



cutting through complexity

FINANCIAL SERVICES

AIFMD

Transposition update

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General AIFMD overview

By regulating alternative investment fund managers (AIFMs) rather than the funds themselves, the European Union's (EU) Alternative Investment Fund Managers Directive (AIFMD) has taken a radical new approach to investor protection which, in turn, has created new complexities, costs and considerations for those operating in this sector. This is not just an issue for EU managers alone. Nobody ever suggested AIFMD compliance would be easy.

The challenge is a global one: Any AIFM in any country that markets its funds to EU investors will need to fall in line with AIFMD, although full compliance is not immediately required. It depends on the marketing strategy, the private placement regimes of countries one is marketing to and the domicile of the AIFM and the alternative investment fund (AIF). This creates a host of new organizational requirements for managers to grapple with and new business complexities for organizations to overcome.

Time for action

While uncertainty may have been an oft-cited (and usually legitimate) excuse for inaction in the past, the reality is that organizations and fund managers operating in this sector will need to take immediate action if they hope to achieve compliance before the registration dates set by member states. Deadlines are fast approaching and significant work remains for all parties operating in the alternative investment market – managers, depositaries, investors and regulators. Simply put, this is no time for inaction.

Fund managers falling within the scope of AIFMD will need to carefully consider the implications of the directive for their businesses. AIFMD draws heavily from the Undertakings for Collective Investments in Transferable Securities (UCITS) Directive and Markets in Financial Instruments Directive (MiFID) and those managers already working within these frameworks will be familiar with many of the requirements. Those fund managers based outside the EU that manage and/or market AIFs in the EU will also be significantly impacted by the AIFMD and will need to adapt their operations and marketing activities to this new framework. Therefore, who does this apply to?

An AIFM has to apply for a license if the combined assets of the AIFs it manages exceed EUR100 million. This threshold is increased to EUR500 million if the AIFs under management are unleveraged or closed-ended for a period of 5 years.

On 17 December 2013, the European Securities and Markets Authority (ESMA) published regulatory technical standards (RTS) to provide guidance on the determination of types of AIFMs. The European Commission finally adopted the RTS to determine types of AIFMs and to distinguish whether an AIFM manages open-ended or closed-ended AIFs (or both) to allow the AIFM to correctly apply the specific liquidity management rules and valuation procedures to the different AIFs it manages.

An open-ended AIF is differentiated from a closed-ended AIF by the fact that it redeems shares from its investors prior to its liquidation or wind down phase in accordance with procedures and a frequency outlined in its offering document or instruments of incorporation. Any reduction in the capital of an AIF in line with its instruments of incorporation and any trading of an AIF on a secondary market should not be considered as a redemption of shares and should not render an AIF open-ended.

To account for the fact that no harmonized definition of closed-ended AIFs existed in the EU prior to the introduction of AIFMD, the RTS clarifies that AIFMs can benefit from the transitional periods in Articles 61(3) and (4) of AIFMD and continue to manage, without a license, their closed-ended AIFs that are in an advanced or final stage of their investment cycle if they manage closed-ended AIFs that have not redeemed their shares for an initial period of 5 years.

As of 30 April 2014, AIFMD has been transposed in 22 of 28 member states. The directive is still to be transposed in Hungary, Poland, Portugal, Spain, Lithuania and Slovenia. The following guidelines provide an overview of the impact of AIFMD in Europe.

Managing AIFs in the EU

Scope

The directive requires any fund manager whose regular business is to manage AIFs in the EU to be authorized by, or registered with, a competent authority in the EU. This new framework applies to fund managers that have their registered office in the EU with its provisions extending to the management of non-EU AIF by these managers. The directive also applies to fund managers based outside EU borders that manage and/or market AIFs in the EU.

Defining an alternative investment fund

The directive contains a broad legal definition of AIF and seeks to capture any non-UCITS investment fund. An AIF is defined as a collective investment undertaking that raises 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.¹ An AIF may be either an open-ended or closed-ended fund and may take any legal form.²

There are a number of key exemptions to the scope of AIFMD. Specifically excluded from the definition of AIF are holding companies, joint ventures, securitization special purpose entities, pension funds, employee participation or savings schemes and family offices.

The directive foresees some 'grandfathering provisions' for fund managers of certain types of closed-ended funds. Managers of (a) closed-ended AIFs that do not make any additional investments after 22 July 2013 or (b) closed-ended AIFs whose subscription period for investors has closed prior to 22 July 2011 and will be wound up at the latest on 22 July 2016 will not be required to seek an AIFM license. However, fund managers falling under category (b) will be required to comply with annual reporting requirements and disclosure requirements where they control portfolio companies.

The functions of an AIFM

i. Core functions

The concept of 'management of AIFs' is comprised of the core activities of portfolio management and risk management, with the AIFM license covering both these activities. If permitted by its legal structure, an AIF could be internally managed and, as such, the AIF is authorized as the AIFM. Otherwise, an external AIFM can be appointed by one or more AIFs.

ii. Other functions

The AIFM may also perform additional functions in the course of the management of AIFs, including administration (legal and accounting services; customer inquiries; valuation, pricing, tax returns; regulatory compliance monitoring; maintenance of unit/shareholder register; distribution of income; unit/shares issues and redemptions, contract settlements and record keeping), marketing and services specifically related to the assets of an AIF.

iii. Additional investment services

External AIFMs may be authorized by individual member states to provide additional investment services permitted under MiFID, including discretionary portfolio management, investment advice, safekeeping and administration of fund units and the receipt and transmission of orders in relation to financial instruments.

iv. EU passports for management and marketing of AIFs

The AIFM license will confer an EU-wide management passport to AIFMs that will permit the management of AIFs based in any EU member state, either directly or through a branch. The host country competent authorities will not be able to impose any additional requirements on the AIFM in respect of the areas covered by the directive.

AIFMD will also confer an EU-wide marketing passport to the AIFM to market AIFs that it manages to professional investors across the EU.

¹ Guidelines on key concepts of AIFMD (Ref: ESMA/2013/611) provides guidance on the definition of an AIF

² Draft regulatory technical standards on types of AIFMs define open-ended and closed-ended AIFs (Ref: ESMA/2012/844)

Small AIFMs: exemption from full AIFMD regime

The directive foresees a registration regime for fund managers whose assets under management (AUM) are less than EUR100 million (including any assets acquired through use of leverage) or less than EUR500 million in unleveraged AIFs that are without redemption rights for a period of 5 years. These fund managers would fall under a lighter registration regime rather than full AIFMD compliance and would not benefit from the EU-wide management or marketing passport. However, an opt-in procedure is included that would allow small AIFMs to apply for a full AIFM license.

vi. Registration regime

As part of the registration process, the fund manager must provide information on its identity, the AIFs managed and their investment strategies to the competent authorities. On a regular basis, the fund manager will need to report on the main instruments traded, the principal exposures and, most importantly, concentrations of AIFs managed.

The registration regime in AIFMD is without prejudice to any stricter local rules adopted by member states. The main intention of the regime is to allow the competent authorities to effectively monitor systemic risk.

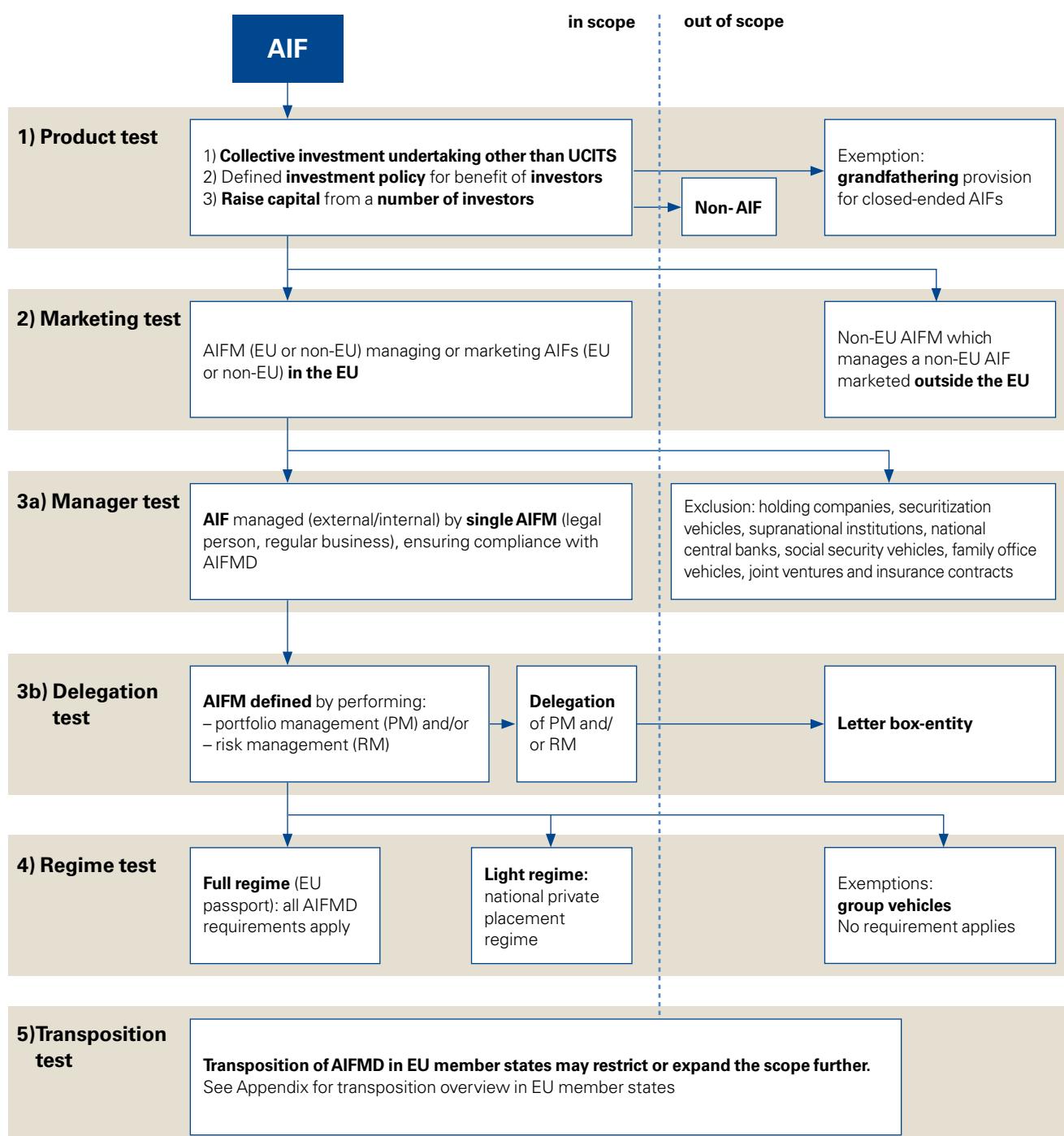
Additional new EU marketing passport regimes

Parallel to AIFMD, European authorities adopted two new regulations creating the European Venture Capital Fund (EuVECA) label³ and the European Social Entrepreneurship Fund (EuSEF) label⁴, which came into force 22 July 2013. EU managers managing less than EUR500 million and whose funds qualify for these labels have access to a marketing passport to market the funds to certain categories of investors (professional and sophisticated retail) across the EU. The regimes are optional, with no obligation to comply, and are less onerous than the full AIFMD regime.

³ Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds

⁴ Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds

Scope assessment matrix



Source: KPMG in Luxembourg, 2013.

Austria



1 Local framework

The Austrian Federal Ministry of Finance (BMF) published the Alternative Investment Fund Managers Law 2013 (AIFMG) which came into force on 22 July 2013. The government's overall approach to transposition of the AIFMD was to 'copy-out' the provisions in the EU legislation to minimize the regulatory burden on firms. Austria, however, opted to make use of the national decision making on management scope regarding the implementation of the 'De minimis' threshold as well as marketing to private investors.

The Austrian implementation of AIFMD amended several Austrian regulatory acts to introduce the new regulated activities of managing an AIF and acting as a depositary to an AIF. Under the AIFMG, a firm is required to register, pursuant to Article 1 (5) AIFMG, or to seek authorization, pursuant to Articles 5 and 6 AIFMG, before commencement of business. Permission to undertake regulated activities is granted by the Financial Markets Authority (FMA). The FMA has established a specialist AIFMG authorizations team to review and approve all registrations and applications received. An authorized Austrian AIFM will be required to comply with the regulations and applicable secondary legislation. A registered AIFM will be required to comply on selected provision of AIFMG (Articles 24 to 28, 56 and 60 AIFMG).

We would like to point out that, in the near future, the government plans to implement some minor changes within AIFMG that might introduce a new category of semi-professional private investors, such as the German 'Kapitalanlagegesetzbuch' did. The revision will, in any case, not come into effect before autumn 2014.

2 Guidance provided by local regulator

As part of the transposition process, the regulations are accompanied by relevant papers which were published by the FMA. On the FMA [website](#)¹, there is the following [information for Austrian AIFMs](#)² and non Austrian AIFMs:

- guidelines for the authorization and registration of AIFM (German)
- [information](#)³ concerning marketing of EU AIFs and non-EU AIFs to retail investors in Austria pursuant to Article 49 AIFMD (English)
- questions and answers 2012 (German)
- a list to the 'Memoranda of Understanding' (German)
- [information](#)⁴ concerning marketing of EU AIF in Austria pursuant to Article 31 AIFMG (English)
- information concerning marketing of units or shares of EU AIFs with an Austrian authorization in member states pursuant to Article 30 AIFMG (German)
- notification letter for the marketing of units or shares of EU AIFs in member states other than the home member state of the AIFM (English)
- FMA guide to help AIFMs complete the AIFMG cross-border marketing passport application form.

¹ <https://www.fma.gv.at/en/homepage.html>

² <https://www.fma.gv.at/de/unternehmen/investmentfonds-kag/informationen-fuer-verwalter-alternativer-investmentfonds.html>

³ https://www.fma.gv.at/typo3conf/ext/dam_download/secure.php?u=0&file=11966&t=1403008156&hash=dbb3aed9d580c65360aa16b1f5808b0e

⁴ https://www.fma.gv.at/typo3conf/ext/dam_download/secure.php?u=0&file=11955&t=1403008156&hash=f144f9284e200e64d0bf3e8e3f94f35b

3 Scoping of AIFMs and small AIFMs

The majority of provisions of the regulations only apply to fund managers managing funds in the scope of the directive holding assets in excess of EUR100 million or EUR500 million in the case of unleveraged funds whose investors have no right of redemption for at least 5 years. Fund managers below the threshold will be required to register with the FMA.

Small registered AIFMs include the following entities:

- managers registered under the European Venture Capital Funds Regulation
- managers registered under the European Social Entrepreneurship Funds Regulation.

Small registered AIFMs are entities which:

- are registered by the FMA to carry out regulated activities in Austria
- have not opted into full scope of the AIFMG
- not allowed to market to retail investors
- not entitled to obtain either product or management company passport.

These type of entities need to register with the FMA using the required form. The FMA provides information concerning registration⁵ in German only. The application for registration needs to include information to identify the AIFM(s), the corporate structure and the AIFs they manage, on the AIFs intended to manage, as well as basic information on the AIFs such as industrial, geographical or other market sectors and investment strategies.

4 Approval procedures

The FMA provides guidelines on [authorization](#)⁶ pursuant to the AIFMG. At the moment, they are only available in German. This document requires the applicant to provide information to demonstrate that it meets certain conditions for being an authorized person. There are extensive supplementary documents that are required which include, among others, the regulatory business plan, legal agreements, information on the AIFs to be managed from constitutional documents to pre-investment disclosures, financial and regulatory capital forecasts and information on remuneration policy and investment strategies of the AIFM.

Submission and approval timelines

The FMA required applications to be submitted before 22 July 2014 in case of an existing AIFM.

Prior to submission, all AIFMs have to comply with regulatory requirements on a 'best-effort-basis'.

The FMA has an internal service standard to determine applications for authorization of managers within a period of 3 months. If documents are missing, the period will be extended for a further period of 3 months.

Application review process

Once the FMA has received an application, it will confirm receipt of the application. If the application is considered to be incomplete, the FMA will contact the applicant firm with a request for information.

Once an application is assigned to a team of experts, the firm can expect questions and requests for information up until the point that authorization is granted.

⁵ http://www.fma.gv.at/typo3conf/ext/dam_download/secure.php?u=0&file=12121&t=1402990132&hash=d7884023bf9494b75e07a2d8ebb15bd5

⁶ http://www.fma.gv.at/typo3conf/ext/dam_download/secure.php?u=0&file=12121&t=1402990132&hash=d7884023bf9494b75e07a2d8ebb15bd5

5 Practical guidance with regard to the AIFM application

General Information

- The FMA application process should not be viewed as a form filing exercise. There is a significant amount of effort required to create a coherent set of application documents to explain why authorization is sought and how the applicant firm will operate post-authorization.
- The application must be provided to the FMA via Incoming Platform or email.
- The applicant firm should consider:
 - information on the persons actually conducting the AIFM's business
 - information on the identity of all shareholders or members of the AIFM with a qualifying holding in it
 - a business plan including both the AIFM's organization structure and information on how the AIFM proposes to discharge its duties and the investment strategy of the AIFs the AIFM has applied for authorization to manage
 - the remuneration policy
 - information on agreements made on delegation and sub-delegation of functions.
- The following information regarding the AIFs the applicant proposes to manage as AIFM must be attached:
 - information on the investment strategy, including the types of target funds if the AIF is a fund of funds and the principles the AIFM applies in connection with the use of leverage and the risk profile and other features of the AIF it manages or proposes to manage

- information on the master AIF registered office if the AIF is a feeder AIF
- the contractual conditions or statutes of all AIFs
- information on the agreements for appointing the depositary.

Cross-border activities

- filing for notification (either product passport, Article 30 AIFMG or management passport, Article 32 AIFMG)
- for the marketing passport application under AIFMG, a notification needs to be made to the FMA. The FMA will notify competent authorities in the selected member states
- applicant firms should consider which countries they need to passport for a cost and strategic point of view.

Remuneration

An AIFM must establish remuneration policies and practices for all categories of employees, including:

- managers and persons actually conducting the business
- risk takers
- employees with monitoring functions
- all employees receiving total remuneration placing them in the same remuneration bracket as the managers and risk takers whose professional activity impacts materially on the risk profile of the AIFM or on the risk profiles of the AIFs it manages that are consistent with and promote sound and effective risk management and do not encourage risk-taking that is incompatible with the risk profile, the contractual conditions or the statutes of the AIFs it manages.

It is very important that the remuneration policy meets the requirements on remuneration pursuant to Article 11 and Annex 2 to Article 11 AIFMG because the document needs to be submitted together with the other required documents to the FMA in the course of the license application.

Risk management

Requirements regarding risk management do not deviate from the ones stipulated by AIFMD.

AIFMs must functionally and hierarchically separate the functions of risk management from the operational departments. AIFMs must, in all events, be in a position to demonstrate to the FMA on request that specific safeguards are in place against conflicts of interest to enable risk management measures to be independently implemented and that risk management satisfies the requirements and is consistently effective.

AIFMs must implement appropriate risk management systems and must review these systems at appropriate intervals, but at least once a year and adapt them as necessary.

Liquidity management

Requirements regarding liquidity management do not deviate from the ones stipulated by AIFMD.

An AIFM must have an appropriate liquidity management system for each AIF it manages that is not a closed-ended AIF without leverage, must establish procedures enabling it to monitor the AIF's liquidity risks and must ensure that the liquidity profile of the AIF's investments complies with its underlying obligations. Additionally, the AIFM must

ensure that the investment strategy, the liquidity profile and the redemption policies of each AIF it manages are consistent with each other.

Conditions for AIFs managed by non-EU AIFMs to be marketed in Austria without a passport

Pursuant to Article 47 AIFMG, which stipulates conditions for AIFs managed by non-EU AIFMs to be marketed in Austria without a passport, non-EU AIFMs are only allowed to market shares of AIFs they manage to professional investors in Austria if they comply with the relevant regulatory requirements of the AIFMG and have a legal representative in Austria. Furthermore, the respective non-EU AIFM has to submit a notification providing relevant information on both the AIFM as well as the AIF it intends to market in Austria to the FMA, as well as a confirmation of the supervisory authority of the AIFM's country of origin confirming the compliance of the AIFM with the requirements of the AIFMG. There is also the requirement to appoint a depositary. Article 19, paragraph 6 of the AIFMG provides some guidance on the conditions to appoint a third country depositary.

Belgium



1 Local framework

AIFMD was implemented into Belgian law in June 2014.

Specifically, the AIFM Law comprises three main parts:

- There are harmonized provisions taken from AIFMD, which contain the authorization and passport requirements for AIF managers. Managers governed by Belgian law are required to submit an application for authorization or registration to the Belgium regulator, Financial Services and Markets Authority, (FSMA). The passport applies to EEA AIFMs passporting into Belgium (either the management or marketing passport).
- The non-harmonized provisions on AIFs are taken from the 3 August 2012 law and apply to AIFs that are subject to following supervision:
 - AIFs governed by Belgian law or by foreign law that are offered to the public in Belgium
 - non-public AIFs governed by Belgian law that have opted for one of the institutional or private AIF statuses (institutional closed-ended real estate investment companies (sicafi/bevaks), institutional open-ended investment companies (sicav/beveks) or private investment companies investing in non-listed or growth companies (private pricaf/privaks)).
- The non-harmonized provisions on AIF management companies are taken from the 3 August 2012 law and apply to management companies governed by Belgian or foreign law which manage public AIFs governed by Belgian law.

The rules for non-EEA managers have not yet been incorporated, which means that the current private placement regime and the public offering regime are still applicable to non-EEA AIFMs wanting to market into Belgium.

2 Guidance provided by local regulator

Guidance has been provided by the local regulator on the transition period. This information can be found on the FSMA's (Belgian regulator) website ([Dutch version](#)¹ and [French version](#)²). In addition, the Appendix to the question and answer document gives further guidance on the following topics:

- application deadlines for AIFMs already existing in Belgium before 22 July 2013
- approval procedures for AIFMs already existing in Belgium before 22 July 2013 (in the transition period)
- product rules on AIFMs already existing in Belgium before 22 July 2013 (in the transition period)
- general rules for internal and external managers existing in Belgium before 22 July 2013
- marketing/commercialization for/of new AIFs by AIFMs already existing in Belgium before 22 July 2013 (in the transition period)
- application deadlines for AIFMs established in the transition period
- applicability of Belgian regulation for closed-end funds versus AIFMD regulation
- calculation of thresholds with regard to AUM
- marketing/commercialization for/of AIFs by EU AIFMs where AIFMD has already been transposed
- marketing/commercialization for/of AIFs by Belgian AIFMs in the EU
- nomination of EU AIFMs where AIFMD has already been transposed for Belgian AIFs
- nomination of Belgian AIFMs for EU AIFs.

¹ http://www.fsma.be/~/media/files/fsmafiles/circ/nl/2013/fsma_2013_11.ashx

² http://www.fsma.be/~/media/files/fsmafiles/circ/fr/2013/fsma_2013_11.ashx

3 Scoping of AIFMs and small AIFMs

The Belgian government AIFMD law foresees no additional scoping requirements for AIFMs. However, for small public AIFMs, there is the additional requirement that if they want to market publicly in Belgium, the AIFM needs to apply for authorization, except for Article 24 and 26-30 of AIFMD. The current regimes for collective investment management companies, such as the collective undertakings regime, remain applicable to Belgium entities. The ESMA guidance, as published in the key concept document, have been adopted by the Belgian regulator.

4 Approval procedures

In mid-2013, FSMA, published a question and answer document on the transitional period and on the Belgian national provisions for transposing AIFMD. This document provided guidance on what rules were applicable to entities during the period between 22 July 2013 and the date of ratification of the law and the subsequent period between the date of ratification of the law and 22 July 2014. A content list for the authorization dossier was included in the Appendix to the question and answer document.

According to the law, the following information concerning the management company (ManCo) has to be delivered to the regulator in the AIFM application:

- information on the management of the ManCo
- information on the shareholders of the ManCo
- a description of the activities performed by the ManCo, including information on how the ManCo will conform to the new requirements as stated in the AIFMD transposition law
- information on the remuneration policy and procedures
- information on the (sub-)delegated activities.

As well as, for every AIF the ManCo intends to manage, the following information has to be delivered to the regulator:

- information on the investment strategies, including the types of underlying funds if the AIF is a fund of funds
- information on the leverage policies and risk profiles of the AIFs the ManCo intends to manage, including information on the geography where the AIF is located
- information on the location of the master if the AIF is a feeder
- information on the custody policies.

The regulator can ask for additional information. The ManCo should only provide any information which the regulator currently does not already have as part of a previous application of the ManCo or any information that has been updated since the last submission to the regulator.

The following [link³](#) provides guidance and/or forms with regard to the registration and/or authorization procedures. For questions on registration and/or authorization, contact psf@fsma.be.

5 Practical guidance with regard to the AIFM application

Currently, Belgian ManCos are preparing their application files. At this stage, there are no significant issues or recurring remarks noted with regard to the information that needs to be submitted to the regulator, as highlighted in paragraph 4. The latest date of submission of the application was 22 July 2014.

³ <http://www.fsma.be/en/Supervision/finbem/bhv/circmedprak/AIFM.aspx>

Denmark



1 Local framework

Authorization/registration pursuant to AIFMD

The Danish Financial Supervisory Authority (FSA) has implemented AIFMD into local acts on AIFMs. The acts are closely following the directive in its requirements.

The acts distinguish between two types of managers in Denmark:

- Managers whose AUM fall above the thresholds mentioned in the directive. These managers have to apply for the authorization, which gives them the right to market funds to professional investors in Denmark. Marketing to retail investors would require additional authorization from the Danish FSA.
- Those managers who fall below the thresholds and are only required to register with the Danish FSA. Registered managers may only market their funds to professional investors in Denmark. If a manager wishes to market its funds to retail investors, it has to first obtain the full authorization and then apply for an additional authorization to market to retail investors.

Important note on the categories of eligible investors

The FSA has submitted an amendment to the AIFM Act to parliament that will relax some of the current rules. At the moment, only investors who are considered to be professional investors in accordance with the MiFID definitions may invest in AIFs that are managed by managers with a registration pursuant to the AIFM act. The amendment would widen the universe of eligible investors for registered fund managers and will therefore allow registered fund managers to accept subscriptions from persons who commit at least EUR100,000 to an AIF and sign a specific declaration without having to seek an authorization to market to retail investors. The amendment has not yet been entered into force.

The act can be found [here](#).¹ The executive order on authorization for AIFMs to market to retail investors can be found here in Danish. The list of application forms for authorization or registration can be found [here](#) (the majority available only in Danish).

2 Guidance provided by local regulator

The Danish FSA has a dedicated section on AIFMD (and the AIFM Act implementing it) on its official website (www.dfsa.dk) which provides an explanation of the new regulation and its implications for market participants as well as practical guidance on a variety of related topics. The site also contains a question and answer section with information about the most common and relevant questions about the AIFM Act. The site is updated regularly and is a helpful resource for anyone interested in AIFMD. At the present time, the site is only available in Danish.

In addition, the FSA has published the following guidelines:

- the guideline on application for authorization or registration to pursue the activity of management of AIFs (the Guideline 9349 of 5 July 2013)
- the guideline on depositaries for AIFs (the Guideline 9388 of 16 July 2013).

3 Scoping of AIFMs and small AIFMs

Marketing in Denmark of non-EU AIFs

The Danish FSA has a national regime for non-EU managers that wish to market non-EU funds in Denmark, a jurisdiction in which managers must apply for authorization. It is important to note that non-EU AIFs managed by a non-EU manager cannot currently obtain authorization to market those funds to retail investors in Denmark.

