



**Financial Services
Commission**

Information page

Alternative Investment Fund Managers Directive Authorisation of AIFMs – Capital Requirements

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Any advice or interpretation covered in this information page represents the views of the FSC as to its expectations of how the requirements of the AIFMD are to be complied with and/or how it fails to be applied. This however is not intended as a definitive interpretation of the AIFMD which is ultimately a matter for the courts to determine. The FSC does not provide, or purport to offer, legal advice.



1. Introduction

- 1.1 In this information page, reference is made to the Alternative Investment Fund Managers Directive 2011/61/EU (“AIFMD”) and to the supplementing Level 2 Delegated Regulation (“Level 2”).
- 1.2 The AIFMD imposes capital requirements on all authorised AIFMs. For external AIFMs, these capital requirements will apply at the level of the AIFM. For self-managed AIFs, where the AIF itself is the AIFM, the capital requirements will apply at the level of the AIF.
- 1.3 The purpose of this information page is to provide AIFMs with a clear picture of the capital requirements imposed by AIFMD.

2. Initial capital and own funds

(Article 9 of AIFMD)

AIFM type	Minimum initial capital
Internally managed AIFM	€300,000
AIFM	€125,000 *

- 2.1 *Where the value of the portfolios of AIFs managed by the AIFM exceeds €250 million, the AIFM must provide an additional amount of own funds:
- equal to 0.02% of the amount by which the value of the portfolios of the AIFM exceeds €250 million, but
 - shall not exceed €10 million.
- 2.2 Irrespective of section 2.1, the own funds of the AIFM may never be less than the amount required under Article 21 of Directive 2006/49/EC (the Capital Adequacy Directive) which states:
- “Investment firms shall be required to hold own funds equivalent to one quarter of their preceding year’s fixed overheads.
- The competent authorities may adjust that requirement in the event of a material change in a firm’s business since the preceding year.
- Where a firm has not completed a year’s business, starting from the day it starts up, the requirement shall be a quarter of the fixed overheads projected in its business plan, unless an adjustment to that plan is required by the competent authorities.”
- 2.3 For the purpose of the value of the portfolio in the paragraph above, the portfolio of the AIFM shall include AIFs for which the AIFM has delegated functions in accordance with Article 20 of the AIFMD but shall exclude AIF portfolios that the AIFM is managing under delegation.
- 2.4 The FSC may authorise an AIFM not to provide up to 50% of the additional amount of own funds referred to in section 2.1 if it benefits from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in:
- a Member State, or



- (b) a third country where it is subject to prudential rules considered by the Financial Services Commission as equivalent to those laid down in European Union law.

The FSC would need to be satisfied with the guarantee before allowing this, firms interested in this should discuss this with the FSC at an early stage.

- 2.5 To reduce potential professional liability risks resulting from activities AIFMs may carry out, both internally managed AIFs and external AIFMs must either:
- (a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
 - (b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

Further requirements on this are set out below.

- 2.6 Own funds (including additional own funds under section 2.5(a)):
- (a) must be invested in liquid assets or assets readily convertible to cash in the short term, and
 - (b) may not include speculative positions.

- 2.7 This section does not apply to AIFMs which are also UCITS management companies, except for sections 2.5 and 2.6 and any relevant measures referred to in section 7 below.

3. Professional liability risks

(Article 12 of Level 2)

- 3.1 The professional liability risks to be covered pursuant to section 2.5 above shall be risks of loss or damage caused by a relevant person through the negligent performance of activities for which the AIFM has legal responsibility.
- 3.2 Professional liability risks as defined in section 3.1 shall include, without being limited to, risks of:
- (a) loss of documents evidencing title of assets of the AIF;
 - (b) misrepresentations or misleading statements made to the AIF or its investors;
 - (c) acts, errors or omissions resulting in a breach of:
 - (i) legal and regulatory obligations;
 - (ii) duty of skill and care towards the AIF and its investors;
 - (iii) fiduciary duties;
 - (iv) obligations of confidentiality;
 - (v) AIF rules or instruments of incorporation;
 - (vi) terms of appointment of the AIFM by the AIF;
 - (d) failure to establish, implement and maintain appropriate procedures to prevent dishonest, fraudulent or malicious acts;
 - (e) improperly carried out valuation of assets or calculation of unit share prices;
 - (f) losses arising from business disruption, system failures, failure of transaction processing or process management.

- 3.3 Professional liability risks shall be covered at all times either through appropriate additional own funds determined in accordance with section 6 below or through appropriate coverage of professional indemnity insurance determined in accordance with section 4 below.

