International Comparative Legal Guides

Alternative Investment Funds 2020

A practical cross-border insight into alternative investment funds work

Eighth Edition

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1 Regulatory Framework

1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

The UK is regarded as one of the leading global asset management centres, with an investment funds industry covering both traditional and alternative asset classes. In the case of funds with alternative investment strategies such as private equity, real estate and infrastructure funds, both the fund manager and the fund itself tend to be domiciled in the UK.

Prior to the Alternative Investment Fund Managers Directive ("AIFMD"), supplemented by its Level 2 Delegated Regulation ("Delegated Regulation") and guidelines from the European Securities Markets Authority ("ESMA"), the framework for Alternative Investment Funds was derived from the Financial Services and Markets Act 2000 ("FSMA") and the principal regulatory authority, the Financial Conduct Authority ("FCA"). However, AIFMD has ushered in a new regulatory environment for many investment fund managers, including private equity firms and managers of hedge funds.

AIFMD offers the lofty ideal of pan-European harmonisation of the regulatory and supervisory framework for the non-UCITS ("Undertakings for Collective Investment in Transferable Securities") fund sector, together with the associated freedom to passport management and marketing activities on a cross-border basis. However, no passport is ever free and for Alternative Investment Fund Managers ("AIFMs"), there will be significant costs and burdens; and in common with other Directives, the creation of freedoms within Europe can come at the price of newly erected barriers to truly international business.

As noted above, AIFMD applies to the non-UCITS sector. Broadly speaking, UCITS funds have not been used to implement alternative investment strategies and therefore are generally outside the scope of this chapter. Some hedge fund managers may be able to launch products under the UCITS brand if the proposed investment strategy fits into the framework and the UCITS requirements will offer investors greater regulatory safeguards and protections. However, the fact that UCITS funds are subject to mandated investment and borrowing powers means that they are likely to lack the investment flexibility which is available to private funds.

AIFMD has been implemented in the UK by various implementing measures – primarily the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773), the Alternative Investment Fund Managers (Amendment) Regulation 2013 (SI 2013/1797) and the Alternative Investment Fund Managers Order 2014 (SI 2014/1292). The majority of these implementing measures have been introduced by way of updates to the FCA Handbook. The FCA created a new investment fund sourcebook, called "FUND", as part of its Handbook and this contains most of the FCA's rules and guidance for UK AIFMs, which adds an additional component to the general regulatory framework set out under FSMA.

The European Venture Capital Funds Regulation ("VCF Regulation") provides what is essentially "AIFMD Lite" for EU venture capital fund managers. The regime was broadened in 2018, with the aim to make it more attractive following a lacklustre take up.

The Regulation on cross-border fund distribution ("Omnibus Regulation") and the Directive on the cross-border marketing of funds ("Omnibus Directive") entered into force on 1 August 2019. The majority of the Omnibus Regulation applies as from 2 August 2021 and Member States must also implement the Omnibus Directive as from that date. The legislation relates to areas which have previously been identified as problematic by fund managers, particularly in the context of the inconsistent national implementation of the AIFMD by individual EU Member States. In addition, a new set of obligations will be imposed on the marketing and distribution process. The measures will amend the existing marketing rules under AIFMD, the VCF Regulation, the EuSEF Regulation and the UCITS Directive.

1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Many Alternative Investment Funds will be AIFs for the purposes of AIFMD. An AIF is a collective investment undertaking which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors. Even if a vehicle does not fall within the definition of an AIF, it may be categorised as a collective investment scheme ("CIS") under FSMA (a CIS is similar, but not identical, to the European concept of a collective investment undertaking). An example of this is likely to be carried interest arrangements structured through a limited partnership, which are unlikely to be AIFs due to the employee participation scheme exclusion from AIFMD, but which are likely nevertheless to be unregulated CISs for the purposes of domestic legislation.

The FCA authorises and regulates persons carrying out specific "regulated activities" in the UK. Acting as the manager of an AIF is a regulated activity, as is establishing, operating (which includes managing) and winding up an unregulated collective investment scheme. A suitably authorised person must therefore be appointed to carry out these activities on behalf of an Alternative Investment Fund.

In the UK, only appropriately authorised persons can carry on a regulated activity by way of business. It is a criminal offence to breach this requirement. Any agreement entered into by a person carrying on a regulated activity in contravention of this provision is unenforceable against the other party and the other party is entitled to recover any money paid and to compensation for any loss sustained.

AIFMD contains a partial exemption for AIFMs whose total assets under management do not exceed certain thresholds. These sub-threshold firms will not have to comply with the full provisions of AIFMD, unlike those firms which are "full-scope" AIFMs. The relevant thresholds are: (i) €500 million, provided the AIF is not leveraged and investors have no redemption rights for the first five years; or (ii) €100 million (including assets acquired through leverage). The exemptions do not remove the requirement for authorisation, and sub-threshold firms will need to apply to the FCA to become a "small authorised AIFM" or, in certain limited circumstances, a "small registered AIFM". The latter category imposes the lowest regulatory burden on firms but is only available for internally managed AIFs and certain types of real estate scheme. Sub-threshold AIFMs can opt into AIFMD to be treated the same as full-scope AIFMs, so as to benefit from the AIFMD passporting regime.

A regulated entity which conducts all of its activities in its capacity as the manager/operator of an Alternative Investment Fund – whether an authorised AIFM or not – will be exempt from the EU Markets in Financial Instruments Directive ("MiFID").

Historically, though, many UK resident managers or advisers of off-shore hedge funds would have been subject to MiFID as the manager/operator of the fund was off-shore and the UK regulated entity was merely its delegate in respect of relevant investment management services. This analysis, however, has been somewhat muddied by the "letterbox" test imposed under AIFMD. The consequence of this test is that in some cases the entity which is designated as the manager of an AIF under the fund documentation is not regarded as the AIFM for the purposes of AIFMD (because it is a letterbox). The exact analysis of the letterbox test applicable to any situation is very fact-specific, but the risk is likely to arise from one of the tests set out in the Delegated Regulation, which provides that a manager of an AIF is likely to be deemed a letterbox if it delegates the performance of investment management functions (i.e. investment management and risk management) to an extent that exceeds by a substantial margin the investment management functions performed by the manager itself. The consequence of this is that an on-shore manager of a hedge fund may, depending on the exact structure and division of powers, now find itself as the AIFM for the purposes of the Directive even if it feeds its services into an off-shore manager.