¹ https://www.finanstilsynet.dk/~/media/Regler-og-praksis/2014/Act_598_2013.ashx

The aforementioned amendment to the AIFM Act will allow, under very certain conditions, the marketing of non-EU AIFs to retail investors. The application forms for marketing can be found [here²](#) and [here³](#).

The Danish FSA requires the reciprocity declaration from the non-EU AIFs competent supervisory authority as a condition for granting authorization to market the fund in Denmark. In case the fund is not supervised in its home country, it will be sufficient for a licensed lawyer from the jurisdiction in which the fund is established to confirm that the fund is currently not under supervision and that the similar Danish funds will have access to market their units in this jurisdiction.

4 Approval procedures

The following documents must be submitted to the Danish FSA together with the application form when applying for an authorization to manage AIFs:

- the activities plan specifying how the manager is going to ensure compliance with the AIFM Act and the manager's business model
- information on remuneration of the manager's employees
- business procedures regarding every AIF type the manager seeks to manage (risk management and compliance procedures are especially important and the procedures should be customized to the types of AIFs the manager is applying for an authorization to manage)
- standard agreements the manager is using, including the management agreement (or draft of) between the fund and the manager
- internal procedures on Anti-Money Laundering (AML)/ Know Your Client (KYC)
- a budget for the first 3 years (on a monthly basis), including the budgeted AUM

- any existing warranties held by the manager
- information about the management team for the fitness and propriety assessment, including separate application forms for fit and proper assessment
- the application form for the acquisition of qualifying interests in the management company for all owners of the company
- the structure chart of the manager, chart of the ownership, list of the manager's employees (their curriculum vitae enclosed) and description of their roles
- the document constituting the management company together with the board's guidelines to the executives of the company (the application should also include the transcripts of the board meetings where the board discussed the application for authorization)
- information about the designated depositaries/custodian.

The Danish FSA considers all documents equally relevant and important for the application process. The submitted documents should serve as proof that the manager has a sound understanding of the business model and all of the risks it involves, including the potential conflicts of interest. The manager should also be able to properly handle those risks. Therefore, it is important to stress that the business procedures should be tailor-made and should take into consideration the nature and specific aspects of the manager's business model.

5 Practical guidance with regard to the AIFM application

Currently, only two Danish fund managers have received the authorization pursuant to the AIFM Act. The industry is beginning to prepare for the authorization process and it is expected that the number of applications and, as a consequence, the number of authorizations, will rise significantly in the near future.

² https://www.finanstilsynet.dk/en/Indberetning/Soeg-tilladelse/Ansoeg/Ansoegning-om-tilladelse-til-markedsfoering-af-AIF-fra-tredjeland.aspx?sc_lang=en

³ https://www.finanstilsynet.dk/Indberetning/Soeg-tilladelse/Ansoeg/Ansoegning-om-tilladelse-markedsfoere-alternativ-investeringsfond-detailinvestorer-danmark.aspx?sc_lang=en&sc_lang=en

Finland



1 Local framework

The Finnish AIFM framework consists of the national AIFM law, delegated regulations issued by the Ministry of Finance as well as the specific regulations and guidance notes issued by the Finnish FSA. The AIFM law was passed on 7 March 2014 and came into effect 15 March 2014.

The Ministry of Finance has issued its delegated regulations on AIFM operations, permit, remuneration, Key Investor Information Document (KIID), depositaries, financial statements, AIFM permit, reporting and other areas. The FSA will issue its own guidance notes shortly.

The AIFM law follows AIFMD very closely. The chapters follow the logic and order of the directive. Throughout the law, references are made to the directive and the delegated regulations issued by the commission. References are also made to guidelines issued by the ESMA and other branch organizations.

2 Guidance provided by local regulator

As noted above, the FSA is the local regulator and will issue guidance based on the AIFM law and the Ministry of Finance's delegated regulations. The FSA guidance will focus on the AIFM permit procedure and the reporting requirements of AIFMs to the regulator.

3 Scoping of AIFMs and small AIFMs

The Finnish legislation differentiates between AIFMs who are obligated to apply for an AIFM license and those who only need to register as AIFMs.

The Finnish legislation follows the thresholds as set by AIFMD. In addition, if AIFs are marketed to non-professional investors, a specific exemption has to be sought from the FSA, resulting in additional requirements that must be fulfilled or else an AIFM license will be required.

If the combined assets of the AIF are below the threshold, the AIFM need only register as an AIFM with the Finnish FSA. Small AIFMs are exempt from large parts of the AIFM law, notably the rules regarding risk management and remuneration. With the ratification of the AIFM law, any new marketing of AIFs will not be able to use the exemptions of the previous private placement regime. However, AIFMs established in a European Economic Area (EEA) country and in their home member state (e.g. small AIFMs) may continue to market in Finland, provided they comply with general disclosure requirements, audit requirements and AIFM asset stripping requirements.

Non-EEA fund managers could still use reverse solicitation under certain circumstances. The guidance expected to be provided by the regulator will clarify such circumstances in more detail.

4 Approval procedures

In order to be approved as an AIFM in Finland, the fund manager must apply for an AIFM license or register as an AIFM using the specific application forms issued by the FSA. The applications are then submitted to the FSA for approval. As a rule, the FSA is obligated to make a decision within 3 months of receiving all of the necessary documents and clarifications.

An EEA-based AIFM that wishes to market its AIFs in Finland must notify the FSA of its intention as well as which AIFs it intends to market in Finland. The AIFM may start marketing its AIFs in Finland after having received a notification from the Finnish FSA.

EEA resident AIFMs may market their AIFs to non-professional investors in Finland provided they either have an AIFM permit in Finland or an AIFM permit in another EEA country.

A transitional period will be applied to non-EEA resident AIFMs and non-EEA resident AIFs.

The following [link¹](#) provides guidance and/or forms with regard to the registration and/or authorization procedures. For questions on registration and/or authorization, contact +358 10 831 5203

5 Practical guidance with regard to the AIFM application

The application should include sufficient information regarding:

- ownership
- senior management and auditors
- how the business activity is organized
- remuneration program
- outsourcing agreements.

The AIFM must also include information about the AIFs it manages, specifically:

- investment strategies, risk profiles and other characteristics
- countries of residence
- fund rules
- arrangements for nominating a depositary.

More detailed guidance on the procedure and required documentation and information is stated in the Ministry of Finance's delegated regulation.

¹ http://www.finanssivalvonta.fi/EN/REGULATION/INTERNATIONAL_PROJECTS/AIFMD/Pages/Default.aspx

France



1 Local framework

The French Supervisory Authority – the Autorité des marchés financiers (AMF) – developed its regulations to take into account the evolutions brought by the transposition in French regulations of AIFMD.

As such, the AMF published its amended general regulations and two specific instructions concerning AIFMs:

- Instruction No. 2008-03 relating to the approval procedure for management companies, disclosure obligations and passport was modified to take into account the implementation in French law of AIFMD on subjects such as the deadline for approval or the passport for the cross border management.¹
- A new instruction, No. 2014-01, relating to the program of activity, obligations of the investment services providers and notification of passport, concerns only the other investment services providers. Covered are procedure instructions for their program of activity at the time of the application for approval and of the notification of European passport.²

Also, the AMF has published a guide about marketing UCITS and AIF (position DOC-2014-04) with instruction on marketing parts or shares of AIF (DOC-2014-03) and an instruction on information for investors of the undeclared or unapproved AIF (DOC-2014-02). DOC-2014-04 brings precision to the definition of the marketing in France of parts or shares of UCITS and of AIF and describes the various applicable regulations for the marketing in France of these entities. DOC-2014-03 details the procedures for marketing an AIF in France. It also specifies the procedure of marketing an AIF managed by a French management company that is authorized under AIFMD in another EU member state. Finally, the DOC-2014-02 details the contents of the annual report for an unapproved or undeclared AIF and specifies the information which must be provided to the investors of these AIFs.

For further guidance on the new AIFM arrangements, management companies can also:

- Refer to the *AIFM Guide for Management Companies*, published 16 April 2013, the *AIFM Guide on the measures taken for collective investments*, published 15 July 2013 and the *AIFM Guide on Asset Managers Remuneration Policies*, published 2 August 2013 (in French only).

- Contact their usual portfolio manager at the AMF.
- Send a message to the dedicated email address aifm@amf-france.org.

2 Guidance provided by local regulator

The AMF released to all the current management companies several documents concerning the regulatory reporting under the AIFMD regime:

- a newsletter on the first reporting AIFM
- guidance on the reporting requirements to AIFM
- the alert already sent out in November 2013 informing the companies of the timelines to be followed for the reporting to the regulator
- a practical guide to the use of the extranet environment of the AMF reporting GECO database (a database made available by the AMF for investors that provides data on investment management companies, products and financial investment advisors) within the framework of AIFMD.

The database provides the main characteristics of each product: the investment company behind the product, classification, authorization date, etc. Documents relating to the fund are also available, along with the net asset value (NAV), with a 6-month sliding history. A graph is available displaying the trend in the fund's NAV. Searches are possible using several characteristics of funds intended for all investors. Information about dedicated funds is not published in GECO.

A summary of the first regulatory reporting to the AMF included the following points:

- Data capture has to be submitted directly to the AMF GECO database.
- The data has to be sent in an XML format.
- The deadline to send the reporting for AIFMs below the threshold and who do not opt in was 31 January 2014.
- The deadline to send the first reporting for opt in and other AIFMs is 30 September 2014.

¹ www.amf-france.org/Reglementation/Dossiers-thematiques/Epargne-et-prestataires/Gestion-alternative/L-AMF-met-a-jour-ses-instructions-relatives-aux-procedures-d-accordement-des-societes-de-gestion-de-portefeuille-et-des-autres-prestataires-de-services-d-investissement.html

² Ibid

3 Scoping of AIFMs and small AIFMs

French companies below the threshold are not obliged to have the AIFM license to manage AIFs as long as the AUM remain below the threshold. Notwithstanding, they must declare to the AMF the AIFs they manage. They are also required to submit to the AMF the reporting obligations relating to the AIFs.

AIFMs below the threshold do not get the AIFM passport. However, French regulations offer companies the possibility to opt in for the AIFM license in order to have access to the passport and to gain marketing access across the EU for the funds they manage. For the moment, non-EU managers are allowed to market their products in France only with prior authorization of the AMF position DOC-2014-04.

4 Approval procedures

The AMF has created new application forms to file for approval under AIFMD. This new application form includes:

- a reply form
- a new program of activity
- a new approval form for asset management companies.

These are posted on the AMF's website under the heading Forms & Declarations in French only.

The Appendix 1.1 of instruction AMF No. 2008-03 relating to the approval procedures for the management companies, called 'disclosure obligations passport', gives further details about key documents expected to be submitted when applying for the authorization:

<ul style="list-style-type: none"> • liquidity management for open-ended AIFs • delegation of AIFM functions • investment in securitization positions • initial capital and own funds 	<ul style="list-style-type: none"> • disclosure to investors • reporting obligations to competent authority and limits to leverage • valuation • remuneration • depositary
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When the manager has submitted its new request for approval or, in the case of existing managers, extending their current authorization, the AMF returns a receipt that provides evidence of the official deposit of the initial accreditation package. The receipt mentions the expiry date of the deadline of approval, which is 3 months from the reception of the complete file.

The AMF can extend this period for up to 3 additional months when it considers it necessary and has notified the administrator.

When the authorization file is not in compliance with AIFMD or is deemed to be incomplete, the AMF can return the file to its sender with an explanation and a request to address the issues identified.

During the review of the application file, the AMF can ask for any necessary additional information for finalization of the authorization request.

If the management company is currently already approved in compliance with the directive 2009/65/CE UCITS 4, it is not necessary to submit again to the AMF the information or the documents which it has already supplied during its application for UCITS approval as long as this information or these documents are still up to date. Only additional information requested by the directive will need to be submitted.

The following [link³](#) provides guidance and/or forms with regard to the registration and/or authorization procedures. For questions on registration and/or authorization, contact aifm@amf-france.org.

5 Practical guidance with regard to the AIFM application

During our recent work with managers on their submission to the AMF, we found three other important issues for that we would like to focus your attention on:

- conflicts of interest
- remuneration: The AMF pays particular attention to this aspect since it is a new requirement for French management companies. Current AMF interpretation is that all the employees of the management company are in scope unless it can be proven they do not influence the risk profile of the AIF's managed
- leverage.

To date, the AMF has granted the AIFM license to approximately 80 management companies. The speed of authorization granted by the AIFM, on average, was estimated to be 65 days (against 75 days on average for other authorizations). Currently around 50 percent of the below threshold managers in France are choosing to opt in for AIFMD.

³ http://www.amf-france.org/en_US

Germany



1 Local framework

Within the transposition of the AIFMD, the German Supervisory Authority – the *Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)* – overhauled the German investment code which had been in place for many years.

In early July 2013, Germany has adopted a new Capital Investment Act (Kapitalanlagegesetzbuch – "KAGB"). The KAGB replaces the current Investment Code (Investmentgesetz – "InvG") as of 22 July 2013. Any fund or fund managers who has marketed in the past, or intends to market in the future to Germany-based investors will need to familiarize themselves with this extensive codification of German investment law.

The implementation of the KAGB is far more reaching in comparison to the original AIFMD draft, especially for private placements of foreign funds which are prohibited in Germany as of 21 July 2014 and not in 2018 as required by AIFMD. Furthermore, the German law is much more detailed with respect to regulation of product and fund managers. Comparing the requirements of AIFMD and KAGB leads to the conclusion that many European regulations (AIFMD) made its inroads into the German investment act but that the KAGB adds a significant amount of additional requirements.

The European UCITS Directive is also incorporated in the KAGB. All funds fulfilling the stated criteria are classified as UCITS and all other products are classified as AIFs. This covers for example open-ended real estate funds and closed-end funds. Practically speaking, there are no loopholes anymore to distribute foreign funds to

German investors, which are not fulfilling the regulatory requirements of the KAGB and AIFMD. The parallel universe of regulated and unregulated funds ceased to exist.

