



**Financial Services
Commission**

Information page

Alternative Investment Fund Managers Directive Overview

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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.



Introduction

The Alternative Investment Fund Managers Directive 2011/61/EU ("AIFMD") is a European Directive which must be transposed by all Member States into their respective national laws by 22 July 2013. The European Commission has supplemented the AIFMD with a Delegated Regulation, more commonly known as the level 2 implementing measures ("Level 2"). Since Level 2 is enacted as a Regulation, it must be applied in its entirety across the EU.

With the introduction of the AIFMD, all EU funds will either be UCITS or alternative investment funds ("AIFs"). Therefore, the scope of the AIFMD is very large and in Gibraltar it will cover EIFs, authorised funds, private funds and some recognised funds.

The AIFMD however does not directly regulate the operations of AIFs but instead regulates the managers of the AIFs; i.e. the alternative investment fund managers ("AIFMs"). It is therefore prudent to determine who the AIFM is for the purposes of the AIFMD as some AIFs may themselves be considered AIFMs.

Determination of the AIFM

The AIFMD defines AIFMs as "legal persons whose regular business is managing one or more AIFs". As a result, the definition of AIFMs is heavily dependent on the definition of an AIF.

The AIFMD defines AIFs as "collective investment undertakings, including investment compartments thereof, which:

- a. raise 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; and
- b. do not require authorisation pursuant to Article 5 of Directive 2009/65/EC (on UCITS)."

Each AIF must have a single AIFM which shall be responsible for ensuring compliance with the AIFMD. The AIFMD provides for two possible types of AIFM:

- (a) the external manager that manages AIFs; and
- (b) the AIF itself, when it is self-managed.

Definition of "Small AIFMs"

"Small AIFMs" are AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by substantive direct or indirect holding, manage portfolios of AIFs whose assets under management:

- (a) including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or
- (b) in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

The above thresholds are commonly referred to as the "*de minimis thresholds*". Each AIFM will either be a Small AIFM or an authorised in-scope AIFM. However, Small AIFMs may choose to opt-in under the AIFMD and obtain the AIFM authorisation.



Affected investment firms and funds should refer to the FSC information page on "AIFMD - Small AIFMs" for further information.

In-scope AIFMs

All other AIFMs that do not fall within the definition of Small AIFMs above will need to obtain authorisation as an AIFM and comply with all the requirements of the AIFMD. In addition, Small AIFMs may also opt-in under the Directive in order to benefit from the marketing passport. Where such Small AIFMs opt-in, the AIFMD will become applicable in its entirety.

There are numerous conditions and requirements under the AIFMD which need to be met before an AIFM can become authorised. The main requirements are:

- Delegation
- Depositary
- Marketing
- Organisational requirements (including valuation)
- Operating conditions
 - Remuneration
 - Conflicts of interest
 - Risk management
 - Liquidity management
 - Investment in securitisation positions
- Transparency requirements
 - Annual return
 - Disclosure to investors
 - Reporting obligations

AIFMs will need to apply within a year from 22 July 2013 to be authorised as an AIFM.

Please refer to the FSC's information page on the AIFMD with further information on all the requirements listed above.

Implications of the AIFMD in different scenarios

Below is an overview of the implications that the AIFMD will have in different scenarios:

Self-managed Gibraltar AIF

In this scenario, the Gibraltar AIF would be the AIFM for the purposes of the AIFMD. The Gibraltar AIF would therefore need to comply with all the requirements of the AIFMD. The Gibraltar AIF will need to apply for authorisation to the FSC by 22 July 2014 (i.e. 1 year after the implementation date). For the grace period between the implementation date and the date the AIFM authorisation is received, the Gibraltar AIF may continue to operate but cannot be marketed throughout the EEA until authorised..

EU AIFM managing Gibraltar AIF and Gibraltar AIFM managing EU AIF

The AIFM would need to comply with all the requirements of the AIFMD and will need to apply for authorisation to the competent authority of its home Member State (the FSC in the case of a Gibraltar AIFM) by 22 July 2014. For the grace period between the



implementation date and the date the AIFM authorisation is received, the AIFs may continue to operate but must not be marketed as per the AIFMD. Once authorised, the AIFM will be able to market the EU AIFs (including Gibraltar AIFs) it manages throughout the EU with the marketing passport.

Non-EU AIFM managing Gibraltar AIF

As from 22 July 2013, such AIFMs may choose to market the Gibraltar AIF in the EU under the national private placement regimes ("NPPRs") of each Member State (subject to some additional conditions). Alternatively, the Gibraltar AIF can be designated as the AIFM and delegate the portfolio management to the non-EU AIFM (in this instance please refer to 'Self-managed Gibraltar AIF' section above).

As from mid-2015 at the earliest, such AIFMs may choose to, for example, continue marketing under the NPPRs or apply for authorisation under AIFMD.

As from mid-2018 at the earliest, the European Commission may abolish all NPPRs. From that point on, in order to market the Gibraltar AIF, the non-EU AIFM will need to obtain authorisation under the AIFMD.

Gibraltar AIFM managing non-EU AIF

Such Gibraltar AIFMs would need to comply with all the requirements under the AIFMD and will need to apply for authorisation to the FSC by 22 July 2014. For the grace period between the implementation date and the date the AIFM authorisation is received, a Gibraltar AIFM may continue to manage a non-EU AIF but it must not be marketed in the EU. Once authorised, the Gibraltar AIFM may market the non-EU AIF in the EU under the NPPRs of each Member State, subject to some additional conditions. The marketing passport under the AIFMD of non-EU AIFs will only become available to such AIFMs as from mid-2015.

Implications of the AIFMD on other licensed entities

UCITS Management Companies

Authorised UCITS Management Companies may provide services to AIFMs without obtaining authorisation under the AIFMD. UCITS Management Companies wishing to become AIFMs themselves in order to manage AIFs will require an additional authorisation under the AIFMD. It is possible for a single entity to hold a dual authorisation as a UCITS Management Company and an AIFM.

MiFID firms (including other licensed investment firms)

MiFID firms wishing to become AIFMs in order to manage AIFs will be required to apply for authorisation under the AIFMD and then relinquish their MiFID licence. Those opting to do this should refer to the MiFID services being provided to non-AIFs as the AIFMD sets out restrictions in this respect. It is not possible for a single entity to hold a dual authorisation under MiFID and AIFMD. Note that MiFID firms acting as Small AIFMs do not need to apply for authorisation under AIFMD or relinquish their MiFID licence – these firms would continue to be regulated under MiFID. Investment firms may also provide services to AIFMs without obtaining authorisation under the AIFMD subject to providing these services solely on a delegated basis.

CIS Managers

Firms holding a CIS Manager licence will need to replace such licence with an AIFM licence. These firms will be required to apply for authorisation as there are no 'grandfathering' provisions available.



Depositaries

Depositaries must note that under the AIFMD, the depositary is the key independent party and is charged with protecting the investors in the AIFs. The depositary has three major roles as safe keeper of assets, monitor of cash, and overseer of NAV calculation and fund administration. The depositary is liable for the loss of assets and financial instruments in its control unless the loss is out of the depositary's reasonable control and was unavoidable. This liability goes beyond negligence and resembles strict liability. Depositaries are encouraged to read the FSC's information page on Depositaries for further information.