1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Generally speaking, under the current UK framework, an Alternative Investment Fund itself is not required to be authorised or licensed by the FCA. AIFMD broadly supports the traditional position that it is the manager (or AIFM), rather than the Alternative Investment Fund, which is subject to regulation. However, whilst historically there have been very few operational requirements imposed at the level of the fund itself, to the extent AIFMD applies, the AIFM must now ensure that certain requirements are imposed upon the fund, such as: the appointment of a depositary to have custody of certain assets and/or verify title to privately held assets; organisational controls (relating to risk management, compliance and valuation); conduct-of-business rules (relating to due diligence, execution of orders and reporting); and rules relating to companies in which the fund has a substantial stake.

This will not be the case if the fund manager is looking to implement an alternative investment strategy through a retail fund (meaning those which are approved by the FCA to be marketed to identified categories of investors, including, in the case of UCITS and non-UCITS retail schemes, the general public). In the case of non-UCITS retail schemes, the fund itself, as well as the manager, will require FCA authorisation. Where a closed-ended investment fund is to be launched (such as an investment trust or real estate investment trust) and its shares listed, the listing on the London Stock Exchange of any such fund, as well as the manager, would need to be authorised by the FCA.

1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity *vs.* hedge)) and, if so, how?

The UK regulatory regime, broadly speaking, does not differentiate between open-ended and closed-ended private funds, assuming that the fund is domiciled within the UK, although, as noted above in the context of sub-threshold firms, the partial exemption from AIFMD will bite at a higher level for non-leveraged closed-ended funds.

However, the regulatory categorisation of UK fund managers advising or managing off-shore structures may be different to that which would apply if the entire structure is on-shore.

Other regulatory requirements which might apply to a manager of Alternative Investment Funds are linked with the investment strategy being pursued, rather than whether the fund is open-ended or closed-ended (although the relevant strategy might be linked with a particular type of fund). For example, further requirements of UK legislation which are particularly relevant to hedge funds include: rules relating to market abuse and insider dealing; disclosures of interests in shares and related derivatives above certain levels; and disclosures of net economic short exposures to certain financial-sector companies and companies subject to a rights issue.

1.5 What does the authorisation process involve and how long does the process typically take?

An application for authorisation under FSMA involves the applicant submitting a considerable volume of information to the FCA. This will include information on the proposed business activities of the applicant, its controllers and individuals who will be undertaking certain core controlled functions, its systems and controls including those relating to the manner in which the applicant monitors its compliance with applicable FCA Rules, its group structure and reporting lines and financial projections for the first year of trading. For those applicants applying for authorisation to manage an AIF, the FCA will require further information about the AIF itself (such as details of the AIF's risk profile and its use of leverage).

Once a complete application has been submitted (together with the requisite application fee), the FCA currently has six months to review the application (this is reduced to three months in the context of applications by AIFMs). During the review process, the FCA is likely to raise additional queries in relation to the information submitted.

The FCA has made available a suite of forms for use by UK AIFMs in order to apply for the various permissions and authorisations required from a UK AIFM. Further applications will also need to be made in relation to any "material changes" to the information submitted as part of the authorisation application.

Following authorisation, a successful applicant will need to comply with the applicable conduct of business and prudential rules of the FCA which are relevant to its business. In the context of AIFMs, particular focus is likely to be given to the capital adequacy requirements of, and remuneration principles imposed by, AIFMD.

1.6 Are there local residence or other local qualification or substance requirements?

A fund manager applying for authorisation under FSMA (whether or not as an AIFM) must meet certain threshold conditions. One of these is that the head office of the applicant must be in the UK. Although the FCA will judge each application on a case-by-case basis, the key issue in identifying the head office of a firm is the location of its central management and control.

In December 2018, the Department of Business, Energy and Industries Strategy of the UK Government indicated that it will introduce various reforms in respect of UK limited partnerships, following its consultation earlier in 2018. The reforms include requirements for a proposed "principal place of business" ("PPoB") to be included in the application for the limited partnership's registration. On an ongoing basis, the limited partnership will then need to demonstrate that it maintains an ongoing connection to the UK. The UK Government is still considering what evidence will be required to demonstrate the ongoing connection and how these requirements shall apply to existing limited partnerships. In terms of timing, the UK government has only committed to the required legislation "when parliamentary time allows".

1.7 What service providers are required?

Historically, there have been no formal requirements to appoint external service providers to private funds domiciled in the UK (although a manager may have engaged service providers as a matter of choice). However, this is another area of change under AIFMD. One of the most significant changes under AIFMD is the requirement to have a depositary, who will have the responsibilities set out under AIFMD (which include custody, cash movement reconciliations and monitoring certain processes such as issues and redemptions of units and valuations). Independent valuers may also be appointed pursuant to the provisions of AIFMD.

1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

AIFMs authorised in their EEA ("European Economic Area") home Member State (i.e. EEA AIFMs) should be able to exercise management and marketing passport rights in the UK in relation to EEA AIFs. In order to exercise these rights, the EEA AIFMs home Member State competent authority will send the relevant notification forms to the FCA, the UK's competent authority for these purposes. At the time of writing, however, it is unclear whether such passporting rights will continue to be enjoyed following Brexit.

Firms based in non-EEA jurisdictions wishing to market AIFs in the UK are required to comply with the National Private Placement Regime ("NPPR"), as well as the UK's financial promotion rules

1.9 What relevant co-operation or information sharing agreements have been entered into with other governments or regulators?

One of the key determinants in the context of a non-EEA manager's ability to market a non-EEA fund within Europe will be whether information exchange arrangements are in place between the jurisdiction (i.e. Member State) in which the marketing takes place and the jurisdiction in which the fund manager and the fund itself are established. The information exchange arrangements that the FCA has entered into can be found at https://www.esma.europa.eu/document/aifmd-mous-signed-eu-authorities – updated, but this includes all of the primary fund jurisdictions including the British Virgin Islands, the Cayman Islands, the Channel Islands and the United States.

2 Fund Structures

2.1 What are the principal legal structures used for Alternative Investment Funds?

There are a wide variety of fund vehicles available in the UK. Certain of these are only available for retail funds, such as the authorised unit trust and the open-ended investment company. Others, such as the investment trust company, are likely to be used for closed-ended structures implementing a traditional investment strategy.