2 Guidance provided by the local regulator

The KAGB creates a significant 'gold plating' on top of AIFMD. There are currently only a very limited number of authoritative guidelines and virtually no precedent case law. The German Supervisory Authority – the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) – has only just started publishing its own guidelines and frequently asked questions (FAQs) in the past few months. Several key concepts surrounding the scope of the law, the applicability of the grandfathering rules, the practicalities surrounding depositaries (Verwahrstellen) and the exact reach of the broad definition of 'marketing' in the KAGB are currently still subject to discussion.

BaFin has published the following regulations, guidance notes and interpretations, all of which are available on the BaFin AIFMD homepage:

- guidance note (Merkblatt) on the authorization procedure for domestic AIF management companies
- guidance note on the requirements for trustees acting as depositary
- interpretation on the scope of application of the KAGB and on the term *Investmentvermögen* (investment fund)
- FAQs on marketing and purchasing investment funds
- FAQs on the transitional provisions pursuant to Sections 343ff of the KAGB
- FAQs on delegation pursuant to section 36 of the KAGB.

3 Scoping of AIFMs and small AIFMs

The KAGB inter alia comprises two rules for German small AIFMs and their AIFs.

1. Small AIFM managing specialized AIF only

The KAGB comprises two special rules for German small AIFM and their AIF.

According to KAGB, small AIFs are only regulated by law if the following criteria are met:

- The AIFM and its affiliates manage only specialized AIFs.
- The AUM in those specialized AIFs must not exceed EUR500 million and no leverage is employed or if leverage is employed the assets under management must not exceed EUR100 million
- Furthermore the AIF cannot provide redemption rights in the first five years of their investment activity.

2. Small AIFM managing (inter alia) retail AIF

According to KAGB, an exemption is made if the AIFM manages only closed-end German AIFs, and their AUM do not exceed EUR100 million including leverage and the AIFM states that they not subject KAGB as a whole.

However, certain provisions of the KAGB must be respected, in particular:

- registration and reporting obligations
- depositary requirement
- product rules
- marketing rules for closed-ended retail AIF.

4 Approval procedures

Approval procedures are complex with rather long processing times by the regulator. In 2013, the application documentation was to be handed in on hardcopy format. In 2014, observations in the market showed that this requirement was somewhat eased and electronically formats were accepted as well.

If an AIFM plans to distribute its AIFs to German investors it must obtain approval of the BaFin and hand in following documents:

- documentation of fulfillment to hold the required capital resources
- documentation of trustworthiness and professional competence of the senior management
- a business plan with information about the AIF
- information on remuneration policies and risk taker
- documentation on substantive outsourcing activities
- investment Terms, articles of association or partnership agreement
- the name of the depositary of the AIF
- the prospectus and the substantial information for investors (Wesentliche Anlegerinformationen) of the AIF, if the AIF is a feeder, AIF information about the master.

5 Practical guidance with regard to the AIFM application

From KPMG experience, we would focus your attention on the following important issues:

- **Classification of fund categories:** The classification is to be done in two dimensions: 'open-ended' and 'closed-ended' AIFs (depending on the redemption rules) and 'retail AIFs' and 'specialized AIFs' (depending on the investors of the AIF). 'Specialized AIFs' is an AIF with professional and semi-professional investors only. The definition of semi-professional investor is new and comprises foundations, churches and municipalities.
- **Licensing requirements and product regulation for retail AIFs:** Retail AIFs are strongly regulated in Germany. There are a lot of additional requirements to be respected by AIFMs managing retail AIFs. These relate principally to the permissible assets, reporting systems.
- **Permissible assets and investment restrictions:** KAGB defines clear investment restrictions for certain types of AIFs.
- With respect to open-ended retail real estate AIFs in broad areas, the same requirements apply as according to the former German Investment Act.
- **Principle of risk diversification:** Every AIF has to follow the principle of risk diversification in its investing activities. The only exception is a closed-ended specialized AIF.
- **Depositary:** KAGB differentiates between UCITS depositary and AIF depositary. To guarantee the same level of protection to the investors of AIF and of UCITS, KAGB provides stricter regulations, in particular, regarding sub-deposit and the liability of the depositary.
- **Marketing to 'private investors', 'professional' and 'semi-professional' investors:** KAGB constitutes strong requirements with regards to marketing of the shares or stocks in AIF to 'private investors', 'professional' and 'semi-professional' investors. Marketing requires a previous reporting of the placement intention to the supervisory authority.
- **Remuneration rules:** KAGB remuneration rules correspond to certain requirements constituted by AIFMD. There are practically no additional requirements but there are a number of AIFMD requirements that are not compatible with the national employment law (e.g. claw backs, penalty (malus) for underperformance).
- **Grandfathering provisions:** KAGB constitutes grandfathering provisions for closed-ended AIFs only. An AIFM of a closed-ended AIF does not require approval and does not need to comply with the KAGB provisions to manage these funds if they do not make any additional investments after 21 July 2013.



Ireland



1 Local framework

Part two of the EU AIFM regulations 2013 (the 'Irish Regulations') transposes the requirements for authorization of AIFMs into Irish law. The Central Bank of Ireland (CBI) has put a process in place to facilitate applications.

The document *Application for Authorization of an Alternative Investment Fund Manager 2013* can be found [here](#).

As well as completing the application form, applicants need to submit the following information:

- a detailed program of activity
- details of minimum capital and financial projections, including detailed assumptions on which the projections are based
- all information regarding ownership structures
- information on remuneration policies and practices
- information on the AIFs the AIFM intends to manage
- any ancillary documents (to include confirmation of capital and statement of responsibility)
- all relevant organizational charts.

2 Guidance provided by local regulator

As well as the AIF Rulebook, the CBI has issued the eighth edition of its *Q&A on Transitional Arrangements* (7 March 2014) and also some updated guidance. Interesting developments emerging include:

- Clarification on whether special purpose vehicles (SPVs) need to register as AIFMs. Broadly, registered 'financial vehicle corporations' and securitization companies funded by way of debt or other non-equity

instruments (i.e. which do not issue shares or units to investors) are not currently within the scope of the AIFMD. This is subject to any further clarification by ESMA.

- The conditions for marketing AIFs in Ireland with and without a passport are set out.
- Clarification that internally managed AIFs are not prohibited from using shareholder funds to meet initial capital requirements.
- A determination that the delegation of portfolio/risk management to a third country undertaking is not permitted in a jurisdiction unless there is a cooperation agreement in place between the CBI and the relevant competent authority.
- A consultation paper on 'Depositary Lite'. This document clarifies the CBI's position on entities allowed to perform the safekeeping and administration of investment instruments. It also seeks opinions on how to manage conflicts of interest where an entity proposes to provide both fund administration and depositary services.
- Submission dates for first reporting for AIFMs. The submission dates may be subject to change, but are currently as follows: For quarterly reporting, the period covered should be 1 April 2014 until 30 June 2014 and should be submitted by 11 September 2014. For semi-annual reporting, the same reporting period is stated and the report should also be submitted by 11 September 2014. Annual reports should cover all of 2014 and should be submitted by 31 January 2015.
- Updated guidance for AIFs and their service providers. This guidance provides clarification on the approval process for third-party service providers to AIFs.

The AIF Rulebook, the Question & Answer document and updated guidance are available [here](#).

3 Scoping of AIFMs and small AIFMs

The registration regime for AIFMs has been transposed into Irish law in accordance with the Directive. It exists for AIFMs whose AUM are below EUR100 million (including any assets acquired through use of leverage) or less than EUR500 million in unleveraged AIFs that are without redemption rights for a period of 5 years. Again, the CBI has put a process in place to facilitate applications. The document *Application for Registration of an Alternative Investment Fund Manager 2013* can be found [here](#).

The CBI has indicated it may request information over and above the application form, but that will be determined on a case-by-case basis.

Legislation is expected in autumn 2014 that will provide for a new corporate structure for Irish investment funds: the Irish Collective Asset-management Vehicle (ICAV). The ICAV (once available) can be used for both UCITS and non-UCITS funds and will complement other structures available for funds, such as the public limited company (PLC), the unit trust, the common contractual fund and the investment limited partnership, with existing PLC structures having the option to convert to the new ICAV structure. The main benefit of the ICAV will be that it can elect its classification under the US 'check-the-box rules', allowing it to be treated as a partnership for US tax purposes and thereby avoid certain tax consequences for US taxable investors if the structure is deemed to be a 'passive foreign investment company' (PFIC) under US federal income tax rules. Also, as the ICAV will have its own legislative regime, it will not be subject to aspects of company law legislation that would not be relevant or appropriate to a collective investment scheme.

4 Approval procedures

As well as producing application forms for the application processes for authorization and registration (as outlined above), the CBI has also produced a suite of forms:

- Marketing: guidance and notification forms for the marketing of AIFs to professional investors in Ireland and in the EU by an Irish AIFM are available [here](#)
- AIFs: qualifying investor AIF (QIAIF) and retail investor AIF (RIAIF) application forms are also available [here](#).

The following [link](#)¹ provides guidance and/or forms with regard to the registration and/or authorization procedures.

5 Practical guidance on AIFMD applications

There has been a significant uptake in applications by fund managers. By mid April 2014, 14 AIFMs were authorized and nine AIFMs were registered. While there is not extensive insight in terms of the CBI's criteria for acceptance of applications at this time, it would appear that the CBI is placing some emphasis on the remuneration and delegation policies.

Clients have expressed concern about AIFMD reporting. Clarifications on the timing of the first reports to the CBI and on the mechanisms for reporting have been welcomed. The CBI may provide some guidance on the compilation of the prudential returns at a later date.

The CBI has also indicated that while it conforms to ESMA guidance on remuneration, it may produce local guidance on certain remuneration issues over the coming months.

¹ <http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Pages/default.aspx>

Italy



1 Local framework

The legislative decree of 4 March 2014, No. 44 (published in the *Official Gazette* of 25 March 2014, No. 70¹) for the implementation of the European directive 2011/61 has defined the rules for the authorization, operation and transparency of AIFMs who manage and/or market AIFs in the EU. It has amended the directives 2003/41/EC and 2009/65/EC and regulations (EC) No. 1060/2009 and (EU) No. 1095/2010.

The legislative decree has introduced changes to the provisions of the legislative decree No. 58 of 24 February 1998 on collective portfolio management. However, the legislative decree refers the technical aspects to regulatory measures issued by the Bank of Italy, the CONSOB, and the Ministry of Economy and Finance. For those reasons, on 26 June 2014 the Bank of Italy and CONSOB published a consultation on the implementation measures at regulatory level (see Appendix 1). The consultation, that will end within 60 days from the date of publication, covers changes to the following regulations:

- a) "Joint Regulation Bank of Italy – Consob" for the organization and control of intermediaries providing investment services and collective investment management;
- b) CONSOB's "Intermediaries Regulation" and "Issuers Regulation";
- c) Bank of Italy's "Regulation on Collective Investment Undertakings".

Except as otherwise provided, the provisions issued under the rules repealed or replaced by the decree shall continue to apply with the provisions of directive 2011/61/EC and its implementing measures, up to the date of entry into force of the implementing provisions of this decree in the corresponding materials.

consistent with the action taken at the time of the entry into force of the UCITS IV directive in summer 2011, issued a resolution (the joint resolution²), allowing for an initial and partial implementation of AIFMD, particularly in regard to marketing in Italy of European AIFs.

In the joint resolution, CONSOB and the Bank of Italy affirmed the self-executing nature of certain parts of AIFMD ("particularly those regarding the transitional provisions and the cross-border activity of EU AIFMs") and consequently resolved that, with effect from 22 July 2013:

- a) With regard to EU AIFs managed by an EU AIFM, whose marketing in Italy has been authorized before 22 July 2013:
 - i. The EU AIFs may continue to be marketed in Italy to professional investors until 22 July 2014.
 - ii. No later than 22 July 2014, the EU AIFM should put in place all the measures required to ensure compliance with the national provisions for the transposition of AIFMD and, once it has been authorized in its home member state, should effect the notification required under Article 32 of AIFMD for each EU AIF it markets in Italy, or otherwise the marketing of the EU AIFs should terminate.
- b) With regard to EU AIFs managed by an EU AIFM whose home member state has implemented AIFMD:
 - i. The EU AIFs may be marketed to professional investors in Italy under the AIFMD passporting regime, with CONSOB being the competent authority to receive the Article 32 Notification.
 - ii. The EU AIFs may be marketed to retail investors in Italy only under the existing authorization procedure governed by the Bank of Italy regulation and the relevant authorization may only be granted by the Bank of Italy if the Article 32 notification has also taken place.
- c) Marketing in Italy (to both retail and professional investors) of EU AIFs managed by an EU AIFM whose home member state has not yet implemented the

2 Guidance provided by the local regulator

Guidance has been provided by the local regulator on the transition period. In fact, on 26 July 2013, the Italian securities regulator (CONSOB) and the Bank of Italy,

¹ http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2014-03-25&atto.codiceRedazionale=14G00056&elenci30giorni=true

² http://www.consolb.it/documenti/bollettino2013/comunicazione_consob_bi_26_07_2013.pdf

AIFMD should still be authorized under the existing authorization procedure governed by the Bank of Italy regulation. The relevant EU AIFM should also comply with point a) (ii) above.

d) Until the full transposition of AIFMD in Italy, the existing authorization procedure governed by the Bank of Italy regulation will continue to apply to marketing in Italy (both to retail and professional investors) of:

- i. AIFs managed by a non-EU AIFM
- ii. non-EU AIFs managed by an EU AIFM.

e) EU AIFMs whose home member state has implemented AIFMD may manage an Italian AIF (both on a cross-border basis or through a branch) subject to the notification procedure provided under Article 33 of AIFMD, with the Bank of Italy being the competent authority to receive such notification. The relevant EU AIFMs will be enrolled in a new special section of the register of asset managers kept by the Bank of Italy pursuant to Article 35 of the Italian Financial Act and will be subject, to the extent applicable, to the same provisions currently governing the activity in Italy of foreign management companies under the UCITS IV directive.

f) Until the full transposition of the AIFMD in Italy, the authorization of Italian AIFMs and the establishment and marketing of Italian AIFs will continue to be governed by the current pre-AIFMD provisions and Italian management companies may not avail themselves of the passporting/notification procedures provided under Articles 32 and 33 of AIFMD.

