



**Financial Services
Commission**

Information page

Alternative Investment Fund Managers Directive Small AIFMs

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**Table of Contents**

Introduction.....	3
Determination of the AIFM.....	3
Definition of "Small AIFMs".....	3
How to calculate the total value of assets under management.....	4
Registration and reporting of Small AIFMs.....	5
On-going monitoring of assets under management.....	6
Occasional breach of threshold.....	6
Non-temporary breach of threshold.....	7
Status of Small AIFMs and the option to "opt in".....	7
Entities to which the AIFMD does not apply.....	7
AIFMs which are neither exempted nor small.....	8

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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

This page lists the obligations that “Small AIFMs” shall have under the Alternative Investment Fund Managers Directive 2011/61/EU (“AIFMD”) as transposed into Gibraltar through the enactment of the Financial Services (Alternative Investment Fund Managers) Act 2013. The European Commission has supplemented the AIFMD with a Delegated Regulation, more commonly known as the level 2 implementing measures (“AIFMD Level 2 Regulation”), which has also been considered when compiling the information on this page.

Determination of the AIFM

1. 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.
2. The AIFMD defines AIFs “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).”
3. Each AIF must have a single AIFM which shall be responsible for ensuring compliance with 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”

4. “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.



How to calculate the total value of assets under management

6. AIFMs must:
 - (a) identify all AIFs for which it is appointed as the external AIFM or the AIF for which it is the AIFM, where the legal form of the AIF permits internal management;
 - (b) identify for each managed AIF the portfolio of assets and determine in accordance with the valuation rules laid down in the law of the country where the AIF is established or, as the case may be, in the AIF rules or instruments of incorporation, the corresponding value of assets under management including all assets acquired through the use of leverage;
 - (c) aggregate the determined values of assets under management for all AIFs managed and compare the resulting total value of assets under management to the relevant threshold detailed in section 4 above.
7. For the purposes of section 5, undertakings for collective investment in transferable securities (UCITS) for which the AIFM acts as the designated management company under the UCITS Directive shall not be included in the calculation. This is to avoid double counting with reporting UCITS.
8. For the purposes of section 5, AIFs managed by the AIFM for which the AIFM has delegated functions in accordance with Article 20 of AIFMD shall be included in the calculation. However, portfolios of AIFs that the AIFM is managing under delegation shall be excluded from the calculation.
9. For the purpose of calculating the total value of assets under management, each derivative instrument position, including any derivative embedded in transferable securities shall be converted into its equivalent position in the underlying assets of that derivative using the conversion methodologies set out in Annex II on the conversion methodologies for derivative instruments of the AIFMD Level 2 Regulation. The absolute value of that equivalent position shall then be used for the calculation of the total value of assets under management.
10. Where an AIF invests in other AIFs managed by the same externally appointed AIFM, that investment may be excluded from the calculation of the AIFM's assets under management. This is to avoid double counting.
11. Where one compartment within an internally or externally managed AIF invests in another compartment of that AIF, that investment may be excluded from the calculation of the AIFM's assets under management.
12. The total value of assets under management shall be calculated in accordance with sections 5 to 10 at least annually and using the latest available asset values. The latest available asset value for each AIF shall be produced during the twelve months preceding the date of the calculation of the threshold in accordance with the first sentence of this section. Evidence of this to be retained by the AIFM. This must be available for review by the FSC or independent auditors, should this be required.

13. The AIFM shall determine a threshold calculation date and apply it in a consistent manner. Any subsequent change to the date chosen must be justifiable to the FSC. In selecting the threshold calculation date, the AIFM shall take into account the time and frequency of the valuation of the assets under management. Both the initial threshold calculation and any subsequent changes to this date should be advised to the FSC.

Registration and reporting of Small AIFMs

14. Small AIFMs will be required to register with the FSC. In order to register they should complete an "AIFMD Small AIFM Notification Form".
15. It should be noted that although technically "Small AIFMs", small non-EU AIFMs which manage one or more EU AIFs (including Gibraltar AIFs) are not required to register with the FSC until 2015 unless they are marketing the EU AIF in Gibraltar.
16. "The AIFMD Small AIFM Notification Form" will require Small AIFMs to provide details about themselves and the AIFs that they manage to the FSC and must communicate to the FSC the total value of assets under management, calculated in accordance with the procedure set out in sections 5 to 12, at the time of registration.
17. Small AIFMs must submit a separate form for each AIF they manage, this will request information on the investment strategies of the AIF at the time of registration. Such information will consist of each AIF's offering document or a relevant extract from the offering document or a general description of the investment strategy. The relevant extract from the offering document and the description of the investment strategy shall include at least the following information:
 - (a) the main categories of assets in which the AIF may invest;
 - (b) any industrial, geographic or other market sectors or specific classes of assets which are the focus of the investment strategy;
 - (c) a description of the AIF's borrowing or leverage policy.
18. Small AIFMs must regularly report to the FSC, in order for the FSC to monitor systemic risk effectively, information on:
 - (a) the main instruments in which it is trading, including a break-down of financial instruments and other assets, including the AIF's investment strategies and their geographical and sectoral investment focus;
 - (b) the markets of which it is a member or where it actively trades;
 - (c) the diversification of the AIF's portfolio, including, but not limited to, its principal exposures and most important concentrations.

The information must be provided as soon as possible and not later than one month after the end of the period referred to in section 18 below. Where the AIF is a fund of funds, this period may be extended by the Small AIFM by 15 days.

19. Small AIFMs must provide the information specified under section 16 in accordance with the pro-forma reporting template set out in Annex IV of the AIFMD Level 2 Regulation in the form specified by the FSC.
20. The information required for registration purposes must be updated and provided to the FSC on an annual basis. The FSC may require a Small AIFM to provide the information referred to in sections 14 to 16 on a more frequent basis.

On-going monitoring of assets under management

21. Small AIFMs shall establish, implement and apply procedures to monitor on an on-going basis the total value of assets under management. Monitoring shall reflect an up-to-date overview of the assets under management and shall include the observation of subscription and redemption activity or, where applicable, capital draw downs, capital distributions and the value of the assets invested in for each AIF. Records of this should be maintained by the Small AIFM.
22. The proximity of the total value of assets under management to the thresholds set in section 4 above and the anticipated subscription and redemption activity shall be taken into account in order to assess the need for more frequent calculations of the total value of assets under management.

Occasional breach of threshold

23. The Small AIFM shall assess situations where the total value of assets under management exceeds the relevant threshold in order to determine whether or not they are of a "temporary nature". A situation shall not be considered of a temporary nature if it is likely to continue for a period in excess of three months.
24. Where the total value of assets under management exceeds the relevant threshold and the Small AIFM considers that the situation is of a temporary nature, the Small AIFM shall notify the FSC in writing without delay, stating that the situation is considered to be of a temporary nature. The notification shall include supporting information to justify the AIFM's assessment of the temporary nature of the situation, including a description of the situation and an explanation of the reasons for considering it temporary.
25. Three months after the date on which the total value of assets under management exceeds the relevant threshold, the Small AIFM shall recalculate the total value of assets under management in order to demonstrate that it is below the relevant threshold or demonstrate to the FSC that the situation which resulted in the assets under management exceeding the threshold has been resolved and an application for authorisation of the Small AIFM is not required.

Non-temporary breach of threshold

26. Where the total value of assets under management exceeds the relevant threshold and the Small AIFM considers that the situation is not of a temporary nature, the Small AIFM shall notify the FSC in writing without delay stating that the situation is considered not to be of a temporary nature and shall submit a completed application within 30 calendar days in accordance with Article 7 of the AIFMD.

Status of Small AIFMs and the option to “opt in”

27. Small AIFMs will not benefit from any of the rights granted under AIFMD unless they choose to opt in under AIFMD. Where Small AIFMs opt in, AIFMD will become applicable in its entirety and such AIFMs will cease to be Small AIFMs.
28. Nothing in the AIFMD prevents Small AIFMs from being required to comply with rules under any other enactment that supplement, or are more demanding than, the provisions of the AIFMD.

Entities to which the AIFMD does not apply

29. For the avoidance of doubt, AIFMD shall not apply to the following entities:
- (a) holding companies;
 - (b) institutions for occupational retirement provision which are covered by Directive 2003/41/EC, including, where applicable, the authorised entities responsible for managing such institutions and acting on their behalf referred to in Article 2(1) of that Directive or the investment managers appointed pursuant to Article 19(1) of that Directive, in so far as they do not manage AIFs;
 - (c) supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund, and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;
 - (d) the Government of Gibraltar in its role as the national central bank of Gibraltar and other national central banks;
 - (e) the Government of Gibraltar and any other national, regional or local governments and bodies or other institutions which manage funds supporting social security and public pension systems (in Gibraltar or elsewhere);
 - (f) employee participation schemes or employee savings schemes;
 - (g) securitisation special purpose entities; and
 - (h) an AIFM in so far as it manages one or more AIFs whose only investors are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.



AIFMs which are neither exempted nor small

30. All other AIFMs not falling within the definition of Small AIFMs in section 4 above or within the entities listed in section 27 above, will need to obtain authorisation under the AIFMD and required to comply with the conditions for authorisation under the AIFMD at all times.