However, a private fund domiciled in the UK and implementing an alternative investment strategy will usually take one of two forms. Closed-ended private funds (in particular, those investing in asset classes such as private equity, real estate and infrastructure) are most commonly structured as limited partnerships. This is a form of partnership governed by statute under the Limited Partnerships Act 1907 ("LP Act"). In April 2017, the LP Act was the subject of extensive reform by the UK Government in respect of private funds by way of the Legislative Reform (Private Fund Limited Partnerships) Order 2017 ("PFLP Order"). The reforms have been introduced with a view to simplifying the pre-existing law, reducing uncertainty and administrative costs and burdens, and ensuring that the UK remains an attractive and competitive location for private funds in comparison to other jurisdictions. The reforms apply only to a limited partnership that is "designated" as a Private Fund Limited Partnership ("PFLP"). The new regime is not mandatory: it is open to a limited partnership that satisfies the conditions to be a PFLP to choose not to apply to be designated as a PFLP, in which case the pre-existing limited partnership will apply.

In common with other jurisdictions, the limited partnership (including the PFLP) will have one or more general partners and one or more limited partners. The general partner is responsible for the management of the limited partnership (although whether it fulfils this role will largely depend on the regulatory issues described above), but has unlimited liability for the debts and obligations of the partnership over and above the partnership assets. Conversely, the liability of a limited partner will be limited to the amount of capital it contributes to the partnership (and, in the case of PFLPs, there is no requirement for a limited partner to make a capital contribution), provided such limited partner takes no part in the management of the partnership: to the extent the limited partner does take part in management, it will be treated as a general partner and will lose the protection of limited liability. The LP Act contains a white list of matters ("White List") which limited partners of a PFLP can take part in without jeopardising their limited liability status. A limited partnership (including a PFLP) registered in England & Wales does not have any legal personality separate from its partners and is not a body corporate.

One of the fundamental attractions in the UK of a limited partnership structure for private closed-ended funds is that the limited partnership is a flexible vehicle in terms of internal governance and control. The constitutional document (the limited partnership agreement) is a freely negotiable document between the fund manager and the investors.

The statutory framework in the UK requires that a limited partnership is registered as such. This entails providing an application for registration to the Registrar for Limited Partnerships, providing certain details including the name of each limited partner and the amount of capital contributed by each limited partner. Any changes to these details during the continuance of the limited partnership must be similarly registered within seven days of the relevant change. There are also formalities that must be followed on assignments of limited partnership interests, such as advertising the transfer in specific publications. In respect of the new PFLP regime, either a new or an existing limited partnership may choose to apply for PFLP status if it fulfils the criteria to qualify as a PFLP. Unlike limited partnerships, there is no obligation to provide details of the partnership's general nature, capital contribution amounts or term of the partnership (or to notify of any changes to such details).

It is also possible for a private closed-ended fund in the UK to be structured as a unit trust. The English law concept of a trust has no equivalent in some other jurisdictions. It is a structure under which title to the fund's assets is held by a person with legal personality (the trustee) for the benefit of the fund's investors (the beneficiaries). The document constituting the trust (the trust deed) governs the relationship between the trustee and the beneficiaries and, in addition, strict fiduciary duties are owed by the trustee as a matter of law.

As noted above, although the UK is the primary European hedge fund centre, the usual hedge fund structure will generally not include the actual hedge fund being domiciled in the UK, because to set up the fund on-shore would lead to tax inefficiencies since the fund would be treated as "trading" rather than "investing" for UK tax purposes. Instead, hedge fund structures will invariably include a company or limited partnership established in an off-shore jurisdiction.

2.2 Please describe the limited liability of investors in respect of different legal structures and fund types (e.g. PE funds and LPACs).

In respect of funds structured as limited partnerships, under statute the liability of a limited partner for the debts and obligations of the partnership is limited to the amount of capital it contributes to the partnership, subject always to the caveat that the investor does not become involved in the management of the structure.

This does not relieve the investor of its contractual obligation to advance money, and therefore Alternative Investment Funds operating "just-in-time" drawdown structures will be able to draw the full amount the investor has committed to advance to the fund, notwithstanding the statutory limitation on liability. The UK limited partnership will generally be structured so that the commitment of investors comprises a nominal amount of capital contribution, with the balance being advanced by way of a loan. This structure should avoid amounts distributed to investors being subject to return in the event of the insolvency of the limited partnership.

The other fund vehicles available will provide for the limited liability of investors, such that they will not be required to contribute more than the amount which they have committed to invest in the fund.

In respect of PFLPs, as there is no requirement for a limited partner to contribute any capital, the entire funding to be contributed by a limited partner in a PFLP can be in the form of capital which can be contributed and repaid at any time without affecting the extent of the liability. This removes the need for the capital/loan split described above.

2.3 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

There are no formal requirements as to the legal structure used for managers and advisers of Alternative Investment Funds. However, the two most common structures seen in the market are the private limited company and the limited liability partnership (LLP). LLPs have been seen as the preferred structure for asset managers for some time now, as they offer the tax transparency of a traditional partnership whilst giving limited liability to the members of the LLP. Although an LLP is a body corporate, it is inherently a more flexible vehicle than a limited company and therefore can be adapted to suit the particular circumstances of the fund manager's business and preferred governance structure. Since April 2016, LLPs (together with UK unlisted companies) are subject to a new requirement to maintain a register of people with significant control; such register is to be available for public inspection at their registered offices.

Historically, each member of an LLP has been treated as being self-employed for tax purposes. This has meant that LLPs have not needed to pay employer's national insurance contributions ("NICs") on the remuneration of members, and it has also kept members of an LLP outside of the UK employment-related securities ("ERS") legislation.

Since the introduction of the "salaried member" rules in 2014, however, the position is no longer quite so straightforward. Under these rules, a member of an LLP will be treated as an employee if, broadly: (a) at least 80% of the amount payable by the LLP for the services they perform for it is "disguised salary" (broadly, remuneration which is not dependent on the firm's profitability); (b) they do not have "significant influence" over the LLP's affairs; and (c) they make a capital contribution to the LLP which is less than 25% of their annual "disguised salary". If a member meets all three conditions, they will be deemed to be an employee for income tax and national insurance contribution purposes (such that the LLP will need to pay employer's NICs on their remuneration and the member will be brought within the scope of the ERS legislation).

In addition, employees remain outside of the scope of the income based carried interest rules (see question 6.2), whereas self-employed LLP members must consider the potential application of these rules to their carried interest returns.

2.4 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

Generally, there are no statutory or regulatory limitations on the ability of managers of private funds to restrict redemptions or transfers in either open-ended or closed-ended funds, although contractual restrictions may be imposed.