3 Scoping of AIFMs and small AIFMs

The provisions contained in the decree include the following:

- The asset management companies that, at the date of entry into force of this decree:
 - Manage Italian AIFs, can continue to manage them. By 22 July 2014, they shall have taken all the measures necessary to comply with the provisions transposing Directive 2011/61/EC and shall notify the Bank of Italy and CONSOB.
- Already market Italian AIFs to professional and retail investors, may continue to perform this activity. By 22 July 2014, they shall have taken all the necessary measures to comply with the provisions transposing Directive 2011/61/EC. These companies are considered authorized for the marketing in Italy of the aforementioned AIF, under Articles 43 and 44 of legislative decree 24 February 1998, No. 58, as amended by this decree.
- Manage funds that meet the requirements laid down in Regulation (EU) No. 345 and 346 of 2013, shall notify that to the Bank of Italy and CONSOB, certifying the requirements thereof and providing the list of member states in which each fund will be marketed. They are recorded and may sell those funds pursuant to those regulations.
- The people established in the territory of the republic (other than asset management companies) that:
 - At the date of entry into force of this decree, provide the service of collective management of the AIF, may continue to exercise it. By 22 July 2014, they shall have taken all the measures necessary to comply with the provisions transposing Directive 2011/61/EC and submit an application for authorization.
 - Provide the service of collective management of the AIF and may notify the Bank of Italy and CONSOB of the intention to register under the Regulations (EU) No. 345 and 346 of 2013.
- Italian UCITS reserved for professional investors and Italian speculative UCITS (as defined by the Ministerial Decree of 24 May 1999, No. 228) are considered reserved Italian AIFs (pursuant to Article 1, paragraph 1, letter m-c), of legislative decree 24 February 1998, No. 58) as amended by the mentioned decree. From the date of entry into force of the implementing provisions of the decree, the shares or units of UCITS referred to in this paragraph may be

marketed only towards professional investors (as defined in Article 1, paragraph 1, letter m-j)), and categories of investors identified pursuant to Article 39, paragraph 2, letter a) of legislative decree 24 February 1998, No. 58, as amended by this decree.

4 Approval procedures

The authorizing of new Italian managers and the establishment and marketing of new Italian AIFs is regulated by the following provisions, that summarize the authorization system and its main features.

Marketing of EU AIFs by EU AIFMs to Professional Investors

The marketing in Italy of EU AIFs managed by EU AIFMs may occur in accordance with Article 32 of AIFMD. EU AIFMs will be authorized to market in Italy when they receive from their Home Regulator confirmation that the notification package and AIFMD certificate have been submitted to CONSOB.

Marketing of EU AIFs by EU AIFMs to Retail Investors

EU AIFMs can market EU AIFs to retail investors in Italy, provided that the EU AIFs are already marketed to retail investors in the home member state; the AIFMD passport procedure has been completed according to Article 32; a further authorization is given by CONSOB after a consultation with the Bank of Italy.

The EU Passport

An AIFM licensed in its home member state may manage or market AIFs in member states other than its home member state through the EU passport. In fact, thanks to the passporting of the Directive's license, the AIFM can carry out any marketing activity addressed to professional investors.

Requirements for the authorization or registration process

The requirements for the authorization and registration process of asset management companies are regulated by the Legislative Decree No. 58 of 24 February 1998 (art. 34 – 40), which is being modified for the introduction of the National Law No. 98 of 9 August 2013 and nr. 97 of 6 August 2013.

5 Practical guidance with regard to the AIFM application

The European Fund and Asset Management Association (EFAMA) is the representative association for the European investment management industry. In September 2013, it published a document regarding questions about the application of Level 1 of AIFMD by member states,³ including the answers about Italy.

³ <http://www.efama.org/aifmdcenter/aifmdimplementation> (see section: EU Global Analyse, document September 2013_EFAMA: AIFMD - Questions regarding application of Level 1 by member states)

Partidas Departures

Hora Time	Voo Flight	Destino/Via To/Via	Balcão Check-In	Observações Remarks	Hora Time	Voo Flight
18:45	TP 928	Zürich	85 -76		19:20	TP 578
18:50	EI 485	Dublin	34 -36	New Gate	19:20	TP 826
18:55	TP 836	Rome	85 -76		19:20	RER 1158
18:55	BA 503	London/Heathrow	56 -59		19:20	ZI 308
18:55	TP 552	Munich	85 -76		19:20	TP 792
18:55	TP 442	Paris/Orly	85 -76		19:35	EZY7986
19:00	TP 942	Geneva	85 -76	Delayed 19:25	19:40	SN 3820
19:00	EZY2716	Milan/Malpensa	37 -42		19:45	TP 618
19:05	S4 467	Madeira		Terminal 2	19:50	TP 362
19:05	EZS1450	Geneva	37 -42		19:55	TP 740
19:10	S4 129	Ponta Delgada		Terminal 2	19:55	EZY8720

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17:28

89 88 87 86 84 83 82

Luxembourg



1 Local framework

On 10 July 2013, the Luxembourg Parliament voted the Bill of Law No. 6471 transposing AIFMD into Luxembourg domestic law. The AIFM Act (law of 12 July on AIFM) entered into force on 15 July 2013, the day it was published in the *Memorial* (official gazette).

2 Guidance provided by local regulator

On 17 March 2014, the Commission de Surveillance du Secteur Financier (CSSF) has published its sixth version of the [FAQ document¹](#) detailing, among others, scoping, marketing and reporting aspects.

The FAQ includes guidance on the following key aspects:

Scope of AIFs: regulated and unregulated funds.

Applicable authorization and registration regimes

- Transitional provisions:** All AIFMs benefitting from the grandfathering provisions and which need to be authorized were asked to submit their application request to the CSSF as soon as possible and by 1 April 2014 at the latest.
- Delegation requirements:** The CSSF specifies that the delegation rules contained in Circular 12/546 will apply to AIFMs. The circular contains conditions for obtaining and maintaining the authorization and organization of Luxembourg management companies.
- Depositary:** The rationale for an objective reason for contractually discharging liability should be based on specific facts and circumstances. Additional guidance for depositaries is provided on their cash flow monitoring duties, cash reconciliation processes and the use of third parties.
- Reporting:** For AIFMs authorized before 30 June 2014, the first reporting period is 1 July 2014. For AIFMs authorized between 1-22 July 2014, the first reporting period starts 1 October 2014. The FAQ also confirms that all additional information set out in ESMA's opinion on reporting under Article 24 (5) of AIFMD have to be reported including, *inter alia*, information on high-

frequency trading, Value at Risk (VaR) (where relevant) and information on short positions that are held for hedging purposes.

- Annual reports:** Authorized AIFMs have to ensure that an annual report based on the elements described in AIFM law is made available in respect of all those AIFs where the AIFMs' authorization date is prior to the end of the relevant AIFs' fiscal year.
- Determination of the AIFM in the case of limited partnerships:** Société en Commandite par Action (SCA) and Société en Commandite Simple (SCS) that qualify as AIFs can either be internally/self-managed AIFMs managed by the manager in case the purpose of the manager is limited to the management of the given limited partnership or appoint the general partner, manager or other external AIFM appointed by the manager. Société en Commandité Spéciale (SCSp) that qualify as AIFs can either appoint the general partner, manager or other external AIFM appointed by the manager, but cannot be internally/self-managed AIFMs.

The marketing passport in practical terms

- Valuation of assets:** The CSSF confirms that the appointment of a third party as the AIF's external valuer must be formalized by a written contract which clearly states that the third party is appointed as external valuer in the sense of Article 17(4)a of the AIFM law and sets out its tasks.
- Transaction costs:** In relation to transaction costs, Luxembourg Part II funds must disclose the transaction costs in their financial reports.
- Remuneration rules:** For AIFMs authorized in 2014, the rules on variable remuneration should apply to the 2015 accounting period. When delegating portfolio management or risk management activities, the remuneration rules should only apply to the delegates' identified staff and only in respect of the remuneration for the delegated activities. Entities that are subject to the Capital Requirements Directive (CRD) rules are considered to be subject to remuneration rules that are equally as effective as AIFMD.

¹ http://www.cssf.lu/fileadmin/files/AIFM/FAQ_AIFMD.pdf

3 Scoping of AIFMs and small AIFMs

The concept of an AIF is broad and regulated funds set up under the fund laws as well as unregulated structures may qualify as AIFs. Retail non-UCITS funds that are set up under Part II of the law of 17 December 2010 will automatically qualify as AIFs. In contrast Specialized Investment Funds (SIFs), Société d'Investissement en Capital À Risque (SICARs) and unregulated investment structures will have to be appraised on a case-by-case basis to determine whether or not they qualify as an AIF.

Each AIF will need to be managed by an AIFM that can either be an external AIFM or, should the AIF so elect, an internally-managed AIFM. The AIFM is defined as any entity whose regular business is managing one or more AIF. The AIFM will need to perform portfolio management and risk management for the AIFs managed and may additionally perform administration, marketing and activities related to the assets of the AIFs. Luxembourg has opted to allow the AIFM to extend its authorization to perform individual discretionary portfolio management, to provide investment advice, to provide safe keeping and administration services in relation to shares/units in Undertaking for Collective Investments (UCIs) and to provide services in relation to the reception and transmission of orders in relation to financial instruments under the AIFM license.

Depending on the AUM, the manager will either be subject to the full AIFM authorization regime or a lighter registration regime. Sub-threshold managers that would fall under the registration regime have the possibility to opt in to the full AIFM regime on request. Existing Luxembourg managers had a 12-month transition period up until 22 July 2014 to file an application for AIFM authorization and the application questionnaires and other relevant documents are available on the CSSF website.

4 Approval procedures

Full regime

- CSSF published an application questionnaire ([Excel Workbook](#))² which was last updated 20 March 2014 and which needs to be completed by each applicant for approval of a fully licensed AIFM in accordance with Chapter 2 of the AIFM law.
- This workbook is divided into several categories of AIFM (existing/new Chapter 15 Management Company (ManCo); existing/new Chapter 16 ManCo; existing/new self-managed funds; any other Luxembourg entity which intends to adopt the status of an AIFM regulated under the AIFM law); the category of AIFM determines which 'application worksheet' is applicable.
- A [declaration form](#)³ must be signed by at least two legal representatives of the applicant AIFM.
- The completed application worksheet, all requested appendices and the signed declaration must be sent only to the following email address: aifm_applications@cssf.lu.

Registration

- CSSF has published a registration form ([Excel workbook](#))⁴ which shall be used for the registration with the CSSF.
- This workbook constitutes a request for registration in accordance with Article 3(3) of the AIFM law.
- The information required for registration purposes shall be submitted together with the completed registration form and updated on an annual basis.
- A [declaration form](#)⁵ must be signed by at least two legal representatives of the applicant AIFM.
- The completed registration workbook, the signed declaration form in PDF text format and – under certain

² <http://www.cssf.lu/fileadmin/files/Formulaires/AIFMDQuestionnaireV1306181.xls>

³ http://www.cssf.lu/fileadmin/files/Formulaires/Declaration_AIFM.doc

⁴ <http://www.cssf.lu/fileadmin/files/Formulaires/AIFMRegistrationWorksheetV09122013.xls>

⁵ http://www.cssf.lu/fileadmin/files/Formulaires/Registration_AIFM.doc

circumstances – the latest available financial statements in PDF text format must be sent only to the following email address: aifm_registration@cssf.lu.

Authorized and registered AIFM will be entered by the CSSF on a list.

The following [link⁶](#) provides guidance and/or forms with regard to the registration and/or authorization procedures. For questions on registration and/or authorization contact: direction@cssf.lu

5 Practical guidance with regard to the AIFM application

Practical experiences during the application process:

- Provision of information on organizational structures already filed before the AIFM application.
 - The applicant AIFM can confirm at the very beginning of the application questionnaire (point 1.4) that it has not undergone any changes since the last filing with the CSSF with respect to certain organizational matters. As a consequence, the applicant AIFM does not need to submit the required information again.
 - One of our clients had to fill in – on request of the CSSF – all of the information again, even though there were no changes since the last filing.
- Remuneration policy.
 - The application questionnaire asks only for a description of the remuneration policy demonstrating compliance with Annex II of AIFM law and with the ESMA guidelines on sound remuneration policies under AIFMD (ESMA/2013/201).

– Our clients have experienced that the CSSF has asked for a detailed comparison of the regulatory requirements with the remuneration policy in a tabular form. The clients needed to file a comparison table with the regulatory requirements and page reference of their remuneration policy. In the revised version of the questionnaire that was released on 20 March 2014, the CSSF added two new requirements relating to remuneration:

- A table comparing each of the requirements of Annex II of the AIFM law as further outlined under Annex II of the ESMA guidelines on sound remuneration policies under the AIFMD (Ref. 03/07/2013/ESMA/2013/232) with the equivalent clause in the AIFM's remuneration policy. The table should have at least the following four columns:
 - requirement of AIFM law (Annex II)
 - extract of remuneration policy which corresponds to the requirement of Annex II
 - status of compliance (fully compliant, partially compliant, not compliant)
 - justification of partial or non-compliance.
- In the event of delegation of the portfolio management or risk management activities, demonstrate how it is ensured that Annex II of the AIFM law is respected by these delegates, indicate if the delegates are compliant with any other regulatory standards (e.g. compliance with MiFID or Capital Requirements Directive (CRD) regulations).

