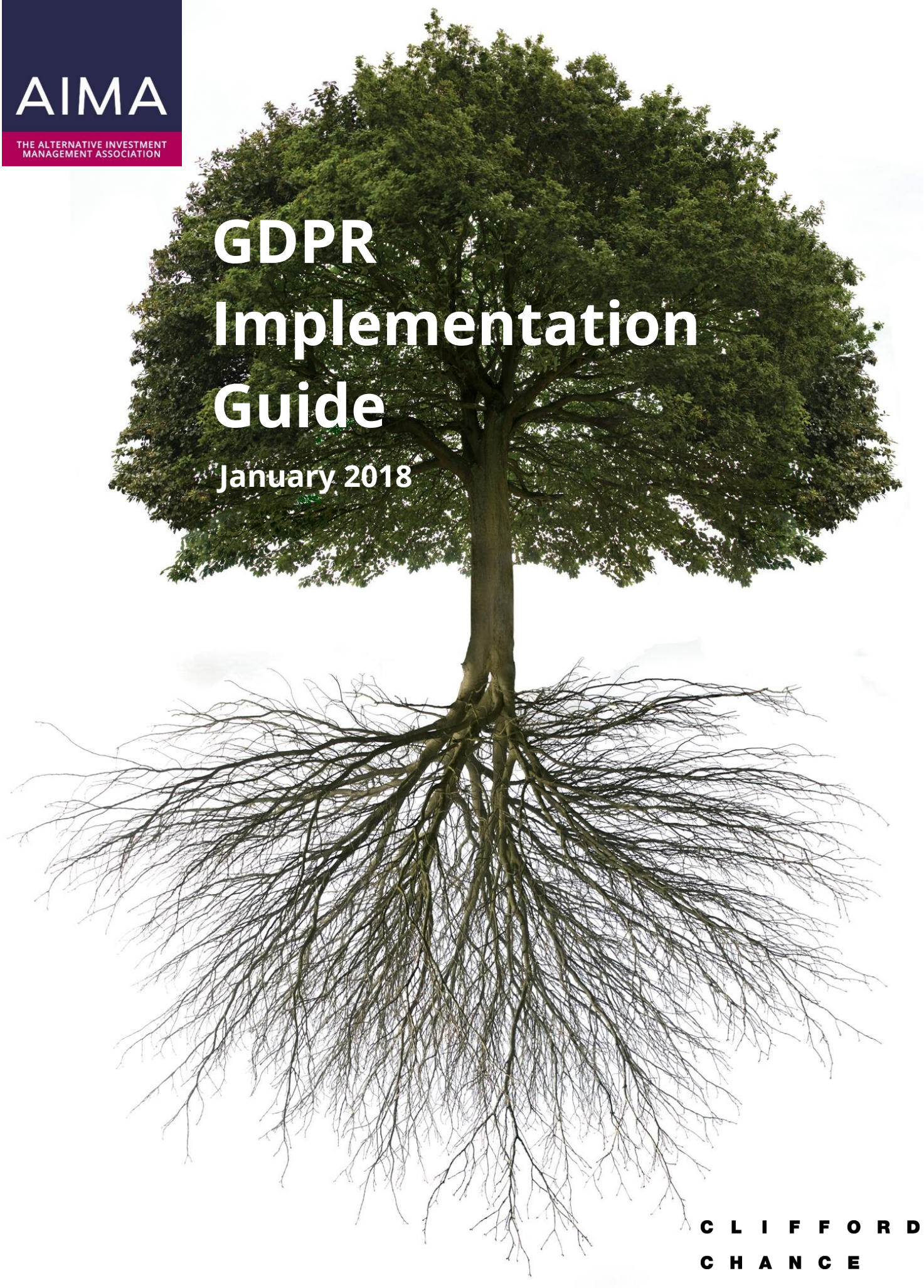
AIMA

THE ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

GDPR Implementation Guide

January 2018



CLIFFORD CHANCE

The EU General Data Protection Regulation (GDPR) was published in May 2016 and will become effective on 25 May 2018, replacing the EU Data Protection Directive (the Directive), which was drafted in the mid-1990s.