2.5 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

There are no legislative restrictions on the transfer of investors' interests. However, in the case of UK limited partnerships, certain filing requirements will need to be met, and details of the transfer advertised, before it is deemed to be effective. These filing requirements do not apply to PFLPs.

2.6 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

The AIFMD provisions relating to the asset stripping have been transposed into UK legislation. The provisions covers situations where an AIF managed by an AIFM subject to full authorisation holds a significant proportion of the shares in, or acquires control of, a private company or an issuer of traded securities, imposing requirements relating to the provision of information to the company or issuer, shareholders, employers and employees. The provisions also contain restrictions on distributions, capital reductions, share redemptions and acquisitions by companies or issuers of their own shares for two years after the AIF acquires control.

3 Marketing

3.1 What legislation governs the production and use of marketing materials?

Following the implementation of AIFMD, marketing has become one of the more difficult issues a manager of Alternative Investment Funds has to grapple with, as managers need to consider both domestic and pan-European legislation. Marketing restrictions are imposed by AIFMD and the Delegated Regulation. UK AIFMs wishing to market a UK AIF or EEA AIF to retail or professional investors in the UK are required to apply to the FCA to do so. The FCA permits the marketing of a private fund to a wider group of participants than the category of "professional investors" referred to in AIFMD, provided the financial promotion rules referred to at question 3.2 below are complied with throughout the entire marketing process.

The Omnibus Directive will amend the existing regimes for cross-border marketing of AIFs and UCITS, and the Omnibus Regulation will introduce new standardised requirements for cross-border fund distribution in the EU.

3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

Under domestic legislation, there are limited content requirements applicable to marketing materials, although there is an overarching obligation to ensure that marketing materials are "clear, fair and not misleading". AIFMD has changed the rules somewhat by including prescribed pre-investment disclosures which must be made to prospective investors. Whilst many of these disclosures (set out in Article 23 of AIFMD) are largely consistent with information that has historically been included in marketing materials for private funds, there are specific components of the disclosure regime which were either new or enhanced the level of detail previously provided.

The requirements of the EU Prospectus Regulation which catch "offers to the public" will generally not apply to the marketing of Alternative Investment Funds on the basis that the requirements can be avoided if, the total consideration of offers in the EU, calculated over a 12-month period, is between EUR1 million and EUR8 million (with Member States having the ability to set their own national threshold within these limits). The EU Prospectus Regulation will also not catch open-ended vehicles, so most hedge funds, for example, would not be caught in any event.

The Omnibus Regulation will introduce new requirements for all marketing communications made to investors by an AIFM. These communications must: (i) be identifiable as marketing communications; (ii) be fair, clear and not misleading; and (iii) present risks and rewards of producing units or shares of an AIF in an equally prominent manner.

3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?

Outside of AIFMD, there is no requirement to register marketing or legal documentation with the FCA. However, an AIFM must submit certain marketing information to the FCA 20 working days prior to marketing and must obtain pre-clearance for any material planned changes to the information provided (the AIFM must give at least one calendar month's notice of the changes). Material unplanned changes must be notified to the FCA immediately. The notification must include a declaration from the AIFM that the management of the AIF complies with the relevant conditions in the UK AIFM Regulations. Since September 2019, notifications must be submitted by the AIFM using the FCA's online system, Connect. AIFMs using the online system for the first time must therefore allow for the time taken to set up its online account with the FCA.

The Omnibus Regulation will empower national regulators in EU Member States to require notification of marketing communications which: (i) UCITS managers intend to use directly or indirectly in their dealings with investors; and (ii) AIFMs intend to use directly or indirectly in their dealings with retail investors (within the MiFID II definition).

3.4 What restrictions are there on marketing Alternative Investment Funds?

For the purposes of AIFMD, marketing is a direct or indirect offering or placement at the initiative or on behalf of the AIFM to or with investors domiciled within the EU. This is a narrower concept than that of a financial promotion under domestic regulation, which is an offer or inducement to engage in investment activity. The FCA has provided guidance on when it considers an AIFM to be marketing in the UK; neither pre-marketing (as detailed at question 3.5 below) nor reverse solicitation will be regarded as marketing. In respect of reverse solicitation, the FCA guidance states that a confirmation from the investor that the approach was made at its own initiative should be sufficient to rely on this approach. The guidance, however, also states that it must be received prior to making the offer or placement. In addition, "marketing" does not include general public statements, the issuance of capital calls or secondary trading.

From 22 July 2014, an authorised AIFM is able to market to professional investors only on the basis of the AIFMD passport.

Marketing by small AIFMs (i.e. sub-threshold firms) will be subject to a lighter-touch regime; broadly, UK small AIFMs will be able to market all sub-threshold AIFs in accordance with the domestic financial promotion regime.

Off-shore managers of off-shore Alternative Investment Funds may market into the UK on the basis of the financial promotion regime. However, they will be required to comply with the transparency and (if relevant) private equity disclosure requirements imposed under AIFMD.

Finally, the Omnibus Directive will insert a new provision into AIFMD to clarify the circumstances where an AIFM will be considered to have ceased marketing in a Member State. Specific rules will govern a "de-notification" of marketing in EU jurisdictions for EU AIFMs – except in the case of closed-ended AIFs they must make a blanket offer to repurchase units from investors and in all cases re-activation will be restricted.

3.5 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

In its guidance, the FCA has stated that pre-marketing is not regarded as constituting marketing by an AIFM for the purposes of AIFMD. The pre-marketing will be permissible where it is based on draft documentation and the offer document, or other information, is not sufficiently detailed to enable the recipient to make an investment decision or submit a subscription request; for example, a pathfinder document should not amount to marketing. The Omnibus Directive will, however, for the first time, introduce a new definition of "pre-marketing" into AIFMD. The intention of the proposal is that if a promotional activity does not fall within the definition of "pre-marketing", it should be treated as "marketing". These new requirements mean that the circulation of draft offering documents (e.g. draft versions of a limited partnership agreement) will constitute AIFMD marketing. EU AIFMs will be required to send an "informal letter" to their home State regulator notifying it of the pre-marketing within two weeks. This will be a significant change from the current approach in the UK.

Pre-marketing activities will be subject to the UK's financial promotion regime. Under FSMA, the communication of financial promotions is restricted. Generally, financial promotions are permitted if they are made or approved by an entity authorised by the FCA. However, in the context of unregulated collective investment schemes (which will catch most private funds), there are further restrictions which limit even the scope for authorised persons to make financial promotions.

