

Regulatory information for **United Kingdom**Applicable to **UK investment funds (both regulated and unregulated) which may invest in real estate.**Last review **April 2021**

Legal and Regulatory Framework		
1.	Legal landscape	<i>Which laws apply?</i>
	Regulatory	<p>The access to and conduct and supervision on the financial markets for regulated and unregulated investment funds is regulated by the Financial Conduct Authority (FCA).</p> <p>The FCA has a Handbook that sets out its rules and guidance for conducting regulated activities. For investment funds, the specific rules are set out in the Collective Investment Schemes sourcebook (COLL) and the Investment Funds sourcebook (FUND).</p> <p>The FCA's rules and Handbook is created under the Financial Services and Markets Act 2000 (FSMA), which sets out, for example, the definition of open-ended funds such as an authorised unit trust or investment company as well as, more generally, what is and is not a collective investment scheme.</p> <p>The requirements of the Alternative Investment Fund Managers Directive (AIFMD) continue to apply to UK alternative investment fund managers (AIFMs) and alternative investment funds (AIFs) after Brexit.</p>
	Corporate and contract law	<p>The primary legislation driving the conduct of regulated activities in the UK is the FSMA.</p> <p>Otherwise, real estate fund structures will drive which legislation they are subject to. For example, if the fund is structured as a corporate entity then it will likely be subject to the Companies Act 2006; however, if it is formed instead as a limited partnership fund then it will be subject to the Limited Partnership Act of 1907.</p>
2.	Regulated activities	<i>What kind of activities are regulated?</i>
		<p>The Financial Services and Markets (Regulated Activities) Order 2001 (RAO), driven out of FSMA, sets the activities that you must be regulated to provide. These include:</p> <ul style="list-style-type: none"> <li>managing a regulated or unregulated AIF; and</li> <li>certain distribution activities, particularly providing investment advice.</li> </ul> <p>Firms may only provide these activities in the UK by seeking prior FCA authorisation, in particular as AIFM. This authorisation would allow the AIFM to manage and distribute AIFs in the UK (and into the rest of the world).</p>
3.	Managing an AIF	<i>What does managing an AIF mean?</i>

		Managing an AIF means being responsible for the primary functions which the AIFMD defines as being the responsibility of the AIFM – namely the risk and portfolio management of an AIF.
4.	Marketing an AIF	<i>What does marketing an AIF mean?</i>
		<p>The FCA defines marketing of an AIF using the definition in the AIFMD. However, it also provides some additional <a href="#">guidance</a> in its Perimeter Guidance manual (PERG). Here the FCA covers what it perceives should and should not be considered as AIFMD marketing, together with how the AIFMD marketing rules interact with other pre-existing marketing legislation in the UK.</p> <p>From an AIFMD perspective in particular, the FCA provides useful guidance on how it determines when an AIF is marketed and the level of activity that can take place beforehand.</p>
5.	Regulated entity	<i>Which entity is regulated?</i>
		The AIFM must be FCA regulated if it is established in the UK.
		<p>The AIF will also need to be regulated if it is established as a regulated fund in the UK. Non-UK regulated funds are not considered regulated for marketing purposes in the UK.</p> <p>Real estate funds could be established as regulated funds if they are set up as non-UCITS retail schemes (NURS) or qualified investor schemes (QIS).</p>
6.	Regulatory Authorities	<i>Who are the regulatory authorities?</i>
		<p>The financial industry is broadly overseen by the Prudential Regulation Authority (PRA, a sub-set of the Bank of England) and the FCA.</p> <p>For AIFMs, the FCA is the prime regulator from an authorisation and supervision perspective, though some groups with AIFMs may be dual regulated by FCA and PRA if they conduct banking activities within the group.</p>
7.	Type of AIFs	<i>What is the legal form?</i>
		<p>As above, in section 5, funds in the UK will be established as regulated or unregulated funds. Regulated fund can be established as:</p> <ul style="list-style-type: none"> <li>• Open-ended investment companies (OEICs);</li> <li>• Authorised unit trusts (AUTs);</li> <li>• Co-ownership schemes; and</li> <li>• Authorised limited partnerships (ALP).</li> </ul> <p>The ALP and co-ownership schemes both fall within the UK’s authorised contractual scheme requirements, meaning they are considered to be tax transparent. These funds will then, from a real estate perspective, take the regulatory form of a NURS or QIS. Further, these funds can receive clearance from Her Majesty’s Revenue and Customs (HMRC) to be a property authorised investment fund (PAIF).</p>

