



**Financial Services
Commission**

Policy Paper

Alternative Investment Fund Managers Directive Delegation

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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

1.1 In this policy paper, 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 Article 20 of AIFMD sets out rules in accordance with which AIFMs may delegate the functions that they are authorized to perform. Delegation is an important consideration of AIFMD; therefore an Information Page has been issued along with this policy paper. The Information Page covers higher level requirements and principles. This policy paper specifically deals with the FSC expectations and policy in respect of delegation and the activities that can be performed. This is an important aspect of delegation where as a result of discussion with Industry it was agreed that further details were needed.

The Commission essentially needed to determine its policy in respect of delegation particularly under Article 20(3) of AIFMD and Article 82 of AIFMD Level 2. The AIFMD has set out requirements for AIFMs in relation to delegation. These rules have raised the need in Europe for regulators to set out its policy in respect of delegation.

1.3 The purpose of this policy paper is to provide AIFMs, with a clear picture of what can be delegated and create a programme for compliance. It also emphasizes the types of controls that need to be put in place in order for this to be satisfactory.

Activities to be performed by an AIFM

The following is a list of functions that authorized AIFMs may perform. It is these functions which can be delegated under Article 20 of AIFMD.

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

Other functions that an AIFM may additionally perform in the course of the collective management of an AIF and can also be delegated:

- (i) administration
- (ii) legal and fund management accounting services;
- (iii) customer inquiries;
- (iv) valuation and pricing, including tax returns;
- (v) regulatory compliance monitoring;
- (vi) maintenance of unit-/shareholder register;
- (vii) distribution of income;
- (viii) unit/shares issues and redemptions;
- (ix) contract settlements, including certificate dispatch;
- (x) record keeping;
- (xi) marketing;
- (xii) 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.

Policy

The AIFM will still need to comply with the general delegation requirements and obligations in accordance with regulation 26 of the Financial Services (Alternative Investment Fund Managers) Regulations 2013.

1. In accordance with good corporate governance principles, the board of an AIFM shall be responsible for the following managerial functions which shall take place in Gibraltar:

(a) decision making: The board shall have clear responsibility and competence in relation to all material decisions affecting the operation and conduct of the business of the AIFM.

This includes for example: Critical management/strategy decisions; internal policies and procedures approval; Investment Policy approval; Major contract approval; and Annual Budget approval.

The FSC expects that at least 3 out of 4 board meetings are held in Gibraltar. Where sub-committees are established, the FSC expects the majority of the work to take place in Gibraltar. The FSC expects directors to attend board meetings in person and shall take account of regular non-attendees;

(b) monitoring of investment policy, investment strategies and performance: The board shall put in place procedures to ensure and verify that the investment policies and strategies of each AIF are complied with and to ensure availability of up to date information on portfolio performance;

(c) monitoring compliance: The board shall put in place procedures designed to ensure compliance with all applicable legal and regulatory requirements of the AIFM itself and all AIFs under management;

(d) risk management: The board shall put in place procedures designed to ensure that all applicable risks pertaining to the AIFM and to AIFs under management can be identified, monitored and managed at all times;

(e) liquidity management: The board shall put in place procedures designed to ensure that all applicable liquidity risks pertaining to the AIFs under management can be identified, monitored and managed at all times;

(f) operational risks: the board shall put in place procedures designated to ensure that all applicable operational risks pertaining to the AIFM can be identified, monitored and managed at all times;

(g) conflicts of interest: The board shall put in place procedures designed to ensure that all applicable conflicts of interest pertaining to the AIFM and to the AIFs under management can be identified, monitored and managed at all times;

(h) supervision of delegates: The board shall have clear structures in place for the ongoing monitoring of work delegated to third parties;

- (i) financial control: The board must put in place procedures to ensure all relevant accounting records of the AIFM and of the AIFs under management are properly maintained and are readily available, including production of annual and half-yearly financial statements;
- (j) monitoring of capital: The board shall put in place procedures to ensure compliance with capital adequacy requirements;
- (k) internal audit: The board shall put in place procedures to ensure effective internal audit procedures for the AIFM and for AIFs under management;
- (l) complaints handling: The board shall have arrangements in place to ensure that complaints from investors are addressed promptly and effectively;
- (m) accounting policies and procedures: The board shall have procedures in place to ensure that proper accounting policies and procedures are employed in respect of the AIFM and all AIFs under management;
- (n) recordkeeping: The board shall put in place procedures designed to ensure that all recordkeeping requirements pertaining to the AIFM and to the AIFs under management can be complied with at all times;
- (o) remuneration: The board shall put in place remuneration policies designed to ensure that any relevant conflicts of interest can be managed appropriately at all times; and
- (p) AIFMD reporting process: The board shall put in place procedures designed to ensure that the AIFM complies with its obligations under the AIFMD Regulations to report to the FSC.

2. Delegates to be appointed by the AIFM shall be approved by the board of the AIFM acting in good faith in the interests of the AIFs under management.

3. Where an AIFM delegates activities the programme of activity shall identify the board member or other notifiable individual at the AIFM who will, on a day-to-day basis, monitor and control each of the individual activities identified in paragraph 2. The board of the AIFM shall formally adopt a statement of responsibility in relation to the functions and the procedures which will apply in each case.

Programme of activity

At application stage or when a material delegation is being conducted AIFMs need to complete the following process:

AIFMs need to pre-notify the FSC of any functions being delegated and these need to be approved by the FSC.

Where an AIFM delegates activities, the AIFM needs to create a programme of activity that shall provide for the following requirements in relation to the reports to be received by the person at the AIFM responsible for this function and the required action, in the context of each function identified in paragraph 2 of this section:

(a) types of reports received: A list of reports which the designated person will receive from parties who have an involvement, by delegation or otherwise, in the performance of the function and the identity of those third parties;

(b) frequency of the reports: The provisions relating to frequency must include procedures for immediate reporting to the designated person of all material issues which arise;

(c) action carried out: Circumstances in which action by a designated person is required and procedures to be followed by the designated person in this event, including escalation to the board; and

(d) exceptional Reporting: In addition to (a) to (c), the programme of activity must also provide for the following:

the programme of activity should set out details of thresholds / trigger events and procedures which must be adopted on receipt of exceptional reports;

The programme of activity shall be submitted to the FSC, and will need to be approved by the FSC, prior to the AIFM delegating the selected function(s).

All agreements must include a section to allow the FSC to carry out on-site visits and automatic right of access. The FSC requires positive confirmation to this effect.

On-going requirements:



Delegates are required to submit exceptional reports to the designated person in accordance with thresholds / trigger events which the board will from time to time determine, details of which are provided to the FSC. It is imperative that the controls established are maintained on an ongoing basis.

Any material changes to the programme of activity should be notified to the FSC as this would be considered a material change.

Reports and evidence of discussions etc. must be maintained where they can be subject to inspection by the FSC.