Units in unregulated collective investment schemes will, to the extent made by an entity which is not authorised by the FCA, need to be marketed in accordance with the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ("FPO") or, to the extent made by an entity which is authorised by the FCA, need to be marketed in accordance with either the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) Order 2001 or the provisions of the conduct-of-business rules contained as a component part of the FCA Rules.

3.6 Can Alternative Investment Funds be marketed to retail investors?

AIFMD effectively leaves the question of marketing to retail investors to the discretion of Member States (although this is subject to change, as detailed below). The UK has retained provisions which allow marketing to retail investors. If an AIFM is permitted to market to professional investors, it can also market to certain types of retail investors (effectively qualifying high-net-worth or sophisticated investors), provided it does so in accordance with the UK financial promotion regime.

The financial promotion regime has changed recently with the effect that, where the promotion is being made in accordance with the conduct-of-business rules contained in the FCA Rules, in addition to the investors having to fall within the terms of the exemptions themselves, the issuer of the financial promotion must undertake a suitability assessment to ensure that the investment is appropriate for the prospective investor. This suitability assessment needs to be undertaken prior to the point at which the financial promotion is issued.

The Omnibus Directive will insert new requirements into AIFMD where any AIFM is marketing to retail investors. The AIFM will be required to put in place "facilities" in the relevant Member State that must perform certain tasks. As the definition of "retail investor" is as defined in MiFID II, this will include investors such as high-net-worth individuals or local authorities who cannot be opted-up to MiFID professional status.

From 1 January 2018, alternative investment funds being made available to retail investors must also provide a standardised, short disclosure document – a key information document ("KID") – to investors under the PRIIPS Regulation. The KID must comply with certain detailed technical standards.

3.7 What qualification requirements must be met in relation to prospective investors?

There are no "across the board" qualification requirements which apply in relation to prospective investors, although certain bases on which marketing is made under the financial promotion regime (or, where applicable, AIFMD) will require an analysis of the circumstances of the prospective investor.

AIFMD introduces a passport which facilitates marketing to professional investors on a pan-European basis. For the purposes of AIFMD, a professional investor is one who could be so regarded under MiFID. Although most institutional investors are likely to be professional investors *per se*, it may prove difficult to opt people into professional status (it is a higher bar than most UK managers are used to). Investors who are not professional investors will be retail investors.

3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

Under MiFID II, from January 2018, local government pension schemes ("LGPS") are classified as retail investors which can lead to certain additional restrictions on marketing and distributing interests in such schemes. Following lobbying by the industry, however, LGPS are able to utilise a standardised opting-up procedure, such that LGPS can be opted-up to an elective professional status in a relatively straightforward manner.

There are no additional restrictions to those which otherwise apply under the financial promotion regime.

3.9 Are there any restrictions on the participation in Alternative Investments Funds by particular types of investors (whether as sponsors or investors)?

Under the current legislative and regulatory regime, there are no firm restrictions on the participation in Alternative Investment Funds – however, there may be regulatory capital costs to financial institutions in respect of their investment positions.

Under AIFMD, AIFMs are limited in terms of the additional activities they are able to undertake, and therefore certain financial institutions may need to restructure their operations to ensure that they are compliant with the provisions of AIFMD.

3.10 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

There are no restrictions on the use of intermediaries, although if the intermediary is itself carrying on regulated activities for the purposes of the UK regulatory regime, it will need to be authorised by the FCA.

4 Investments

4.1 Are there any restrictions on the types of investment activities that can be performed by Alternative Investment Funds?

Generally speaking, there are no restrictions, although the fund manager will need to ensure that the activities it is carrying out in respect of the Alternative Investment Fund are consistent with the scope of permission it has to carry out regulated activities (and with the contractual investment policy of the Alternative Investment Fund).

However, AIFMD does impose certain restrictions relating to asset stripping, as described at question 2.6 above.

In addition, although not restrictions, there are certain deal disclosure requirements under AIFMD. In this regard, an AIFM must notify the FCA when an AIF's voting interest in an unlisted company passes through certain thresholds. There are additional disclosure obligations when an AIF acquires "control" of an EU company (the test as to control varies according to whether the investee company is listed or unlisted). Investments by an AIF may also trigger a requirement to make certain information available to the FCA, the investee company and remaining shareholders (including, for unlisted companies, intentions as to the company's future business and the likely repercussions on employees). In the context of unlisted companies, relevant information must be passed to employee representatives (subject to limited exceptions).

4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio, whether for diversification reasons or otherwise?

There are no such limitations.

4.3 Are there any local regulatory requirements which apply to investing in particular investments (e.g. derivatives or loans)?

There are no such limitations.

4.4 Are there any restrictions on borrowing by the Alternative Investment Fund?

In the context of private funds, there are currently no statutory or regulatory limitations on borrowing, although contractual restrictions are common. In the context of AIFs covered by AIFMD, certain of the pre-investment disclosures relate to the use of leverage. In particular, an AIFM must disclose: the circumstances in which the AIF may use leverage; the types and sources of leverage permitted and the associated risks; any restrictions on the use of leverage and any collateral and asset re-use arrangements; and the maximum level of leverage the AIFM is entitled to employ on behalf of the AIF.

5 Disclosure of Information

5.1 What disclosure must the Alternative Investment Fund or its manager make to prospective investors, investors, regulators or other parties?

Alternative Investment Funds structured as limited partnerships will need to comply with the registration requirements under the 1907 Limited Partnerships Act. Limited partnerships designated as PFLPs need only disclose basic details (essentially the fund's name and address). There may be a requirement on the general partner of a UK limited partnership to file the partnership's accounts on the basis of the Partnership Accounts Regulations.

5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example for the purposes of a public (or non-public) register of beneficial owners?

From July 2017, fund houses that have any Scottish limited partnerships ("SLPs") in their fund structures (commonly used as feeder and carry vehicles) need to make filings under the Persons of Significant Control ("PSC Regime"). The PSC Regime also applies to SLPs designated as private fund limited partnerships, registered under the Limited Partnerships Act 1907. Failure to comply with the PSC Regime requirements carries criminal penalties. The PSC Regime has applied to LLPs since April 2016. English limited partnerships are not affected by these changes and remain outside the scope of the PSC Regime.

The PSC Regime requires SLPs to deliver to Companies House information relating to people with significant control ("PSCs") in relation to the SLP. The rules are complex but, in broad terms, a SLP's PSCs could include its general partner, any manager/operator and any limited partner whose interest in the partnership represents more than 25% of total interests.

5.3 What are the reporting requirements to investors or regulators in relation to Alternative Investment Funds or their managers?

