



**Financial Services
Commission**

Information page

Alternative Investment Fund Managers Directive Organisational requirements - General

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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 supplementing Level 2 Delegated Regulation (“Level 2”).
- 1.2 The AIFMD imposes organisational requirements on all authorised AIFMs. The purpose of this information page is to provide AIFMs with a clear picture of the general organisational requirements imposed on AIFMs by the AIFMD.

2. General principles

(Article 18 of AIFMD)

- 2.1 AIFMs must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs; and:
 - (a) in particular, the FSC shall, in relation to each AIFM and having regard to the nature of the AIFs managed by it, require that the AIFM has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms,
 - (b) the mechanisms must include, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account,
 - (c) the mechanisms must ensure, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected, and
 - (d) the mechanisms must ensure that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF rules or instruments of incorporation and the legal provisions in force.

3. General requirements

(Article 57 of Level 2)

- 3.1 AIFMs shall:
 - (a) establish, implement and maintain decision-making procedures and an organisational structure which specifies reporting lines and allocates functions and responsibilities clearly and in a documented manner;
 - (b) ensure that their relevant persons are aware of the procedures to be followed for the proper discharge of their responsibilities;
 - (c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the AIFM;
 - (d) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the AIFM and effective information flows with any third party involved;
 - (e) maintain adequate and orderly records of their business and internal organisation.

AIFMs shall take into account the nature, scale and complexity of their business and the nature and range of services and activities undertaken in the course of that business.

- 3.2 AIFMs shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.
- 3.3 AIFMs shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the event of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.
- 3.4 AIFMs shall establish, implement and maintain accounting policies and procedures and valuation rules that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.
- 3.5 AIFMs shall implement appropriate policies and procedures to ensure that the redemption policies of the AIF are disclosed to investors, in sufficient detail, before they invest in the AIF and in the event of material changes.
- 3.6 AIFMs shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with sections 3.1 to 3.5, and take appropriate measures to address any deficiencies.

4. Electronic data processing

(Article 58 of Level 2)

- 4.1 AIFMs shall make appropriate and sufficient arrangements for suitable electronic systems so as to permit the timely and proper recording of each portfolio transaction or subscription or, where relevant, redemption order.
- 4.2 AIFMs shall ensure a high standard of security during the electronic data processing and integrity and confidentiality of the recorded information, as appropriate.

5. Accounting procedures

(Article 59 of Level 2)

- 5.1 AIFMs shall employ accounting policies and procedures as referred to in section 3.4 above so as to ensure the protection of investors. The accounting records shall be kept in such a way that all assets and liabilities of the AIF can be directly identified at all times. If an AIF has different investment compartments, separate accounts shall be maintained for those compartments.

- 5.2 AIFMs shall establish, implement and maintain accounting and valuation policies and procedures so as to ensure that the net asset value of each AIF is accurately calculated on the basis of the applicable accounting rules and standards.

6. Control by the governing body, senior management and supervisory function

(Article 60 of Level 2)

- 6.1 When allocating functions internally, AIFMs shall ensure that the governing body, the senior management and, where it exists, the supervisory function are responsible for the AIFM's compliance with its obligations under the AIFMD.
- 6.2 An AIFM shall ensure that its senior management:
- (a) is responsible for the implementation of the general investment policy for each managed AIF, as defined, where relevant, in the fund rules, the instruments of incorporation, the prospectus or the offering documents;
 - (b) oversees the approval of the investment strategies for each managed AIF;
 - (c) is responsible for ensuring that valuation policies and procedures in accordance with Article 19 of the AIFMD are established and implemented;
 - (d) is responsible for ensuring that the AIFM has a permanent and effective compliance function, even if this function is performed by a third party;
 - (e) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed AIF are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;
 - (f) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed AIF, so as to ensure that such decisions are consistent with the approved investment strategies;
 - (g) approves and reviews on a periodic basis the risk management policy and the arrangements, processes and techniques for implementing that policy, including the risk limit system for each AIF it manages;
 - (h) is responsible for establishing and applying a remuneration policy in line with Annex II of the AIFMD.
- 6.3 An AIFM shall also ensure that its senior management and, where appropriate, its governing body or supervisory function :
- (a) assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations laid down in the AIFMD;
 - (b) take appropriate measures to address any deficiencies.
- 6.4 An AIFM shall ensure that its senior management receives on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.
- 6.5 An AIFM shall ensure that its senior management receives on a regular basis reports on the implementation of investment strategies and of the internal

procedures for taking investment decisions referred to in points (b) to (e) of section 6.2.

- 6.6 An AIFM shall ensure that the governing body or the supervisory function, if any, receives on a regular basis written reports on the matters referred to in section 6.4.

7. Permanent compliance function

(Article 61 of Level 2)

- 7.1 AIFMs shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the AIFM to comply with its obligations under the AIFMD, and the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under the AIFMD.

The AIFM shall take into account the nature, scale and complexity of its business, and the nature and range of services and activities undertaken in the course of that business.

- 7.2 An AIFM shall establish and maintain a permanent and effective compliance function which operates independently and has the following responsibilities:
- (a) monitoring and, on a regular basis, evaluating the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with section 7.1 and the actions taken to address any deficiencies in the AIFM's compliance with its obligations;
 - (b) advising the relevant persons responsible for carrying out services and activities and assisting them in complying with the AIFM's obligations under the AIFMD.
- 7.3 In order to enable the compliance function referred to in section 7.2 to perform its responsibilities properly and independently, the AIFM shall ensure that:
- (a) the compliance function has the necessary authority, resources, expertise and access to all relevant information;
 - (b) a compliance officer is appointed and is responsible for the compliance function and for reporting on a frequent basis, and at least annually, to the senior management on matters of compliance, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
 - (c) persons in the compliance function are not involved in the performance of services or activities they monitor;
 - (d) the method of determining the remuneration of a compliance officer and other persons in the compliance function do not affect their objectivity and are not likely to do so.

However, the AIFM shall not be required to comply with points (c) or (d) where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, that the requirement is not proportionate and that its compliance function continues to be effective.

8. Permanent internal audit function

(Article 62 of Level 2)

- 8.1 AIFMs shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of collective portfolio management activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the AIFM.
- 8.2 The internal audit function referred to in section 8.1 shall
- (a) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the AIFM's systems, internal control mechanisms and arrangements;
 - (b) issue recommendations based on the results of work carried out in accordance with point (a);
 - (c) verify compliance with the recommendations referred to in point (b);
 - (d) report internal audit matters.

9. Personal transactions

(Article 63 of Level 2)

- 9.1 For any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 1(1) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) or to other confidential information relating to an AIF or transactions with or for an AIF, an AIFM shall establish, implement and maintain adequate arrangements aimed at preventing such relevant persons from:
- (a) entering into a personal transaction in financial instruments or other assets which fulfils one of the following criteria:
 - (i) the transaction is subject to Article 2(1) of Directive 2003/6/EC (market abuse);
 - (ii) the transaction involves the misuse or improper disclosure of confidential information;
 - (iii) the transaction conflicts or is likely to conflict with an obligation of the AIFM under the AIFMD;
 - (b) advising or inducing, other than in the proper course of his employment or contract for services, any other person to enter into a personal transaction referred to in point (a)(i) and (ii) above, or that would otherwise constitute a misuse of information relating to pending orders;
 - (c) disclosing, other than in the normal course of his employment or contract for services and without prejudice to Article 3(a) of Directive 2003/6/EC, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person would or would be likely to take either of the following steps:
 - (i) entering into a personal transaction referred to in point (a)(i) and (ii) above in financial instruments or other assets or that would

- otherwise constitute a misuse of information relating to pending orders;
- (ii) advising or inducing another person to enter into such a personal transaction.
- 9.2 The arrangements referred to in section 9.1 shall in particular be designed to ensure that:
- (a) each relevant person is aware of the restrictions on personal transactions referred to in section 9.1, and of the measures established by the AIFM in connection with personal transactions and disclosure, pursuant to section 9.1;
 - (b) the AIFM is informed promptly of any personal transaction entered into by a relevant person covered by section 9.1, either by notification of that transaction or by other procedures enabling the AIFM to identify such transactions;
 - (c) a record is kept of the personal transaction notified to the AIFM or identified by it, including any authorisation or prohibition in connection with such a transaction.
- For the purposes of point (b) above, where certain activities of the AIFM are performed by third parties, the AIFM shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person covered by section 9.1 and provides that information to the AIFM promptly on request.
- 9.3 Sections 9.1 and 9.2 shall not apply to personal transactions:
- (a) effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
 - (b) in UCITS or AIFs that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.
- 9.4 For the purpose of section 9.1, a personal transaction shall also include a transaction in a financial instrument or other asset effected on behalf or for the account of:
- (a) a relevant person;
 - (b) any person with whom the relevant person has a family relationship or with whom the relevant person has close links;
 - (c) a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade.

10. Recording of portfolio transactions

(Article 64 of Level 2)

- 10.1 AIFMs shall make without delay for each portfolio transaction relating to AIFs it manages a record of information which is sufficient to reconstruct the details of the order and the executed transaction or of the agreement.
- 10.2 With regard to portfolio transactions on an execution venue, the record referred to in section 10.1 shall include the following information:
- (a) the name or other designation of the AIF and of the person acting for the account of the AIF;
 - (b) the asset;
 - (c) where relevant, the quantity;
 - (d) the type of the order or transaction;
 - (e) the price;
 - (f) for orders, the date and exact time of the transmission of the order and the name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and the execution of the transaction;
 - (g) where applicable, the name of the person transmitting the order or executing the transaction;
 - (h) where applicable, the reasons for the revocation of an order;
 - (i) for executed transactions the counterparty and execution venue identification.
- 10.3 With regard to portfolio transactions by the AIF outside an execution venue, the record referred to in section 10.1 shall include the following information:
- (a) the name or other designation of the AIF;
 - (b) the legal and other documentation that forms the basis of the portfolio transaction, including in particular the agreement as executed;
 - (c) the price.
- 10.4 For the purposes of section 10.2 and 10.3, an execution venue shall include a systematic internaliser as referred to in point (7) of Article 4(1) of Directive 2004/39/EC (MiFID), a regulated market as referred to in point (14) of Article 4(1) of that Directive, a multilateral trading facility as referred to in point (15) of Article 4(1) of that Directive, a market maker as referred to in point (8) of Article 4(1) of that Directive or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

11. Recording of subscription and redemption orders

(Article 65 of Level 2)

- 11.1 AIFMs shall take all reasonable steps to ensure that received AIF subscriptions and, where relevant, redemption orders are recorded without undue delay after receipt of any such order.

- 11.2 That record shall include information on the following:
- (a) the relevant AIF;
 - (b) the person giving or transmitting the order;
 - (c) the person receiving the order;
 - (d) the date and time of the order;
 - (e) the terms and means of payment;
 - (f) the type of the order;
 - (g) the date of execution of the order;
 - (h) the number of units or shares or equivalent amounts subscribed or redeemed;
 - (i) the subscription or, where relevant, redemption price for each unit or share or, where relevant, the amount of capital committed and paid;
 - (j) the total subscription or redemption value of the units or shares;
 - (k) the gross value of the order including charges for subscription, or the net amount after charges for redemption.
- Information under points (i), (j) and (k) shall be recorded as soon as available.

12. Recordkeeping requirements

(Article 66 of Level 2)

- 12.1 AIFMs shall ensure that all required records referred to in sections 10 and 11 are retained for a period of at least five years.
- However, competent authorities may require AIFMs to ensure that any or all of those records are retained for a longer period, taking into account the nature of the asset or portfolio transaction, where it is necessary to enable the authority to exercise its supervisory functions under the AIFMD.
- 12.2 Following the termination of the authorisation of an AIFM, the records are to be retained at least for the outstanding term of the five years period referred to in section 11.1. Competent authorities may require retention for a longer period.
- Where the AIFM transfers its responsibilities in relation to the AIF to another AIFM, it shall ensure that the records referred to in section 11.1 are accessible to that AIFM.
- 12.3 The records shall be retained on a medium that allows the storage of information in a way accessible for future reference by the competent authorities, and in such a form and manner that:
- (a) the competent authorities are able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;
 - (b) corrections or other amendments, and the contents of the records prior to such corrections or amendments, may be easily ascertained;
 - (c) no other manipulation or alteration is possible



13. Application of implementing measures

Any measures adopted by the European Union Commission under Article 18 of the AIFMD (general organisational requirements) shall also be applicable.