		<p>If a property fund is established as a NURS it is considered, since 30 September 2020, to be a “fund investing in inherently illiquid assets (“FIAs”) and subject to additional regulatory requirements under new FCA rules.</p> <p>These new regulatory requirements require:</p> <ul style="list-style-type: none"> <li>• Increased disclosure of how the fund manager is managing liquidity in the fund;</li> <li>• Standardised risk warnings to be included in the financial promotions for the fund (but not required in the fund prospectus);</li> <li>• Enhanced oversight of the fund and fund manager by the depositary; and</li> <li>• Enhanced liquidity risk management contingency plans.</li> </ul> <p>Funds are considered to be FIAs if they disclose to investors that they are seeking to invest greater than 50% in inherently illiquid assets or if the fund has held greater than 50% in inherently illiquid assets for three continuous months out of the last twelve months. The FCA’s rules state that property is considered to be an “inherently illiquid asset”.</p>
		<p>Unregulated funds can be set up in a range of legal structures (though not any of the above). These will typically include:</p> <ul style="list-style-type: none"> <li>• Exempt unauthorised unit trusts (EUUT);</li> <li>• Limited partnerships (LP); and</li> <li>• Limited liability partnerships (LLP);</li> </ul> <p>These unregulated funds do not need prior FCA authorisation, though they should be notified to the FCA when the AIFM establishes the fund. Other than this, each of these funds can be established with any investment powers, since the FCA does not implement set rules for such funds on spread of risk or assets that they can and cannot invest into.</p>
<b>Exemptions to license requirement</b>		
8.	<b>Regime for “small” AIFMs</b>	<i>The “small” AIFM exemption as meant in the AIFM Directive</i>
		<p>An AIFM may register with the FCA under the small AIFM regime, if:</p> <ul style="list-style-type: none"> <li>• the aggregate assets (directly or indirectly) under its management: <ul style="list-style-type: none"> <li>○ including any assets acquired through leverage, do not exceed an amount of €100 million; or</li> <li>○ do not exceed an amount of €500 million, provided that the AIFs are unleveraged and closed-end during the period of five years following the date of investment by the investors in each AIF.</li> </ul> </li> </ul> <p>Whilst small AIFMs do not need to meet all AIFMD requirements, they will still need to be authorised by the FCA, unless they meet a specific exemption. Currently, only AIFMs</p>