AIFMD and the Delegated Regulation require AIFMs to comply with a range of detailed regulatory reporting obligations. Reporting obligations also apply to non-EEA AIFMs seeking to market their funds under national private placement regimes.

Broadly, AIFMs will be required to make periodic reports to the FCA in accordance with AIFMD using a set of prescribed forms set out in the Delegated Regulation and in line with ESMA's final guidelines. The EMSA guidelines, published in November 2013 and finalised in August 2014, were accompanied by a number of electronic reporting templates in XML format, together with guidance on the preparation of systems capable of generating XBRL reports. In addition to the annual reports in respect of each managed AIF, an AIFM will need to provide periodic reports relating to the AIFM itself and in respect of each AIF that it manages (including information in relation to investment strategies, main instruments traded, principal exposures, risk profiles and (where relevant) leverage).

The FCA has published various guidance papers and Q&As on periodic reporting, setting out what information is required and how, and when, it should be reported. The FCA has an online reporting system, GABRIEL, which assists UK AIFMs with meeting their requirements.

The UK government has indicated, as part of reforms to the UK limited partnerships regime, that it will introduce a requirement for an annual confirmation statement to be filed, confirming that all information on the register at Companies House is correct. A transitional period will be included for existing limited partnerships to provide additional information to cover all relevant requirements. An original proposal made in April 2018 to require limited partnerships to file annual reports and accounts has been dropped and replaced by the less onerous requirement for an annual confirmation. In terms of timing, the UK government has only committed to introducing legislation "when parliamentary time allows".

5.4 Is the use of side letters restricted?

There are no firm restrictions on the use of side letters. However, AIFMD requires disclosures as to how an AIFM ensures the fair treatment of investors and, if side letters are used to provide preferential treatment to investors, a description of the preferential treatment and the type of investors to whom the treatment is made available will need to be disclosed. If the AIFM operates a general most-favoured nations ("MFN") mechanism, this is unlikely to be an issue; however, if no or a limited MFN process is in place, an AIFM will need to consider its use of side letters in the light of the disclosure requirements under AIFMD.

6 Taxation

6.1 What is the tax treatment of the principal forms of Alternative Investment Funds identified in question 2.1?

UK limited partnerships are not taxable entities for UK direct tax purposes (although they do submit tax returns) and are instead fiscally transparent. This fiscal transparency means each limited partner is treated for UK tax purposes as owning its proportionate share of the assets of the partnership and is subject to tax on the income and gains allocated to it under the limited partnership agreement (whether or not they are distributed).

6.2 What is the tax treatment of the principal forms of investment manager/adviser identified in question 2.3?

The tax treatment of the manager or adviser will depend on whether it is constituted as a company or an LLP. If a company, it will be subject to corporation tax on the fees paid by the fund (at 19%). The management team takes its remuneration in the form of salary (taxed at the highest applicable income tax rates, with national insurance contributions due too) and the excess profit can be extracted as dividend income. If the manager is an LLP, it is fiscally transparent, so the profit arising from the fees paid to the manager is automatically taxed in the hands of its members. As noted above, the salaried member rules will be used to ascertain whether a member should be taxed as a self-employed person or an employee. The apparatus of an LLP is likely to mean that it constitutes a UK permanent establishment of its non-resident members such that all of the members, regardless of where they are resident, must pay UK tax on their share of the LLP's profits arising from its UK trade as an investment manager/adviser.

Under anti-avoidance rules introduced in 2015, amounts arising to an individual involved in fund management are taxed as trading income, unless such amounts are already taxed as trading income or employment income or fall into exceptions for carried interest or co-investments. Where amounts from the fund arise to another person – such as a priority profit share/fee income arising to the general partner or manager – these amounts can be potentially imputed to the individual fund managers and taxed in their hands if certain conditions are met.

In terms of funds structured as limited partnerships, where the general partner appoints a manager to manage the partnership, the fee payable to the manager will in principle attract value-added tax ("VAT"). This is most often managed by ensuring that the manager and the general partner are in the same VAT group. The Court of Justice of the European Union ("CJEU") in the *Fiscale Eenheid X* case (C-595/13) outlined broad criteria for what constitutes a "special investment fund" ("SIF") for the purposes of the VAT exemption applicable in relation to SIF management services. It was also strongly suggested by the CJEU that AIFs which satisfy certain qualification criteria can be SIFs. This is a changing area of law and, in March 2020, the UK government announced that it would undertake a review of the VAT treatment of fund management fees. It is therefore possible that the UK's current position on the VAT treatment of management services supplied to AIFs, which satisfy the relevant SIF criteria, will change.

The UK is not typically used as a domicile for hedge funds, but it is a popular location for investment managers of hedge funds, and this is in part because of the Investment Manager Exemption ("IME"). Provided certain conditions are met, the IME ensures that a UK investment manager managing a non-UK fund will not constitute a permanent establishment of the fund in the UK. The IME enables a non-UK resident fund that is trading for UK tax purposes to appoint a UK-based investment manager without the risk of that part of the fund's profit that is attributable to the activity of the investment manager in the UK becoming subject to UK tax.

The UK rules on the taxation of carried interest have been subject to significant change since 2015 and the general "tax transparency" principle is now overlaid with: (i) a minimum charge of 28% for carried interest (compared with 20% for most other types of gains); and (ii) new rules which can recharacterise carried interest receipts as trading income, taxable at the highest marginal rates, where the fund in question has a short average holding period (the "income based carried interest" rules, or "IBCI"). The IBCI rules are complex, but broadly, where the average holding period of fund investments is less than 36 months, the carried interest returns will be treated as trading income. Where the average holding period is 40 months or more, the returns will be treated as investment gains or income. Where the average holding period is at least 36 months and less than 40 months, the returns are treated as a mix of investment return and trading income. There is an exception from the IBCI rules for carried interest awarded to employees. The new rules do not affect the taxation of the fund itself or external investors.

6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

There are no establishment taxes levied in connection with an investor's participation in an Alternative Investment Fund. Stamp duties may be payable on the transfer of limited partnership interests if the partnership property includes stock or marketable securities, although there are a number of methods of mitigating the effect of such taxes. Stamp duty land tax may be payable where the partnership property includes land.

6.4 What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds?

The use of tax-transparent limited partnerships as the primary vehicle for Alternative Investment Funds means that income and gains received by the fund are treated as if they had been received by the fund's investors directly. The taxation of the returns depends on whether the fund is treated as trading or investing.

The question of whether or not a fund is carrying on a trade in the UK is largely a question of fact. In practice, this is determined by applying various criteria derived from case law – often referred to as "badges of trade" – to a fund's transactions. For example, churning investments and investing and divesting opportunistically would be likely to be indicative of a trading activity, whereas holding long for income and capital would be more likely to be considered as an investment activity.

Private equity funds (the main users of the limited partnership structure) usually intend to buy and hold securities for the medium to longer term in order to achieve long-term capital appreciation. Consequently, they are more likely to be considered as investing rather than trading.

If the limited partnership is treated as investing then, as a result of its tax transparency, profit distributions from the limited partnership retain their character as capital gains or investment income and are taxed accordingly. The tax payable by a particular investor will depend upon its own tax profile. For example, if the fund receives dividend income, this would be taxed in the hands of a UK-resident individual but a UK pension fund investor should not be subject to UK tax on such investment income. Most non-resident investors will only be subject to UK tax on UK-source investment income to the extent that it is subject to withholding tax. Withholding taxes are potentially relevant to both UK interest and UK rental income (but generally not dividends), but there are reliefs from withholding. Generally, non-resident investors should not be subject to UK tax on capital gains unless: (i) they hold their interest for the purposes of a UK trade; or (ii) they fall into specific rules relating to UK property (and property related) holdings (see below).

If the limited partnership is treated as trading for UK tax purposes, UK resident investors and non-UK resident limited partners will be subject to income tax (or corporation tax on trading income) on their share of the partnership's trading profits. This will be of particular concern for UK pension fund investors (who are only exempt from UK tax on investment income and gains). Non-UK resident investors will be caught because the partnership (or the fund manager) will constitute a taxable presence in the UK through which the non-resident is carrying on a trade, but in many cases the IME may be applicable.

The UK regime for taxation of gains arising to a non-resident from interests in UK land has expanded in scope significantly from 6 April 2019. Before that date, the UK only taxed non-residents on gains from UK residential property (subject to important exemptions in the context of investment funds). Broadly, the general position is now that non-resident investors are subject to tax on gains arising from disposals of UK land and also on the disposal of substantial interests in relevant entities that derive at least 75% of their market value from UK land. However, the general position is significantly modified by complex specific provisions relating to collective investment vehicles.

Investors should also be aware of the annual tax on enveloped dwellings ("ATED") and this should be considered carefully when a fund invests in UK residential property.

Where a UK limited partnership receives income from non-UK jurisdictions that levy withholding tax, or receives capital proceeds from the sale of an asset situated in a jurisdiction which might tax that gain, then limited partners may seek to rely on the terms of a double tax treaty in order to obtain relief. Whether such relief is available will depend, in part, upon whether that non-UK jurisdiction treats a UK limited partnership as fiscally transparent.

6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund?

Generally speaking, it is not necessary to obtain tax rulings prior to establishing an Alternative Investment Fund.

6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the OECD's Common Reporting Standard?

The UK entered into a Model 1 Intergovernmental Agreement ("IGA") with the US in September 2012 in relation to FATCA and subsequently introduced domestic legislation to implement FATCA reporting. Relevant Alternative Investment Funds established in the UK therefore have to carry out the required due diligence procedures and report prescribed information about relevant investors to Her Majesty's Revenue and Customs.

In addition, the Organisation for Economic Co-operation and Development ("OECD") Common Reporting Standard for Automatic Exchange of Financial Account Information ("CRS") and the EU Directive on Administrative Cooperation in the Field of Taxation ("DAC") have also been implemented into UK law. In relation to the DAC, the UK legislation implementing the provisions of the directive relating to mandatory automatic exchange of information in relation to reportable cross-border arrangements (often called "DAC 6") is due to come into force in the second half of 2020. This legislation will be retrospective in that it will require the reporting of arrangements the first step in the implementation of which was made on or after 25 June 2018.

Accordingly, UK funds will need to consider these information reporting rules in order to ensure that they are compliant.

6.7 What steps are being taken to implement the OECD's Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 2 (hybrids) (for example ATAD I and II), 6 (prevention of treaty abuse) (for example, the MLI), and 7 (permanent establishments), insofar as they affect Alternative Investment Funds' operations?

Following the publication of the OECD's final BEPS reports on 5 October 2015, the UK has taken the lead in the development and implementation of new rules relating to BEPS. For example, legislation having effect from 1 January 2017 was introduced in order to neutralise the effect of hybrid mismatch arrangements and legislation to restrict the tax deductibility of corporate interest came into force from 1 April 2017. In addition, the UK has implemented Country-by-Country Reporting.

The UK signed the multilateral instrument ("MLI") in June 2017 and it entered into force for the UK on 1 October 2018. As expected, the UK has adopted the principal purpose test in relation to its covered treaties, but has not narrowed its definition of an independent agent or extended the definition of permanent establishment, other than adopting the provisions which prevent a permanent establishment being avoided by means of the fragmentation of activities.

6.8 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?

If there is appetite to establish a listed fund, then a UK investment trust ("ITC") (or real estate investment trust ("REIT")) should be considered. Provided certain conditions are met, ITCs are exempt from corporation tax on capital gains, can benefit from the general corporation tax exemptions from dividend income and can potentially deduct dividends paid to investors which represent interest income from their interest receipts.

Provided certain conditions are met, REITs are exempt from corporation tax on the income profits of their property rental business and on gains arising on disposals of assets used in such business (potentially including interests in certain entities that are UK real estate rich) and can benefit from the general corporation tax exemptions from dividend income.

6.9 Are there any other material tax issues for investors, managers, advisers or AIFs?

The tax position of an investor in a UK Alternative Investment Fund will inevitably depend upon its own tax profile – accordingly investors should always seek independent advice on the tax implications of participating in the fund, and managers should advise investors of this fact.

6.10 Are there any meaningful tax changes anticipated in the coming 12 months other than as set out at question 6.6 above?

In March 2020, the UK government announced that it would undertake a review of the UK funds regime, including from a tax perspective. The review includes a consideration of whether UK holding companies utilised by investment funds could be more attractive from a tax perspective. However, the review process is in its early stages and no specific tax changes have been announced at this stage.

7 Reforms

7.1 What reforms (if any) in the Alternative Investment Funds space are proposed?

The UK left the EU on 31 January 2020. The UK now has a transitional period until 31 December 2020 in which to agree a deal with the EU on the future relationship. During the transition period, the revised withdrawal agreement provides that the UK will continue to be treated as an EU Member State.