In addition, the CSSF has requested applicants to submit a hard copy of the questionnaire and all appendices.

⁶ <http://www.cssf.lu/aifm/>



Malta



1 Local framework

The Malta Financial Services Authority (MFSA) launched revised Investment Services Rules on 27 June 2013 to incorporate the AIFMD requirements. These rules deal with the requirements for fund managers, or self-managed funds, to be licensed as AIFMD compliant in Malta.

In addition, the MFSA also released a general information document which can be accessed [here](#)¹ and additional guidance which can be seen [here](#),² in addition to [A Guide to Establishing an AIFM in Malta](#).³

Rulebook for AIFs

The MFSA has issued a new [AIF rulebook](#)⁴ which covers externally and internally managed AIFs and AIFMs with a simple regulatory framework that enables the establishment of funds that meet the directives provisions for operations and marketing, both in Malta and across the EU. The rulebook outlines the standard license conditions for the following:

- administrative procedures and internal control mechanisms
- conduct of business rules
- outsourcing and sub-delegation
- service providers and the related remuneration
- leverage limits
- the roles of the custodian
- financial resources
- disclosure and reporting requirements
- marketing of AIF.

Collective investment scheme licenses in Malta post-AIFMD

The previously existing and highly successful Professional Investor Fund (PIF) regime will be retained in addition to the AIFM regime. Fund managers below the threshold and third country managers will be able to establish funds in terms of the Investment Services Act and regulated by the Investment Services Rules for Professional Investor Funds. Therefore, the categories of collective investment schemes (CISs) which will be available in Malta post-AIFMD are:

- UCITS schemes⁵
- non-UCITS retail schemes⁶
- Professional Investor Funds⁷
- Alternative Investment Funds.⁸

2 Guidance provided by local regulator

As part of the transposition process, four legal notices were published on 8 March 2013. The law, together with the new legal notices can be seen [here](#)⁹:

- Legal Notice 113 of 2013: Investment Services Act (Marketing of Alternative Investment Funds) Regulations, 2013 (details of how both EU AIFMs and non-EU AIFMs may market to Maltese, EU and non-EU investors).
- Legal Notice 114 of 2013: Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations, 2013 (dealing with passporting possibilities of Maltese and EU AIFMs).
- Legal Notice 115 of 2013: Investment Services Act (Alternative Investment Fund Managers) Regulations, 2013 (transposes several sections of AIFMD into national legislation and defines the duties of Malta as a home member state).
- Legal Notice 116 of 2013: Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations, 2013 (details with regard to third countries in respect of their operations in Malta and the EU, as well as the powers and duties of the competent authorities and the transitory provisions).

3 Scoping of AIFMs and small AIFMs

Existing license holders – all non-UCITS funds

The MFSA released two self-assessment questionnaires, one of which had to be completed by each non-UCITS fund licensed in Malta and returned to the regulator by 31 March 2014 to be assured of a license by the July 2014 deadline:

- first questionnaire: Self-Assessment for Fund Managers and Self-Managed Collective Investment Schemes Applying as De Minimis License Holders can be found [here](#)

¹ <http://www.mfsa.com.mt/pages/readfile.aspx?f=readfile.aspx?f=/files/AIFMD/MFSA%20Statement%20on%20AIFMD.pdf>

² <http://mfsa.com.mt/pages/viewcontent.aspx?id=510>

³ <http://mfsa.com.mt/pages/readfile.aspx?f=readfile.aspx?f=/files/AIFMD/A%20Guide%20to%20Setting%20Up%20an%20Alternative%20Investment%20Fund%20Manager.pdf>

⁴ <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=509>

⁵ <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=509>

⁶ <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=509>

⁷ <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=509>

⁸ <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=509>

⁹ <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=247>

- second questionnaire: Self-Assessment for Fund Managers and Self-Managed Collective Investment Schemes applying for an AIFM license can be found [here](#).

These questionnaires aim to determine whether:

- the collective investment scheme should be categorized as a de minimis AIFM and does not intend to opt to be licensed as an AIFM in terms of AIFMD
- the collective investment scheme should be AIFMD compliant or whether it will decide to opt in to the AIFMD regime.

De minimis rulebook

Funds that do not, through the exemptions provided for within the directive, require licensing under AIFMD were still required to submit their self-assessment questionnaire by March 31, 2014. The regulator considered the interests of fund managers and investors would be better served by applying a minimum licensing regime rather than registration,. De minimis license holders will be permitted to manage non-retail collective investment schemes, as well as provide MiFID type services (such as investment advice). In such cases, the license holder will also be required to comply with the rulebook in place for MiFID firms.

4 Approval procedures

The proposed rule book focuses on the following:

- general requirements
- organizational requirements
- conduct of business requirements
- financial resource requirements.

General information

For each license application submitted, relevant personal questionnaires and competency forms need to be submitted for members of the board as well as persons performing roles, including portfolio managers, compliance officers, Money Laundering Reporting Officer (MLROs) and other influential positions.

Assuming an application package for a license is submitted in complete form, the average turnaround for feedback from the MFSA is about 6 weeks, with any clarifications required by the regulator submitted after. In-principle approval is then received about 8 to 10 weeks following the initial submission. However, for all assessment forms and AIFM license applications

submitted by 31 March 2014, authorization was to be granted by 22 July 2014.

Rules for passporting and third countries

The MFSA has issued a document setting out the requirements for EU AIFMs to passport services to Malta, which can be seen [here](#). AIFMs wishing to passport into Malta will be required to apply for authorization by submitting a notification file to their regulator, which is to include details of the planned operations in Malta, general information pertaining to the AIF, as well as specific information with regards to its service providers. Details regarding arrangements made for the marketing of the AIF will also need to be disclosed, as well as what arrangements have been established to ensure that the units will not be made available to retail investors.

The following [link¹⁰](#) provides guidance and/or forms with regard to the registration and/or authorization procedures.

5 Practical guidance with regard to the AIFM application

- The AIFM needs to provide information about its organization, the AIFs it manages, the leverage it employs, a description of services it provides, the relationships with contractual parties and various other pertinent details, even if there have not been any changes since incorporation.
- The AIFM is also required to give details of how the initial capital requirements and additional own funds or professional liability risks covered through either additional own funds or insurance coverage, where required, are being satisfied.
- Identified staff, remuneration committee composition and remuneration policies need to be detailed, as well as details on how it is to be ensured that compensation for senior managers is not in conflict with maintaining their independence in the performance of their duties.
- Details on the risk management policy, valuation policy, portfolio management structure and any delegation arrangements in place need to be defined, including any sub-delegation arrangements where applicable, as well as monitoring and control arrangements for the delegated functions.
- The AIFM also needs to specify which depositaries are being used by the AIFM, as well as confirmation that the agreements in place reflect Article 21 of the directive and chapter IV of the commission-delegated regulation.

¹⁰ <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=509#ISP>

Netherlands



1 Local framework

On 25 June 2013, the bills were published in the *Bulletin of Acts, Orders and Decrees*, the official bulletin of the Dutch government. On 11 June 2013, the Dutch implementation legislation (bill and amending bill) has been adopted by the senate (upper house of parliament).

2 Guidance provided by local regulator

The Netherlands Authority for the Financial Markets (AFM) has posted on its website a [question and answer document](#)¹ giving further guidance on a number of issues identified in the AIFM application process.

3 Scoping of AIFMs and small AIFMs

AIFMs that are exempted from filing for a license are still obliged to register with the Dutch regulator. Forms can be found through this [link](#)². Additional documents required for the opt-in procedure for exempted funds:

- extract from Chamber of Commerce
- total AUM (including calculation thereof)
- description of each of the fund strategies.

An AIFM managing closed-ended funds that it chooses to grandfather must inform the AIFM, including the rationale behind the decision.

4 Approval procedures

The AFM is responsible for the authorization and ongoing supervision of fund managers. De Nederlandsche Bank, the Netherlands central bank (DNB) monitors compliance with the prudential rules, such as the minimal capital requirements and the use of leverage.

When submitting the application form to the AFM, the following documents are required for the AIFM and for the managed AIFs.

AIFM:

- application form AIF
- extract from Chamber of Commerce
- business plan
- organization chart

- delegation policy
- balance sheet signed by external auditor
- list of AIFs, including AUM
- process descriptions
- remuneration policy
- list of identified staff.

Several required policy documents (e.g. the risk management policy) need to be submitted together with the application.

Members of the management board or supervisory board of the AIFM:

- application forms and credential forms (statutory) of directors
- references
- suitability matrix
- resumes
- function profiles.

If applicable:

- copy of license foreign regulator
- extract from a Chamber of Commerce (or equivalent document) third country
- external valuer agreement
- prime broker agreement
- professional liability Insurance policy and evidence of payment
- documents regarding other financial obligations.

AIF:

- bylaws
- prospectus/information memorandum
- information provided to investor prior to subscription.

If applicable:

- most recent annual account including audit certificate.

Depository:

- audit certificate, including evidence regarding capital of depository
- agreement with depository.

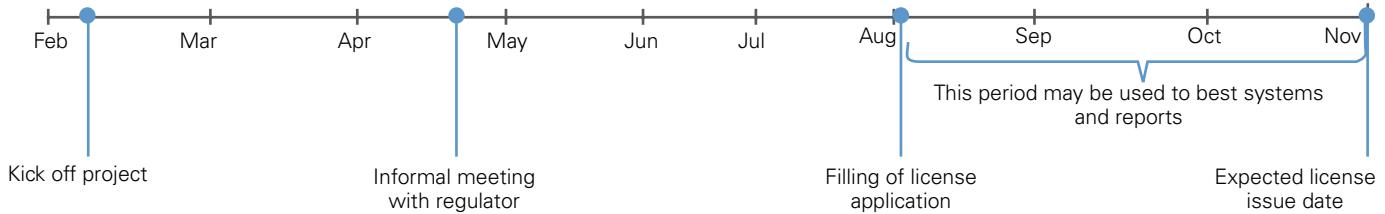
¹ <http://www.afm.nl/nl/professionals/afm-voor/aifm/aifm/faq.aspx>

² <http://www.digitaal.loket.afm.nl/nl-NL/Diensten/aifm-beleggingsinstellingen/melding/Pages/melding-registratiebeheerder-beleggingsinstelling.aspx?tab=4>

If applicable:

- extract from Chamber of Commerce
- documents regarding relations between head office and branch office
- information regarding intra-group obligations, including estimate of solvency
- deed of guarantee
- copy of license

Application forms can be found by clicking the following [link](#).



Industry experience shows that it takes about 6 to 9 months to prepare for the authorization application to be ready to be submitted by the AIFM. The deadline for the application for existing fund managers expired on 21 July 2014. The Dutch regulators have a two step review period of 13 weeks to review the file. When deemed necessary, they will require the second step of 13 weeks. Normally, the process should only take the first 13 weeks.

When the Dutch regulators require additional information from the applicant, the 13 week review period is frozen as per the date of request until receipt of the required additional information.

After filing of the application file, there is time for the implementation of processes within the organization, as long as the fund manager shows best effort in order to have the processes and procedures compliant as soon as possible.

The following links provide guidance and/or forms with regard to the [registration](#)³ and/or [authorization](#)⁴ procedures.

5 Practical guidance with regard to the AIFM application

The AFM focuses on the following areas:

- **Organization description:** We recommend drafting a comprehensive description of the organization, which

- evidence of nomination as UCITS-depository
- application form members of the management board
- organization chart
- evidence of registration in professional register
- process descriptions
- delegation agreement(s).

will guide the regulator through both the organization and the application file. This file should include the full governance structure of the organization, three lines of defense mechanism for risk and compliance management, key roles and responsibilities, including a description of all departments, etc.

- **Risk management document:** (Financial) risk management seems to be a focus area of the Dutch regulator, based on the risk profile of the fund manager. Make sure to have a clear and detailed document available for the regulator to understand. This may be time consuming.
- **Identified staff:** The Dutch regulator wishes to see a list of all staff, including an explanation why a person of function is or isn't qualified as risk taker, together with the description of the process of identifying the staff in scope of the directive.
- **Depository:** The Dutch regulator is keen on knowing why a depository is selected for the respective fund (i.e. "Is the depository suitable for its obligation in respect to the specific asset class?")

³ <http://www.afm.nl/nl/professionals/registers/alle-huidige-registers/aifmd-light-beheerders.aspx>

⁴ <http://www.afm.nl/nl/professionals/afm-voor/aifm/aifm/vergunning-registratie.aspx>

Norway



1 Local framework

Norway is not part of the EU. However, it is a member of the EEA, which allows the countries to participate in the EU's internal market without being members of the EU. They adopt almost all EU legislation related to the single market, except laws on agriculture and fisheries. Before AIFMD can be implemented into Norwegian law, the directive first needs to be amended into the European Economic Community agreement between Norway and the EU and, subsequently, to be approved and adopted by the Norwegian Parliament.

Norway must acknowledge the ESMA's authorities before this can be done. Indications are that the Norwegian government will not adopt the supranational authorities given to ESMA, as this represents a constitutional problem (especially during their bicentennial celebration of the constitution). Therefore, Norway will implement the AIFMD as closely as it can with regards to the constitutional challenges. The result is that AIFMD will not be adopted into the EEC agreement and, hence, Norway will not comply fully with the directive.

Legally, one can interpret this as Norway not implementing the directive. But it is KPMG's opinion that this would be too strict a view on the matter. However, this raises several questions regarding the marketing passport for Norwegian AIFs, all of which are not answered. The strategy of the Norwegian government is to see how this goes. The legal issues with regards to marketing or managing funds in the EU from Norway are then still left open, but it is believed that the practical resolution of these issues will not be overly significant.

On the other hand, it is believed that Norwegian authorities will accept the practice of the marketing passport from foreign AIFs that want to market in Norway, but this is somewhat dependent on other EU countries accepting the Norwegian adoption of AIFMD (i.e. approve that Norwegian AIFs can market in that country).