9.	<b>Licensed EU AIFM</b>	<i>Regimes applicable to EU-AIFMs licensed in another Member State?</i>
	AIFMD Passport	Post-Brexit, UK AIFMs do not have access to a passport to provide services into the EU.
	Retail offerings	<p>NURS or QIS can be offered to retail investors (though QIS can only be offered to certain retail investors that are considered to be qualified investors).</p> <p>Otherwise, typically, UK unregulated schemes cannot be offered to ordinary retail investors without advice.</p> <p>Non-UK AIFs can be offered to UK retail investors only after they have received FCA permission under section 272 of FSMA. This requires the AIFM confirming that the AIF meets equivalent rules to a NURS or QIS in its home country. <b>SIFs/RAIFs/SICARs</b> can only be distributed to "well-informed" investors (see item 4).</p>
	Private Placement Regime	<p>An FCA-authorized AIFM may rely on the Private Placement Regime (<b>PPR</b>) for the offering of interests in:</p> <ul style="list-style-type: none"> <li>• a non-UK AIF under its management; or</li> <li>• an offering of interests in a UK feeder AIF investing in either a non-UK master AIF or in a UKmaster AIF which is not managed by a licensed UK AIFM,</li> </ul> <p><u>provided that:</u></p> <ul style="list-style-type: none"> <li>• the interests are offered to qualified investors only;</li> <li>• the country where the non-UK AIF is established is not listed as a non-cooperative country and territory by the FATF;</li> <li>• there is a cooperation agreement in place between the authority supervising the licensed AIFM (i.e. the UK) and the supervising authority of the country where the non-UK AIF is established; and</li> <li>• the AIFM has notified the FCA of its intention to make an offer as set out above and has provided the FCA with a statement issued by the supervisory authority of its home Member State confirming that it is licensed within the meaning of the AIFM Directive.</li> </ul>
10.	<b>Third country fund managers</b>	<i>Please include a description of the regulations that apply to non-EU AIFMs active in your jurisdiction.</i>
	Private Placement Regime	<p>All non-UK AIFMs / AIFs must market into the UK under the UK's private placement regime.</p> <ul style="list-style-type: none"> <li>• A non-UK AIFM may rely on the UK NPPR, if: <ul style="list-style-type: none"> <li>○ the interests are offered to professional investors only (unless it registers with the FCA under the aforementioned section 272 regime under FSMA);</li> <li>○ the state where the non-EU AIFM is established is not listed as a non-cooperative country and territory by the FATF; and</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ there is a cooperation agreement in place between the FCA and the supervising authority of the country where the non-UK AIFM is established.</li> <li>• Non-UK AIFMs relying on the NPPR must comply with a number of continuing obligations, including pre-investment disclosures, annual report and other ongoing disclosures and the asset stripping rules (if applicable).</li> <li>• Firms relying on the UK NPPR must pre-register with the FCA, which includes an FCA application form.</li> </ul>
<b>License requirements and application</b>		
11.	<b>General requirements</b>	<i>Please provide a general overview of the statutory requirements applicable to a (prospective) AIFM.</i>
		<ul style="list-style-type: none"> <li>• As part of the FCA's authorisation application procedure a (prospective) AIFM must show to the FCA that it meets the statutory requirements with respect to: <ul style="list-style-type: none"> <li>○ the integrity and suitability of individuals undertaking senior roles within the AIFM (typically including the CEO/partners, CCO, CRO and investment management professionals);</li> <li>○ the minimum threshold conditions, in particular how the entity will hold enough financial and non-financial resources to operate as an AIFM;</li> <li>○ the specific AIFMD requirements relating to compliance, remuneration, portfolio management and risk management;</li> <li>○ the policy to avoid and mitigate conflicts of interest to the extent possible;</li> <li>○ the depositary to be appointed for each AIF;</li> <li>○ the planned controllers of the AIFM and any close links they have to other entities;</li> <li>○ the AIFM's use of IT;</li> </ul> </li> <li>• The above is evidenced by submission of a regulatory business plan and supporting documentation, such as a compliance manual, organizational structure and compliance monitoring programme. AIFMs must also submit financial information which sets out its expected revenue and costs over the first 12 months of operation.</li> <li>• Firms must submit a complete application to the FCA. Under FSMA, the FCA has 6-12 months to consider an authorisation application. See section 17 for more information on the FCA application process.</li> </ul>
11a.	<b>Special retail requirements</b>	<i>Are there any additional requirements in the event that there will be offerings to non-professional investors?</i>
		Please see above. Any non-UK schemes that wish to target UK retail investors must be approved by the FCA under section 272 FSMA. This

