



**Financial Services  
Commission**

## **Information page**

# **Alternative Investment Fund Managers Directive Authorisation of AIFMs - General**

Issued : 28 February 2013



**Table of Contents**

1. Introduction .....	3
2. Conditions for taking up activities as AIFM .....	3
3. Application for authorisation .....	4
4. Conditions for granting authorisation .....	5
5. Initial capital and own funds .....	6
6. Changes in the scope of the authorisation .....	6
7. Withdrawal of the authorisation .....	7
8. Annex I of the AIFMD .....	7
9. Application of implementing measures .....	8

Financial Services Commission  
PO Box 940, Suite 3, Ground Floor,  
Atlantic Suites, Europort Avenue,  
Gibraltar

*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 Financial Services (Alternative Investment Fund Managers) Act 2013 ("Act") which will transpose the AIFMD into Gibraltar law.
- 1.2 The purpose of this information page is to provide AIFMs with a clear picture on the process and conditions applicable to obtain an authorisation under the AIFMD.

## 2. Conditions for taking up activities as AIFM

*(Article 6 of the AIFMD)*

- 2.1 An AIFM may not manage an AIF unless authorised in accordance with the Act.
- 2.2 An AIFM authorised in accordance with the Act must meet the conditions for authorisation established in the Act at all times.
- 2.3 Subject to section 2.5 below, an external AIFM may not engage in activities other than those referred to in Annex I to the AIFMD (see section 8) and the additional management of UCITS subject to authorisation under Directive 2009/65/EC (UCITS).
- 2.4 An internally managed AIF may not engage in activities other than the internal management of that AIF in accordance with Annex I to the AIFMD.
- 2.5 An external AIFM may provide the following services:
  - (a) management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC (on occupational retirement provision), in accordance with mandates given by investors on a discretionary, client-by-client basis;
  - (b) non-core services comprising:
    - (i) investment advice;
    - (ii) safe-keeping and administration in relation to shares or units of collective investment undertakings;
    - (iii) reception and transmission of orders in relation to financial instruments;and Articles 2(2), 12, 13 and 19 of Directive 2004/39/EC (MiFID) shall apply to the provision of the services referred to in this subsection by AIFMs.
- 2.6 An AIFM may not be authorised to provide:
  - (a) only the activities referred to in section 2.5;
  - (b) non-core services referred to in section 2.5(b) without also being authorised to provide the services referred to section 2.5(a);
  - (c) only the activities referred to in point 2 of Annex I to the AIFMD; or
  - (d) the services referred to in point 1(a) of that Annex without also providing the services referred to in point 1(b) of that Annex (or vice versa).

- 2.7 An AIFM must provide the FSC with the information it requires to monitor compliance with the conditions referred to in the Act and the AIFMD at all times.
- 2.8 Investment firms authorised under Directive 2004/39/EC (MiFID) and credit institutions authorised under Directive 2006/48/EC (on credit institutions) shall not be required to obtain an authorisation under the Act in order to provide investment services such as individual portfolio management in respect of AIFs; but those investment firms may, directly or indirectly, offer units or shares of AIFs to, or place such units or shares with, investors in the European Union, only to the extent the units or shares can be marketed in accordance with the Act.
- 2.9 Authorisation by the competent authorities of any Member State shall be treated as valid in Gibraltar.
- 2.10 Annex I of the AIFMD is reproduced in section 8 below.

### 3. Application for authorisation

*(Article 7 of the AIFMD)*

- 3.1 An application for authorisation under the Act:
- (a) must be made to the FSC, and
  - (b) may be made only by an AIFM for which Gibraltar is the home Member State.
- The FSC will issue AIFMD application forms and these will be uploaded on to the FSC website as soon as they are ready.
- 3.2 An AIFM applying for an authorisation shall provide the following information relating to the AIFM to the FSC:
- (a) information on the persons effectively conducting the business of the AIFM;
  - (b) information on the identities of the AIFM's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;
  - (c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under the Act;
  - (d) information on the remuneration policies and practices pursuant to Article 13 of the AIFMD (see the FSC information page on AIFMD - Remuneration);
  - (e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Article 20 of the AIFMD (see the FSC information page on AIFMD - Delegation).
- 3.3 An AIFM applying for authorisation must further provide to the FSC the following information on the AIFs it intends to manage:
- (a) information about the investment strategies including the types of underlying funds if the AIF is a fund of funds, and the AIFM's policy as regards the use of leverage, and the risk profiles and other characteristics of the AIFs it manages or intends to manage, including information about the Member States or third countries in which such AIFs are established or are expected to be established;

- (b) information on where the master AIF is established if the AIF is a feeder AIF;
  - (c) the rules or instruments of incorporation of each AIF the AIFM intends to manage;
  - (d) information on the arrangements made for the appointment of the depositary in accordance with Article 21 of the AIFMD (see the FSC information page on AIFMD - Depositary) for each AIF the AIFM intends to manage;
  - (e) any additional information referred to in Article 23 of the AIFMD (see the FSC information page on AIFMD - Transparency Requirements) for each AIF the AIFM manages or intends to manage.
- 3.4 Where a management company is authorised pursuant to Directive 2009/65/EC (UCITS management company) and applies for authorisation as an AIFM under the Act, the FSC may not require the UCITS management company to provide information or documents which the UCITS management company has already provided when applying for authorisation under Directive 2009/65/EC, provided that such information or documents remain up to date.