4. Professional indemnity insurance

(Article 15 of Level 2)

- 4.1 This Article shall apply to AIFMs that choose to cover professional liability risks through professional indemnity insurance.
- 4.2 The AIFM shall take out and maintain at all times professional indemnity insurance that:
- (a) shall have an initial term of no less than one year;
 - (b) shall have a notice period for cancellation of at least 90 days;
 - (c) shall cover professional liability risks as defined in Article 3.1 and 3.2 above;
 - (d) is taken out from an EU or non-EU undertaking authorised to provide professional indemnity insurance, in accordance with EU law or national law;
 - (e) is provided by a third party entity.

Any agreed defined excess shall be fully covered by own funds which are in addition to the own funds to be provided in accordance with section 2.1 and 2.3 above.

- 4.3 The coverage of the insurance for an individual claim shall be equal to at least 0.7 % of the value of the portfolios of AIFs managed by the AIFM calculated as set out in the second subparagraph of section 6.2 below.
- 4.4 The coverage of the insurance for claims in aggregate per year shall be equal to at least 0.9 % of the value of the portfolios of AIFs managed by the AIFM calculated as set out in the second subparagraph of section 6.2 below.
- 4.5 The AIFM shall review the professional indemnity insurance policy and its compliance with the requirements laid down in this section at least once a year and in the event of any change which affects the policy's compliance with the requirements in this section.

5. Qualitative requirements addressing professional liability risks

(Article 13 of Level 2)

- 5.1 An AIFM shall implement effective internal operational risk management policies and procedures in order to identify, measure, manage and monitor appropriately operational risks including professional liability risks to which the AIFM is or could be reasonably exposed. The operational risk management activities shall be performed independently as part of the risk management policy.

- 5.2 An AIFM shall set up a historical loss database, in which any operational failures, loss and damage experience shall be recorded. This database shall record, without being limited to, any professional liability risks as referred to in section 3.2 above that have materialised.
- 5.3 Within the risk management framework the AIFM shall make use of its internal historical loss data and where appropriate of external data, scenario analysis and factors reflecting the business environment and internal control systems.
- 5.4 Operational risk exposures and loss experience shall be monitored on an on-going basis and shall be subject to regular internal reporting to management and ultimately to the board.
- 5.5 An AIFM's operational risk management policies and procedures shall be well documented. An AIFM shall have arrangements in place for ensuring compliance with its operational risk management policies and effective measures for the treatment of non-compliance with these policies. An AIFM shall have procedures in place for taking appropriate corrective action.
- 5.6 The operational risk management policies and procedures and measurement systems shall also be subject to regular review, at least on an annual basis.
- 5.7 An AIFM shall maintain financial resources adequate to its assessed risk profile.

6. Additional own funds

(Article 14 of Level 2)

- 6.1 This section shall apply to AIFMs that choose to cover professional liability risks through additional own funds.
- 6.2 The AIFM shall provide additional own funds for covering liability risks arising from professional negligence at least equal to 0.01 % of the value of the portfolios of AIFs managed. However, it is expected that the additional own funds is greater than this.

The value of the portfolios of AIFs managed shall be the sum of the absolute value of all assets of all AIFs managed by the AIFM, including assets acquired through use of leverage, whereby derivative instruments shall be valued at their market value.

- 6.3 The additional own funds requirement referred to in section 6.2 above shall be recalculated at the end of each financial year and the amount of additional own funds shall be adjusted accordingly.

The AIFM shall establish, implement and apply procedures to monitor on an on-going basis the value of the portfolios of AIFs managed, calculated in accordance with the second sub-paragraph of section 6.2 above. Where, before the annual recalculation referred to in the first subparagraph, the value of the portfolios of AIFs managed increases significantly, the AIFM shall without undue delay recalculate the additional own funds requirement and shall adjust the additional own funds accordingly.



- 6.4 As per the requirement, the FSC may authorise the AIFM to provide additional own funds lower than the amount referred to in section 6.2 above only if it is satisfied — on the basis of the historical loss data of the AIFM as recorded over an observation period of at least three years prior to the assessment — that the AIFM provides sufficient additional own funds to appropriately cover professional liability risks. The authorised lower amount of additional own funds shall be not less than 0.008% of the value of the portfolios of AIFs managed by the AIFM.
- 6.5 The FSC may request the AIFM to provide additional own funds higher than the amount referred to in section 6.2 above if it is not satisfied that the AIFM has sufficient additional own funds to appropriately cover professional liability risks. The FSC will give reasons why it considers that the AIFM's additional own funds are insufficient.

7. Application of implementing measures

Any measures adopted by the European Union Commission under Article 9 of the AIFMD (initial capital and own funds) shall also be applicable.