		<p>requires the AIFM to confirm that the AIF meets equivalent rules to a UK retail scheme (i.e. a NURS or QIS).</p> <p>UK funds should be authorised by the FCA as a NURS or QIS and can then be sold to retail investors. However, NURS can be sold to all retail investors but QIS can only be sold to a limited range of qualified investors that may also be retail investors.</p>
12.	<b>Legal structure AIFM</b>	<i>Please provide an overview of the key organizational characteristics of an AIFM</i>
		The AIFM must be a legal entity. If the AIFM is a UK legal entity, it must have its head-quarters in the UK.
		<p>The FCA would expect, depending on an entity's legal structure, that it would have at least two directors or partners.</p> <p>Individuals performing senior management or investment roles within the AIFM must be authorised by the FCA separately as approved persons.</p>
		<p>Minimum regulatory capital for an external AIFM is €125,000, plus an amount equal to 0.02% of the AuM in case the AuM exceeds €250 million; it being understood that this capital shall never have to exceed an amount of €10 million.</p> <p>Minimum regulatory capital for self-managed AIF's amounts to €300,000.</p>
		Each individual or legal entity with a (direct or indirect) shareholding or degree of control in the AIFM of 10% or more must also meet the predefined criteria on integrity and will be screened by the FCA for that purpose. These are considered to be controllers of the AIFM.
13.	<b>Legal ownership of AIF assets</b>	<i>Who holds legal title to the assets of the AIF?</i>
		This may be held by the AIFM on behalf of the AIF or by the AIF's custodian or depositary, depending on the format of the investment.
14.	<b>Depositary</b>	<i>Please include an overview of the arrangements with depositaries</i>
		<ul style="list-style-type: none"> <li>• The AIFM must appoint an independent depositary for each of its AIFs.</li> <li>• For this purpose the AIFM and depositary will have to enter into a written agreement.</li> <li>• This agreement must be reviewed and approved by the FCA.</li> </ul>
		In case of non-custody assets (e.g. real estate), the duties and tasks of the depositary predominantly comprise of verification of ownership of assets of the AIF and verification of flow of funds.

		In case of a non-UK AIF, the depositary must be established in either the third country where the relevant non-EU AIF is established (provided that such third-country meets certain criteria) or in the UK.
15.	<b>Delegation</b>	<i>Please include an overview of the arrangements with respect to delegation</i>
		Both the AIFM and the depositary are entitled to delegate some of their tasks and duties to a third party, provided that certain statutory requirements with respect to the suitability of the third party, transparency towards investors and liability are met.  The FCA will review the delegation arrangements to ensure that the statutory requirements are met.
16.	<b>Notifications to regulators</b>	<i>Description of <u>any subsequent notifications</u> to the regulators</i>
	Material amendments to the information submitted for the license	The AIFM must inform the FCA of its intention to implement material amendments with respect to the information submitted as part of its authorisation application process.  No such changes may be implemented without the prior approval of the FCA.
	Notification managing new AIF	The AIFM must notify the FCA if it wishes to launch a new (unregulated) AIF.  The AIFM must seek FCA authorisation to launch a new regulated AIF (i.e. a NURS or QIS).
	Notification marketing	The AIFM must inform the FCA of its intention to market interests in any AIF.
	Notification annual report	The AIFM must provide the FCA, for each of the EU AIFs it manages and for each of the AIFs it markets in a Member State, an annual report for each financial year no later than six months following the end of the financial year.
17.	<b>Timing</b>	
	License application	Under AIFMD the FCA has three months to approve a new AIFM application.  However, the FCA treats an AIFM application as a “variation of permission” for any entity seeking authorisation. This means it applies the FSMA statutory time limits to authorise the entity (6-12 months depending on whether the FCA deems the application to be complete) then will approve the variation of permission for the AIFM activities within three months (though in practice, these are both carried out simultaneously).
	Material amendments to license application	If the AIFM intends to make material changes with respect to the information submitted as part of the license process, then the FCA has one month to inform the AIFM whether it intends to reject or restrict the notification. The FCA may extend the decision-making period one time by an additional month.

		<p>If the AIFM has not been informed of the FCA's intention to reject or restrict the application or to extend the decision-period, then the AIFM may proceed with the implementation of the proposed changes (incl. commencement of the management of the new AIF with the same investment strategy). This assumes the new fund is unregulated.</p> <p>For regulated schemes, the FCA has a statutory period of six months to approve the authorisation of a new NURS or QIS (though it aims to complete authorisation within two months and one month, respectively). The FCA has up to one month to authorise a new sub-fund of an existing NURS or QIS.</p>
	Marketing notification	The FCA has 20 business days to notify the AIFM whether it may commence the marketing of the AIF.
18.	<b>Costs</b>	<i>Please include an overview of mandatory fees charged by regulators or other charges in relation to the license application and subsequent supervision.</i>
	License application	<p>The costs due to the FCA for the license application can be divided into two separate categories, which is whether a new entity is seeking authorisation or if an existing entity is extending its permissions to become an AIFM.</p> <p>Typically (depending on any additional activities), for a new entity seeking authorisation as an AIFM, the FCA application fee for an AIFM will be £5,000.</p>
	Extension of license	The costs due to the FCA for an extension of an existing authorisation depend on the permissions sought. If an existing entity applies to become an AIFM then the cost will be £2,500.
	Material amendments to license application (incl. managing a new AIF with same investment strategy)	Depends on the nature of the notification. Unless the notification includes a change to the AIFM's permissions, the FCA will not charge an application fee.
	Annual costs ongoing supervision	<p>AIFMs and UCITS management companies will pay fees in fee block A.7 for their portfolio management activities and fees in fee block A.9 (under the FCA's FEES Manual) for their risk management and administrative activities.</p> <p>Actual fees depend on number of funds managed by the AIFM.</p>
<b>Marketing</b>		
19.	<b>Professional investors</b>	<i>Is marketing to professional investors permitted in your jurisdiction?</i>
	Small AIFMs	<p>Yes, a small AIFM authorised or registered with the FCA may market to UK professional investors.</p> <p>Non-UK small AIFMs will need to register first with the FCA under the NPPR.</p>

	Licensed EU AIFMs	EU AIFMs may only market to the UK professional investors under the UK's private placement regime.
	Third-country AIFMs offering under the NPPR	Under the NPPR, a third-country AIFM may market its AIFs to UK professional clients. See item 10.
20.	<b>Non professional investors</b>	<i>Is marketing to non-professional investors permitted in your jurisdiction?</i>
	Small AIFMs	Yes, a small authorised AIFM might market to non-professional (i.e. retail) clients in the UK as long as the funds are regulated AIFs.  If the funds are unregulated AIFs then it is more difficult to access non-professional investors since you must consider whether you are allowed to make a promotion to these investors under wider legislation that restricts unregulated fund access for retail investors. <b>SIFs/RAIFs/SICARs</b> can only be distributed to "well-informed" investors (see item 4).
	Licensed EU AIFMs	Yes, a Licensed EU AIFM can market their funds to UK retail clients provided such fund meets either of two tests: <ol style="list-style-type: none"> <li>1. The fund is authorised in the UK as a regulated AIF. As above, regulated AIFs can be sold to retail clients (though this is a limited sub-set of retail clients in the case of QIS).</li> <li>2. The fund is regulated outside the UK but meets the same regulatory standards as a UK retail fund (e.g. in relation to investment and borrowing powers). Here it must be registered under section 272 FSMA before it can be marketed to retail investors.</li> </ol>
	Third-country AIFMs offering under the PPR	No, only offerings to qualified investors are permitted under the PPR.
	Third-country AIFMs offering under the designated state regime	Yes, provided that the third-country AIFM complies with the top-up retail rules.
21.	<b>Information memorandum</b>	
	Prior approval required?	The FCA will approve a prospectus issued for a regulated fund and will receive a copy of any similar offering document for an unregulated fund. In this situation it might provide comments (particularly prior to AIFM authorisation) but is less likely to do so.  If a prospectus is produced under the Prospectus Directive then it may be reviewed by the FCA's UK Listing Authority.
	Closed-end AIF that issues transferable	If the AIF is closed-ended and issues transferable interests, the information memorandum must be prepared and approved in accordance with the Prospectus Directive, unless the offer:

	<p>securities to the public</p>	<ul style="list-style-type: none"> <li>• is exclusively addressed to fewer than 150 investors, other than “qualified investors”;</li> <li>• is addressed to qualified investors only;</li> <li>• relates to interests that can only be acquired for a total consideration of at least € 100,000 per investor; and/or</li> <li>• relates to interests with a denomination per interest of at least € 100,000; and/or</li> <li>• has a total equivalent value of less than € 2,500,000, which amount is calculated over a period of 12 months.</li> </ul> <p>In the event of an offer to qualified investors only the information memorandum must contain an adequate selling restriction. In all other scenarios mentioned above the front page of the information memorandum must contain a selling restriction in the form of a prescribed pictogram.</p> <p>The additional information of art. 23 AIFMD can be included either in the prospectus or in an additional document, but must be made available to the investors prior to their decision to invest.</p> <p>If the prospectus is drawn up in accordance with the requirements of the prospectus directive there are no additional requirements for the offer to non-professional investors.</p>
	<p>Other closed-end or open-end AIFs</p>	<p>If the AIF is either open-end or closed-end with non-transferable interests and subject to supervision of the FCA, an information memorandum which complies with the provisions of article 23 AIFMD must be made available to the investors prior to them making their investment.</p>
<p><b>Investor matters</b></p>		
<p>22.</p>	<p><b>Minimum level of investment</b></p>	<p><i>Describe whether there are any minimum level of investments in your jurisdiction</i></p>
		<p>No statutory minimum levels.</p>
<p>23.</p>	<p><b>Investment restrictions/ exceptions</b></p>	
		<ul style="list-style-type: none"> <li>• An AIFM must treat all investors equally and must avoid any conflict of interest. Where investors are treated differently, the AIFM must disclose this to investors (e.g. this could be the existence of side letters or other special clauses for some investors). From a conflicts perspective, the AIFM is expected to mitigate conflicts where it can. As a last resort, the AIFM must disclose the existence of a conflict to investors.</li> <li>• AIFMs may implement stricter approaches than this (for example, introducing an investor committee that approves certain matters, including conflicts) but it is not a regulatory requirement or expectation.</li> <li>• Reference is made to the item 24. for a more detailed description of the restrictions with respect to liquidity.</li> </ul>

24.	<b>Liquidity</b>	<i>Key regulatory/statutory requirements that govern the liquidity rights of investors in the fund – e.g. types of investors, maximum/minimum notice periods and payment periods for redemptions etc.</i>
		<ul style="list-style-type: none"> <li>• Under AIFMD, in the case of open-ended and leveraged AIFs, an AIFM must employ an appropriate liquidity management system and adopt procedures which enables it to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIFM complies with its underlying obligations.</li> <li>• Furthermore, the AIFM must regularly conduct stress tests, under normal and exceptional liquidity conditions, which enables it to assess the liquidity risk of the AIF and monitor the liquidity risk of the AIF accordingly. AIFMs must ensure that, for each AIF that they manage, the investment strategy, the liquidity profile and the redemption policy are consistent.</li> <li>• In case of all other closed-ended and non-leveraged AIFs, AIFMs must ensure that, for each such AIF under its management, the investment strategy, the liquidity profile and the redemption policy are consistent with the management regulations and the prospectus/offering document.</li> </ul>
<b>Additional information</b>		
25.	Additional information	<p>The UK Her Majesty’s Treasury (HMT) recently published a Call for Input on the UK fund regime. HMT is proposing a number of changes it could make to the UK fund regime over the next few years to increase the competitiveness of the UK fund market.</p> <p>Therefore, the UK fund regime for property funds may be subject to change over the coming years.</p> <p>The FCA has also consulted on introducing new rules around authorized property funds to introduce deferred redemptions for investors. However, these proposals are only subject to consultation at the moment, but may be introduced at some point during 2021.</p>

**Contact details:** John Newsome, [john.newsome@pwc.com](mailto:john.newsome@pwc.com)

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