Implementation timeline for AIFMD in Norway

The latest development on 3 June 2014 is that the National Treasury of Norway has proposed a bill for parliament for the first time. It is expected that the bill will pass through parliament a second time and be sanctioned by the king by 1 July and will then be in effect from that time. In addition, the Norwegian FSA, known as Finanstilsynet, has strongly indicated that the deadline for applying for a concession will be extended to 1 January 2015. This will result in a 6-month window where Norwegian AIFMs will run the risk of not being able to market their funds in the EU. However, this will not have any implications for AIFMs wanting to market their funds in Norway after 22 July 2014, as the Norwegian FSA will be open for receiving notification of marketing, etc.

It is important to note that implementation of AIFMD in Norway also opens up marketing to non-professional investors, but each AIFM will have to procure special authorization from the Norwegian FSA.

The Norwegian FSA will have authority to sanction firms that do not comply with AIFMD when it becomes Norwegian law. However, it is currently not clear whether the law will include any national adjustments to the AIFMD or if the FSA will give Norwegian organizations affected by the AIFMD more time for implementation before issuing sanctions. The Norwegian FSA has, however, publicly said that it expects that the AIFMD will clean up the alternative fund industry in the same manner that MiFID did for the financial advisory industry in 2007-09.

The following [link¹](#) provides guidance and/or forms with regard to the registration and/or authorization procedures. AIFMD passport notifications can be sent to aifmd.notifications@finanstilsynet.no

¹ <http://www.finanstilsynet.no/en/Document-repository/News/2013/Q2/The-Alternative-Investment-Fund-Managers-Directive-Directive-201161EU-AIFMD/>



Spain



1 Local framework

On the grounds that the national rules transposing AIFMD have not been implemented yet, the [Comisión Nacional del Mercado de Valores](#)¹ (CNMV) has officially published the following criteria until such transposition takes place.

Communication of the CNMV dated 31 July 2013 regarding remuneration policies under the AIFMD

The CNMV has notified ESMA its intention to fulfill with ESMA's guidelines on sound remuneration policies under the AIFMD due to the guidelines developing the obligations of these policies and its transparency requirements ruled in the *Circular 6/2009, de Control Interno de las Sociedades Gestoras de Instituciones de Inversión Colectiva y Sociedades de Inversión*.

Communication of the CNMV dated 18 July 2013 regarding the management companies of Commonwealth of Independent States and venture capital adaptation of AIFMD

• Management companies

– Existing management companies already registered with the CNMV

i. Management companies below the directive threshold must file their first report (corresponding to the period 23 July to 31 December 2013) by 31 January 2014. The information to be submitted to the CNMV in the absence of transposition of the directive shall be that included in Article 110 of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012, replacing Directive 2011/61/EU of the European Parliament.

ii. Management companies over the threshold must comply with AIFMD within 1 year from 22 July 2013. It is important to stress that current Spanish local laws contain similar clauses regarding organizational requirements and custodian obligations (although a custodian is not compulsory for private equity schemes). As for reports, companies over the threshold should issue their first report on the same dates as companies below the threshold.

– Existing venture capital management companies not registered with the CNMV

i. Management companies below the threshold must comply with AIFMD within 1 year from 22 July 2013. As the AIFMD transposition was expected to have been implemented by that date, no criteria have been issued for this category.

ii. Management companies over the threshold must request authorization and registration with the CNMV within 1 year from 22 July 2013. As the AIFMD transposition was expected to have been implemented by that date, no criteria have been issued for this category.

– New management companies

i. Management companies below the threshold for non-UCITS collective investment schemes and venture capital vehicles must comply with the registration obligation if they submit an application for incorporation subject to the current regimes of authorization of management companies of collective investment schemes and venture capital vehicles.

¹ http://www.google.ie/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&uact=8&ved=0CCgOFjAA&url=http%3A%2F%2Fwww.cnmv.es%2Findex_en.htm&ei=BywrU6bODsHb0QWvgIHoDQ&usg=AFOjCNFGukt48DKevOiuvLflfps7npl7Qw

- ii. Management companies over the threshold for non-UCITS collective investments schemes and venture capital vehicles must comply with the registration obligation if they submit an application for incorporation subject to the current regimes of authorization of management companies of collective investment schemes and venture capital vehicles. In addition, they must also comply with other obligations in force under the current regimes for management companies of collective investment schemes and venture capital vehicles and from 22 July 2014 onwards, with the new regulations arising as a result of AIFMD implementation.

• **Crossborder marketing of AIFs:** There are two possible scenarios. The first is that of a Spanish AIFM marketing AIFs to professional investors in other European countries. The other is that of an AIFM from a different EU member state selling to professional investors in AIFs in Spain by virtue of the EU passport regime.

- *Registration of AIFs in Spain for commercialization purposes:* From 22 July 2013, foreign AIFMs complying with AIFMD have the right to sell AIFs to professionals in Spain. Host member states where the directive has not been transposed (as is the case of Spain) may not waive this right.
- *Registration of Spanish AIFs in European third countries:* The procedure and the documents necessary to be granted the passport are the same as those set forth in AIFMD.

If the ESMA so rules (a formal consultation has been raised), the CNMV will issue passports to AIFMs that meet these conditions, even if the AIFMD has not yet been transposed.

• **Crossborder management of AIFs:** The same considerations as those described for cross-border marketing activities apply for cross-border management of AIFs.

Communication of the CNMV dated 9 October 2013 regarding key concepts of the AIFMD

The CNMV has notified ESMA its intention to fulfill with ESMA's guidelines on key concepts of the AIFMD published on 23 August 2013.

Communication of the CNMV dated 27 January 2014 regarding the compliance with ESMA guidelines on model Memorandum of Understanding (MoU) concerning supervision of entities under AIFMD

The CNMV has communicated ESMA its intention to comply with ESMA guidelines on model MoU concerning consultation, cooperation and exchange of information related to supervision of entities under AIFMD.

Sweden



1 Local framework

On 18 June 2013, the Swedish Parliament adopted the AIFM Act transposing AIFMD. On 19 June 2013, an AIFM law was published in the Official Journal (Swedish Code of Status). On 2 July 2013, the Swedish FSA, called Finansinspektionen, announced its regulations filling the regulatory gap in relations to the act and AIFMD (FFFS 2013:9 – FFFS 2013:22), which entered force 22 July 2013. The main regulation will be FFFS 2013:10.

2 Guidance provided by local regulator

The requirements for the authorization process are found in the act on managers of alternative investment funds (2013:561) and in the financial regulatory code issued by the national supervision authority, [Finansinspektionen](#).¹ The act is called [LAIF](#). The regulatory code is available in [Swedish](#)² and in [English](#).³

3 Scoping of AIFMs and small AIFMs

The scope of LAIF covers:

- AIFs in general
- **Special funds (non-UCITS)** managers of a special fund (a Swedish type of fund) require an LAIF license from Finansinspektionen. Special funds were previously (before LAIF came into force) governed by the Swedish Investment Funds Acts, (Sw. lagen om investeringsfonder (2004:46)) which is the Swedish act for UCITS funds.
- **Private equity funds, real estate funds, commodity funds and infrastructural funds**, earlier not governed by the Swedish regulations on funds.

For AIFs marketed to retail investors as well as to professional investors, there will be some additional

regulatory requirements. These requirements go beyond AIFMD.

The requirements include that shares or units of the AIF should be admitted to trading on a regulated market with the aim to set requirements on liquidity (e.g. investors' ability to transform their units into cash).

Furthermore, there must be a fact sheet containing an easily understandable summary of the basic information needed by investors to assess the fund and the risks associated with investing in it. In form and content, this fact sheet should correspond to those required for special funds and, as for special funds, should be made available to investors in good time before agreements to purchase fund units are entered. Managers may get exceptions from the additional provisions noted above. However, this will mean that only marketing of the funds to professionals will be allowed. For managers marketing AIFs to retail investors, the thresholds of the EUR100 million or EUR500 million for small AIFs are not applicable (i.e. authorization is required regardless of the total amount of AUM).

Concerning special funds, most of the requirements in Investment Funds Acts remain the same parallel to LAIF, although the manager should seek authorization under LAIF.

Private equity funds and similar assets funds that fulfill the following requirements can also be marketed to non-professionals. These requirements are inspired by the European Venture Capital Funds Regulation:

- investment is above EUR100,000
- the subscriber acknowledges the risks associated with the fund
- the fund invests in non-listed equities.

¹ <http://www.fi.se/Folder-EN/Startpage/>

² <http://www.fi.se/Folder-EN/Startpage/Regulations/Regulatory-Code/FFFS-201310/>

³ <http://www.fi.se/Folder-sw/Startpage/Regulations/Regulatory-Code/FFFS-201310/>

4 Approval procedures

To manage an AIF requires authorization from the Finansinspektionen according to LAIF, unless otherwise specified in LAIF. Authorization shall include portfolio management and risk management.

An AIFM must not engage in any business other than permitted by the authorization to manage AIFs. An external AIFM may perform such services as set out in chapter 3.

The application, which shall include the documents/information listed below, shall be signed by an authorized representative of the manager.

The application must contain:

- information on which types of authorization for which the AIFM is applying
- information on persons in the administrative, management or supervisory body of the AIFM
- a shareholder register of the AIFM where qualifying holdings and the size of the shareholders are registered
- a business plan with the AIFM's organizational structure
- minutes from a board meeting or other documents showing that management has approved the application
- minutes from a board meeting or other documents or written information stating that management has decided upon the fund rules or similar rules
- a certificate of incorporation from the Swedish Patent and Registration Office or equivalent document not older than 2 months showing that the AIFM has an initial capital equal to at least the initial capital
- a copy of the articles of association or equivalent regulatory framework including a description of the business that will be conducted
- minutes of the general meeting or the equivalent highest decision-making body in which the articles of association or equivalent regulations have been established for the AIFM

- a copy of the insurance policy if the AIFM has signed an indemnity against professional liability risks
- information on the AIFM procedures to delegate or sub-delegate functions and remuneration policies and practices
- information about the investment strategies to be used
- a statement of where the master fund is established, where the managed fund is a feeder fund into an AIF
- fund rules, articles of association or similar rules
- procedures for appointing the depositary to be appointed
- a draft prospectus or equivalent.

If the business includes management of special funds, the application shall also include a draft fact sheet (Key Investor Information Documents).

The Finansinspektionen will process the application within 3 months, provided that the application is complete. If there are extenuating circumstances, the time of the granting of the authorization can be extended by up to 3 months. The Finansinspektionen will begin processing when the applicable fee has been received.

The following [link⁴](#) provides guidance and/or forms with regard to the registration and/or authorization procedures.

5 Practical guidance with regard to the AIFM application

The application should be prudent and fact based. The business plan ought to be realistic and unbiased. There is no form to be filled in for the application although there are forms for the ownership assessment and fit and proper application for persons within administrative, management or supervisory body of the AIFM.

⁴ <http://www.fi.se/Folder-EN/Startpage/Authorisation/Apply-for-authorisation/>

United Kingdom



1 Local framework

Her Majesty's Treasury (HM Treasury) published the Alternative Investment Fund Managers Regulations 2013 on 17 July 2013 along with an explanatory memorandum. The regulations¹ came into force on 22 July 2013. The government's overall approach to transposition of AIFMD was to 'copy-out' the provisions in the EU legislation to minimize the regulatory burden on firms.

The regulations amend the Financial Services and Markets Act 2000 (FSMA) and related provisions. In particular, the regulations amend the Regulated Activities Order 2001 to introduce the new regulated activities of managing an AIF, acting as a depositary to an AIF, managing a UCITS and acting as a depositary to a UCITS. Under FSMA, a firm is required to seek authorization under Part IV before the commencement of business. Permission to undertake regulated activities is granted by the Financial Conduct Authority (FCA). The FCA has established a specialist AIFMD authorizations team to review and approve all applications received. An authorized UK AIFM will be required to comply with the regulations, the FCA Handbook and applicable secondary legislation.

The investment funds source book

FCA has created a designated Investment Funds source book (FUND) within the FCA Handbook. FUND sets out the requirements of firms covered by AIFMD. This new source book is intended to provide UK/EU AIFMs with a simple regulatory framework that will allow them to establish AIFMD-ready funds for marketing to professional investors in the UK or across the EU. The source book has some sections which are to be drafted and can be seen [here](#).

2 Guidance provided by local regulator

As part of the transposition process, the regulations are accompanied by relevant papers, which were published by the FCA and HM Treasury, respectively.

FCA (formerly FSA)

The FCA dedicated a page on its website to AIFMs in the AIFMD section. On the website, the FCA has published

the following information for UK AIFMs, non-UK AIFMs, depositaries and European venture capital funds:

- the application form packages that need to be completed and filed with the FCA to seek authorization
- questions and answers to support applicant firms through the process
- updated information under the 'AIFMD news' section.² There are a number of updates set out, including remuneration, proportionality under Article 15(1), depositary arrangements, national private placement regimes, reporting requirements, cooperation agreements with other countries, application process, timeline to file and the transitional provisions
- FCA guide to help AIFMs complete the AIFMD cross-border marketing passport application form
- FCA guide on the information to be provided on depositary arrangements at the time of application. (the guide sets out what would constitute 'missing information' and hinder the application package being deemed complete).