The GDPR rules apply to all organisations that deal in any way with the personal data of natural persons, as either 'controllers' or 'processors'. All 'processing' of personal data must have a clear purpose and legal basis, and be compliant with the relevant principles and standards of the GDPR framework.

The GDPR builds upon the data protection regime contained within the Directive, and includes many enhancements:

- **Territorial scope** – increased territorial scope to include any non-EU organisation that processes the personal information of persons located in the EU and that offers services to or monitors persons located in the EU, as well as all EU established organisations;

- **Data protection principles** – strengthened principles for the processing of personal data, in particular by enhancing the accountability for and transparency of personal data processing, and requiring firms to embed data protection into all commercial processes by design and by default;

- **Consent as a legal basis** – greater difficulty to obtain and maintain consent as the legal basis for personal data processing, in particular it is far easier for data subjects to withdraw under the GDPR;

- **Rights of data subjects** – enhanced data subjects rights in relation to their personal data, including the right of access to data, the right to be forgotten, right to restrict processing, and right to object;

- **Obligations for processors** – new obligations and liability for processors, as well as the requirement for controllers to obtain guarantees of compliance with the GDPR from any third-party processors used;

- **Data protection officers** – the GDPR introduces an obligation for firms that regularly and systematically monitor data subjects, or process 'Sensitive Personal Data' on a large scale, to appoint a 'Data Protection Officer' (**DPO**) compliant with the requirements of the GDPR; and

- **Supervision, breaches and sanctions –** greater oversight and sanctioning powers for supervisory authorities, and a requirement for controllers to notify material breaches to supervisors within 72 hours of detection and to data subjects if the breaches pose a high risk to them. Sanctions are greatly enhanced, with the possibility of administrative fines of up to 4% of global group turnover.

The **AIMA GDPR Implementation Guide**[i] was published by AIMA[ii] in January 2018 to provide greater clarity for members in their preparation for the go-live of GDPR. The Implementation Guide contains a:

1. ***Background to the GDPR and a summary of the key rules relevant to alternative investment management –*** including where these rules have changed from the Directive;

2. ***Series of key questions and compliance considerations for AIMA member firms –*** highlighting the issues firms should consider when implementing the GDPR and the questions that should be asked internally;

3. ***Set of tick-box compliance checklists –*** for alternative investment management firms covering general processes and scope mapping exercises, as well as the review of contracts and internal policies.

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Electronic copies of the full *AIMA GDPR Implementation Guide* (January 2018) are available to AIMA member contacts via the AIMA website (www.aima.org). Electronic copies are subject to a limited licence and are reserved for the use of AIMA members only.

For further details on AIMA membership, please contact Fiona Treble (ftreble@aima.org).

For questions related to the content of the Implementation Guide, please contact Oliver Robinson (orobinson@aima.org).

AIMA members have exclusive access to a growing library of industry reference documents:

Due Diligence Questionnaires

- Modular DDQ for Investment managers
- Administrators
- Clearing Members
- Fund administrators
- Fund Directors
- Prime Brokers
- Responsible Investing
- Transaction Cost Analysis Vendors
- Vendor Cyber Security

Regulatory Guides and Guidance notes

- Commodity Position Reporting and Limits
- Fund Directors (3rd Edition)
- Liquid Alternative Funds
- Managed Account Guide
- MiFID2 Guide for Investment Managers
- Side Letter Guidance
- Template Research Charge Collection Agreement

Sound practice Guides

- Business Continuity Management
- Cyber Security 2.0
- Fund of Hedge Funds Managers
- Hedge Fund Valuation
- Hedge Fund Managers' Media Relations
- Investor Relations
- Paying for Research
- Operational Risk Management
- OTC Derivatives Clearing
- Secondary Loan Market
- Selecting a Prime Broker
- Selection and Periodic Assessment of Administrators

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[i] **The Guide is for use by AIMA members only. While every effort has been made to ensure the accuracy of the Guide, AIMA cannot accept any responsibility for decisions taken by firms on the basis of the information presented here. Firms should ensure that they have sought appropriate legal support and advice in respect of the issues covered in the Guide**

[ii] **AIMA** is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than $2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors)