive as the date when the national regimes set out in Articles 36 and 42 of the directive are to be terminated. No such date has as yet been specified)
- reg. 54(9) amendment to earlier affecting provision [S.I. 2013/1797 Sch. 1 para. 2\(12\)\(b\)](#) by [S.I. 2019/328 reg. 20\(3\)\(h\)](#) (This S.I. is amended by [S.I. 2019/325, reg. 58](#); This amendment not applied to legislation.gov.uk. The original amendments by [S.I. 2013/1797](#) are prospective)
- reg. 54(9)(10) inserted by [S.I. 2013/1797 Sch. 1 para. 2\(12\)\(b\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)

- reg. 56-56C substituted for reg. 56 by [S.I. 2013/1797 Sch. 2 para. 3\(7\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 68.6 of the directive as the date when the national regimes set out in Articles 36 and 42 of the directive are to be terminated. No such date has as yet been specified)
- reg. 59(5) amendment to earlier affecting provision [S.I. 2013/1797 Sch. 1 para. 2\(15\)\(b\)](#) by [S.I. 2019/328 reg. 20\(3\)\(i\)\(ii\)](#) (This S.I. is amended by [S.I. 2019/325](#), reg. 58; This amendment not applied to [legislation.gov.uk](#). The original amendments by [S.I. 2013/1797](#) are prospective)
- reg. 59(5)(6) inserted by [S.I. 2013/1797 Sch. 1 para. 2\(15\)\(b\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)