## 4. Conditions for granting authorisation

*(Article 8 of the AIFMD)*

- 4.1 The FSC shall not grant authorisation to an AIFM unless:
- (a) they are satisfied that the AIFM will be able to meet the conditions of the Act and the AIFMD;
  - (b) the AIFM has sufficient initial capital and own funds in accordance with Article 9 of the AIFMD (see the FSC information page on AIFMD - Capital Requirements);
  - (c) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the AIFs managed by the AIFM, the names of those persons and of every person succeeding them in office being communicated forthwith to the FSC and the conduct of the business of the AIFM being decided by at least two persons meeting such conditions;
  - (d) the shareholders or members of the AIFM that have qualifying holdings are suitable taking into account the need to ensure the sound and prudent management of the AIFM; and
  - (e) the head office and the registered office of the AIFM are located in Gibraltar.
- 4.2 The FSC shall consult the relevant competent authorities of other Member States involved before authorisation is granted to the following AIFMs:
- (a) a subsidiary of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State;
  - (b) a subsidiary of the parent undertaking of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State; and
  - (c) a company controlled by the same natural or legal persons as those that control another AIFM, a UCITS management company, an investment firm,

a credit institution or an insurance undertaking authorised in another Member State.

- 4.3 The FSC shall not grant authorisation to an AIFM where the effective exercise of their supervisory functions is prevented by any of the following:
- (a) close links between the AIFM and other natural or legal persons;
  - (b) the laws, regulations or administrative provisions of a third country governing natural or legal persons with which the AIFM has close links;
  - (c) difficulties involved in the enforcement of those laws, regulations and administrative provisions.
- 4.4 The FSC may restrict the scope of an authorisation, in particular as regards the investment strategies of AIFs the AIFM is allowed to manage.
- 4.5 The FSC shall inform the applicant in writing within 3 months of the submission of a complete application, whether or not authorisation has been granted.
- 4.6 The FSC may prolong that period for up to three additional months, where they consider it necessary due to the specific circumstances of the case and after having notified the AIFM accordingly.
- 4.7 For the purpose of this section an application is deemed complete if the AIFM has at least submitted the information referred to in sections 3.2(a) to (d) and 3.3(a) and (b).
- 4.8 AIFMs may start managing AIFs with investment strategies described in the application in accordance with section 3.3(a) as soon as the authorisation is granted, but not earlier than 1 month after having submitted any missing information referred to in section 3.2(e) and 3.3(c) to (e).

## 5. Initial capital and own funds

*(Article 9 of the AIFMD)*

The initial capital and own funds requirements are detailed in depth in the FSC's information page on AIFMD - Capital Requirements.

## 6. Changes in the scope of the authorisation

*(Article 10 of the AIFMD)*

- 6.1 An AIFM, before implementation, must notify the FSC of any material changes to the conditions for initial authorisation including, in particular, material changes to the information provided in accordance with section 3 above.
- 6.2 If the FSC decides to impose restrictions or reject those changes, they shall, within 1 month of receipt of that notification, inform the AIFM; and
- (a) the FSC may prolong that period for up to 1 month where it considers it necessary because of the specific circumstances of the case and after having notified the AIFM; and
  - (b) the changes may be implemented if the FSC does not oppose the changes within the relevant assessment period.

## 7. Withdrawal of the authorisation

*(Article 11 of the AIFMD)*

- 7.1 The FSC may withdraw the authorisation issued to an AIFM where any of the conditions in this section is satisfied.
- 7.2 Condition 1 is that the AIFM:
- (a) does not make use of the authorisation within 12 months,
  - (b) expressly renounces the authorisation, or
  - (c) has ceased the activity covered by the Act for the preceding 6 months.
- 7.3 Condition 2 is that the AIFM obtained the authorisation by making false statements or by any other irregular means.
- 7.4 Condition 3 is that the AIFM no longer meets the conditions under which authorisation was granted.
- 7.5 Condition 4 is that the AIFM no longer complies with Directive 2006/49/EC (Capital Adequacy Directive) if its authorisation also covers the discretionary portfolio management service referred to in section 2.5(a) above.
- 7.6 Condition 5 is that the AIFM has seriously or systematically infringed the Act or other provisions adopted pursuant to the AIFMD.
- 7.7 Condition 6 is that the AIFM falls within any other case where a provision of the law of Gibraltar provides for withdrawal of authorisation under the Act.

## 8. Annex I of the AIFMD

Investment management functions which an AIFM shall at least perform when managing an AIF:

- (a) portfolio management;
- (b) risk management.

Other functions that an AIFM may additionally perform in the course of the collective management of an AIF:

- (a) Administration
  - (i) legal and fund management accounting services;
  - (ii) customer inquiries;
  - (iii) valuation and pricing, including tax returns;
  - (iv) regulatory compliance monitoring;
  - (v) maintenance of unit-/shareholder register;
  - (vi) distribution of income;
  - (vii) unit/shares issues and redemptions;
  - (viii) contract settlements, including certificate dispatch;
  - (ix) record keeping;
- (b) Marketing;
- (c) Activities relating to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration



activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

## **9. Application of implementing measures**

Any measures adopted by the European Union Commission under Articles 7 to 9 of the AIFMD, which are covered in this information page, shall also be applicable.