The UK would continue to implement new EU investment funds legislation which takes effect during that time. This means that the UK may potentially be required to implement some very significant measures which are currently being negotiated, including resultant legislation from the upcoming reviews of the AIFMD and the PRIIPs regime, in addition to the Omnibus Directive and Omnibus Regulation.

Funds should not abandon their efforts to prepare for a no-deal Brexit outcome. Those most affected by a no-deal Brexit would be UK full-scope AIFMs relying upon a managing or marketing passport. As the UK will immediately become a third country in the event of a no-deal Brexit, these AIFMs will no longer be able to rely upon passporting regimes and will instead only be able to market under NPPR. Full-scope AIFMs established in other EEA Member States would no longer be able to manage a UK AIF or to market to UK investors under the AIFM passport in the event of a no-deal Brexit. To address this, the FCA has proposed a temporary permissions regime. Sub-threshold AIFMs will not be affected to the same extent as full-scope AIFMs; having never had access to the AIFM directive passport, they will continue to market under the NPPR. Similarly, non-EEA AIFMs would also continue to market under NPPR.

The London Interbank Offered Rate ("Libor") is expected to be discontinued by the end of 2021 and there has been increased pressure from the regulators (including the FCA) to ensure that market participants cease to use this benchmark well in advance of this date. Most funds are likely to be affected by the Libor discontinuation; funds might use Libor as benchmark or performance targets, and its administrators, managers and custodians as an input to their valuations and risk assessments. Also, Libor might feature across a fund's investments, as it is commonly referenced in funding arrangements, interest rate derivatives transactions, as well floating rate notes and securitisations.

The Omnibus Directive and Omnibus Regulation, which will make a number of direct amendments to AIFMD regimes entered into force on 1 August 2019. The majority of the Omnibus Regulation applies as from 2 August 2021 and Member States must also implement the Omnibus Directive as from that date. By August 2021, the UK will no longer be a member of the EU and (unless extended) the EU withdrawal transitional period will have ended. It therefore remains to be seen to what extent UK fund managers will be affected, at least directly. To the extent that the regime amends the operation of the EU cross-border fund marketing passport regimes, the UK may simply decide to revoke the directly applicable Omnibus Regulation. It is possible, however, that even with such a revocation and no implementation of the Omnibus Directive, there may nonetheless be legislation "onshoring" certain aspects of the regime into the UK. At the very least, UK and other non-EU fund managers may find that they are affected by consequential amendments that individual EU Member States may decide to make to their national private placement regimes.

The AIFMD contains provisions requiring the European Commission to start a review of the application and scope of AIFMD by 22 July 2017. Following its review, the Commission is permitted to propose appropriate legislative amendments to AIFMD to address any identified issues – such revisions are commonly referred to as "AIFMD 2". For the purposes of assisting in the review, the Commission appointed KPMG to conduct the market study and impact assessment. In January 2019, the firm's report on the operation of AIFMD was published. The report represents the first step in the Commission's review process. It will continue its review and said in its press release accompanying the publication of the report that it will report to the European Parliament and the Council "next year" – i.e. 2020. The timeline for any subsequent legislative proposals therefore remains uncertain for the time being and any concrete changes that may result and impact upon firms is (compared to other things) likely to be some considerable way off.

The senior domestic managers and certification regime (SMCR), which previously only applied to UK banks, was extended in December 2019 to include all non-bank firms, including UK fund managers, authorised under the Financial Services and Markets

Act 2000. The aims of the regime are to ensure greater clarity about the responsibilities of senior individuals within firms, as well as greater individual accountability. However, there is a one-year transitional period as regards certain aspects of the regime so that firms have until 9 December 2020 at the latest to: (i) complete their fitness and propriety assessments; (ii) to train all those employees (other than ancillary staff) who are not Senior Managers or Certification Staff, but who are nonetheless within the scope of the relevant conduct rules; and (iii) to upload via Connect all the data about individuals that they are required to provide for the purposes of the FCA's new Directory. In response to the COVID-19 pandemic, in April 2020 the FCA published its expectations of firms in complying with their SMCR obligations.

As to English limited partnerships, the introduction of the PFLP regime has been welcomed as a positive step and should allow the UK to compete with other similar vehicles offered in other jurisdictions. Further (relatively minor) reform proposals for all UK limited partnerships are to be introduced following a response paper published by the UK government in December 2018. The proposals are designed to build in effective controls into the life cycle of a limited partnership to combat such vehicles being used for illegal activities. At the time of writing, no draft legislation has been published, with the government only committing to legislation "when parliamentary time allows".

Since January 2018, the PRIIPs Regulation has required that retail investors are provided with a standardised, short disclosure document containing key information about the product (the Key Information Document or "KID") where it is made available to them in the EU. Consequently, many manufacturers of the types of funds who have routinely been targeted at the professional market in the past are likely to have tightened up on measures designed to ensure that distribution does not reach any retail investors. A consultation on possible changes to the PRIIPs Regulation, most notably to the contents of the Key Information Document, was published by the European Supervisory Authorities ("ESAs") in 2019 and closed in January 2020. The ESAs are expected to submit their final proposals to the European Commission during the first half of 2020.

In July 2019, the UK government launched its "Green Finance Strategy", which aims to create a greener financial system which supports cleaner and more environmentally sustainable investment and growth. The government intends that climate and environmental factors be fully integrated into mainstream financial decision-making across all sectors and asset classes. The initiative is still in its early stages but is likely to have an impact on AIFMs in the future.

In short, practitioners within the industry will need to ensure that they keep abreast of developments and consider whether they should be engaging with the industry in lobbying to try and ensure that any proposed regulatory excesses can be curbed.

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The Travers Smith LLP funds department comprises four partners and 15 other dedicated fee earners, based in London. The group focuses on funds, investors and intermediaries in the private equity, infrastructure, debt, real estate and listed equities sectors. It has constantly been at the forefront of developing market practice and thought on relevant changes for the investment funds industry, including the European Alternative Investment Funds Managers Directive and, more recently, the potential impact of Brexit. The funds tax group advises on the structuring of investment funds to maximise their tax efficiency for investors and managers. The funds department sits alongside the firm's market-leading private equity M&A practice, one of the largest transactional teams of private equity lawyers in the City. The funds finance practice combines expertise from the firm's fund formation and finance practices to advise lenders that provide subscription line and other facilities to real estate funds. Travers Smith also advises real estate funds on the borrower side. The funds department is best known for advising private funds and closed-end listed funds.

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