In addition to the website, through the course of the transposition period, the FCA has consulted with stakeholders via consultation papers and guidance. These are detailed below:

- The FCA's fourth quarterly consultation paper has been published and invites comments on changes to the FCA Handbook. In particular, chapter 2 sets out minor changes to the FCA Handbook that impact AIFMs, UCITS managers and certain AIF depositaries.
- Finalized guidance ([FG 14/02](#))³ on the remuneration code under AIFMD was published at the end of January.
- The FCA made an express statement to draw the attention of firms to a prudential policy statement ([PS 13/10](#))⁴ published in December 2013, which contains updated guidance. Annex 3 is emphasized as important for UK AIFMs.
- The FCA published a policy statement in June 2013 ([PS 13/5](#))⁵ to set out the final rules to implement AIFMD

¹ <http://www.legislation.gov.uk/ksi/2013/1773/made>

² <http://www.fca.org.uk/firms/markets/international-markets/aifmd/latest-news>

³ <http://www.fca.org.uk/static/documents/finalised-guidance/fg14-02.pdf>

⁴ <http://www.fca.org.uk/static/documents/policy-statements/ps13-10.pdf>

⁵ <http://www.fca.org.uk/your-fca/documents/ps13-5-implementation-of-the-aifmd>

in the UK. Since the publication of the policy statement, some of the rules have been translated into the FCA Handbook, specifically the **Perimeter Guidance**,⁶ the **Fund Sourcebook**⁷ and **Chapter 11 of the Interim Prudential sourcebook for Investment Businesses**.⁸

- The FSA published two consultation papers on the implementation of AIFMD in November 2012 (**CP 12/32**)⁹ and March 2013 (**CP 13/09**).¹⁰
- In January 2012, the FSA published a **discussion paper**¹¹ to set out some of the issues related to the transposition of AIFMD. Topics covered in the discussion paper included, but were not limited to, prudential considerations, creation of a single set of rules relating to funds in the FCA handbook, amendments to secondary legislation and the private placement regime in the UK.

HM Treasury

- **Transposition table**¹² sets out how the UK implements AIFMD through secondary legislation or rules in the FCA handbook.
- There were two consultation papers that provided the government with a means to engage with UK stakeholders. Parallel to this, the government engaged with industry bodies and the FCA. The first consultation paper was published in **January 2013**¹³ and paragraph 2.2.1 of the consultation paper was later updated to clarify the approach to sub-threshold managers. The second consultation paper was published in **March 2013**.¹⁴ HM Treasury responded to the consultation papers in **May 2013**.¹⁵

3 Scoping of AIFMs and small AIFMs

The majority of provisions of the regulations only apply to fund managers managing funds in scope of the Directive holding

assets in excess of EUR100 million or EUR500 million in the case of unleveraged funds whose investors have no right of redemption for at least 5 years. Fund managers below the threshold will be required either to register with the FCA or to remain authorized under the current requirements while complying with basic reporting requirements.

Small registered AIFMs can only be the following entities:

- internally managed, closed-ended investment companies (e.g. investment trusts)
- unauthorized managers of property funds where those funds are operated by an FCA authorized operator
- managers registered under the European Venture Capital Funds Regulation
- managers registered under the European Social Entrepreneurship Funds Regulation.

These types of entities need to register with the FCA using the required form which includes information on the identification of the AIFM(s) in the corporate group and the AIFs they manage and basic information on the AIFs such as AUM and investment strategies. Small AIFMs of property funds are subject to a registration regime rather than being classed as small authorized UK AIFMs.

Small authorized AIFMs are entities which:

- are authorized by the FCA to carry out regulated activities in the UK
- are a small AIFM
- have not opted into full scope of the AIFMD.

These AIFMs will be subject to the pre-existing requirements as well the need to complete a Variation of Permission

⁶ <http://fshandbook.info/FS/html/handbook/PERG/16/2>

⁷ <http://fshandbook.info/FS/html/handbook/FUND>

⁸ http://media.fshandbook.info/Handbook/IPRU-INV_Full_20140101_20151230.pdf

⁹ <http://www.fsa.gov.uk/library/policy/cp/2012/12-32.shtml>

¹⁰ <http://www.fsa.gov.uk/static/pubs/cp/cp13-09.pdf>

¹¹ <http://www.fsa.gov.uk/portal/site/fsa/menuitem.10673aa85f4624c78853e132e11c01ca/?vgnextoid=0a7fa8ce791f4310VgnVCM2000004fbc10acRCRD&vgnextchannel=a5f52c1e181f4310VgnVCM2000004fbc10acRCRD&vgnextfmt=default>

¹² http://www.legislation.gov.uk/ksi/2013/1773/pdfs/uksitn_20131773_en.pdf

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/193488/consult_transposition_of_the_alternative_investment_fund_managers_directive_220113.pdf

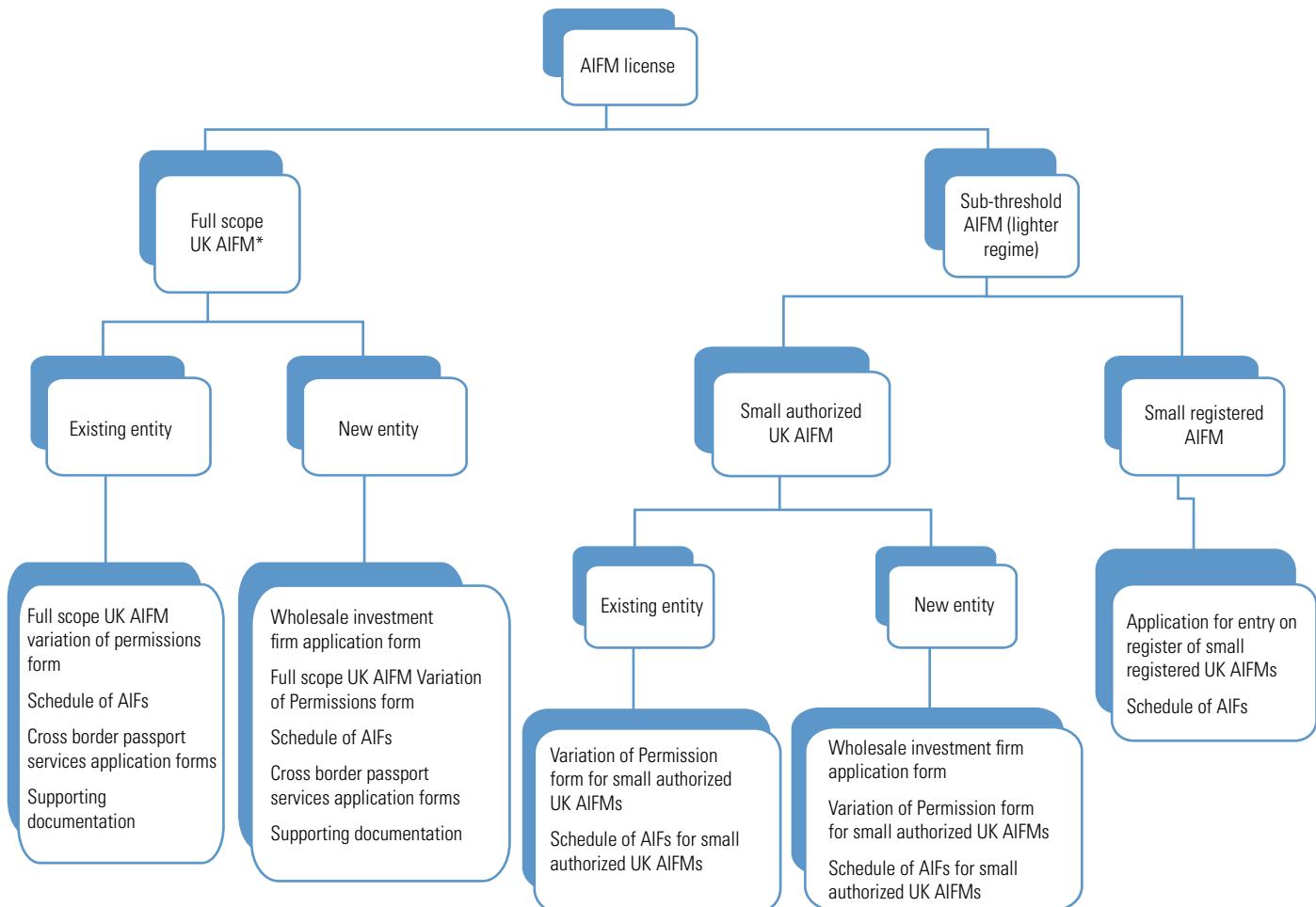
¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221911/consult_transposition_of_the_aifmd_further_consultation_130313.pdf

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198219/transposition_of_the_alternative_investment_fund_managers_directive_response_to_further_consultation_130513.pdf

form in order to undertake the new regulated activity of managing an AIF. This form includes information on the AIFs intended to manage, information as to why the change in status is required, a summary regulatory business plan and information on total AUM and the threshold and how the AIFM continues to stay below the threshold. These AIFMs, however, do not receive the marketing passport which is granted to full scope AIFMs.

The FCA handbook has guidelines on what types of fund businesses are caught by AIFMD. The guidance is detailed and covers open-ended funds to the treatment of joint ventures. The guidelines are contained in the Perimeter Guidance (PERG) of the FCA Handbook, specifically [PERG 16.2](#).¹⁶

Once a firm has established the category of AIFM it falls under, there are various forms specified on the FCA website that need to be completed. The different application packs and forms required are set out below:



* AUM exceeds certain thresholds (EUR100 million leveraged/EUR500 million unleveraged with no right of redemption for at least 5 years)

¹⁶ <http://fshandbook.info/FS/html/handbook/PERG/16/2>

The forms required are dependent on whether the applicant firm is a new legal entity or a firm that is authorized by the FCA. Firms that are authorized by the FCA under a MiFID license can submit an application to vary its permissions. In contrast, a new legal entity will be required to submit the wholesale investment firm application and the variation of permission form.

Submission and approval timelines

The FCA recommended that applications be submitted by 22 January 2014. This must be read in conjunction with the statement that HM Treasury published on 23 December 2013. HM Treasury confirmed its intention to amend the regulations such that where AIFMs' application for authorization or registration is submitted without sufficient time for the FCA to determine the application before 22 July 2014, the AIFM will be able to continue business until the FCA has made a determination.

The FCA has an internal service standard to determine applications for authorization of managers within 3 to 4 months, which is less than the 6 months set out under the FSMA statutory deadline. Straightforward applications may be dealt with faster and more complex applications may take longer.

Application review process

Once the FCA has received an application, it will confirm receipt of the application and allocate a firm reference number. Thereafter, a dedicated triage team will determine whether that application contains sufficient information to be allocated to the case officer. If the application is considered to be incomplete, the FCA will contact the applicant firm with a request for information.

Once an application is assigned to a case office, the firm can expect questions and requests for information up until the point that authorization is granted.

The FCA notes with reference to regulation 9(a) of the regulations that there will be applications that are complete but contain missing information. This will need to be submitted by the firm at least 1 month before authorization.

The following [link¹⁷](#) provides guidance and/or forms with regard to the registration and/or authorization procedures. For questions on registration and/or authorization, contact +845 606 9966.

5 Practical guidance with regard to the AIFM application

General information

- The FCA application process should not be viewed as a form filing exercise. There is a significant amount of effort required to create a coherent set of application documents to explain why authorization is sought and how the applicant firm will operate post-authorization.
- Soft and hard copies of the completed application pack must be provided to the FCA. The use of indexes and tabs assist the case officer in the review of the application.
- The cover letter can be used to put the case officer on notice of any key points up front (e.g. timing).
- The applicant firm should consider the timeline for passport approvals, fund migration mechanics and notifications required by the competent authorities in countries where the funds are domiciled.

Regulatory business plan

- The development of the regulatory business plan is key to the creation of a strong application package. Wherever possible, it should be used to answer the questions in the prescribed application forms to avoid repetition and duplicated efforts. This can be achieved through cross references to the application form questions and documents.
- The headings prescribed in the Variation of Permissions form must be covered. The headings that must be included, at a minimum, are:
 - i. the background to the business
 - ii. the proposed business and operating model of the firm
 - iii. the organizational structure of the firm, complete with organizational charts and head count figures
 - iv. details of the AIFM's long-term business and expansion strategy
 - v. the level and appropriateness of non-financial resources
 - vi. governance and culture of the firm with details of management information reported and how an appropriate culture is established and overseen by senior personnel

¹⁷ <http://www.fca.org.uk/firms/markets/international-markets/aifmd>

- vii. systems and controls, in particular, disclosure to investors and the competent authorities, liquidity management, risk management, leverage, prime brokerage, valuation and delegation. This should include a description of investment, risk management and asset valuation policies, including the use of leverage, portfolio management procedures and an explanation of the procedures for changes to investment strategy and policy. This section should consider both the first line controls of the business itself and the interaction of the second and third line controls (e.g. compliance and internal audit)
- viii. description of the risks to the AIFs and how these will be monitored and mitigated.

Schedule of AIFs

- The Schedule of AIFs is another critical document in the application package for an AIFM and significant effort is required to collate and verify the accuracy of each data field.
- All relevant tabs of the AIF schedule must be completed for the application to be deemed complete by the FCA. Further, the Excel format must be maintained and not converted to PDF or any other format.
- The name of the AIF stated in the Schedule of AIFs must match its constitutional or offering document.
- Create a document to detail explanatory notes for the completion of particular data fields to avoid unnecessary points of clarification being raised. For instance, one column in the Schedule of AIFs requires details of the Net Asset Value (NAV) per AIF. The explanatory note can be used to confirm the NAV date being used to populate this data field.

- The AUM calculation should be based on the methodology set out in Article 2 of the Level 2 regulation. Time to complete the required AUM calculation should be factored in by the applicant firm.
- The FCA has published notes to assist full-scope AIFMs to complete the Schedule of AIFs.

Financial Resources and Capital Model

- Create a document to set out assumptions applied to the model or financial projections.
- Chapter 11 of Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) must be read in conjunction with the Level 2 regulation.
- The FCA has advised applicant firms that the current definition of 'funds under management' contained in IPRU (INV) 11 and the glossary of the FCA Handbook shall be amended. The amendment will allow the AIFM to value derivative positions at market value rather than notional values for the purpose of their capital calculation only. The FCA recognizes that the use of a notional value can introduce volatility into the additional own funds requirement.

Cross-border services application form

- For the marketing passport application under AIFMD, one notification needs to be made to the FCA. The FCA will notify competent authorities in the selected member states.
- Applicant firms should consider which countries they need to passport for a cost and strategic point of view.

Remuneration

A short summary of the approved AIFMD compliant remuneration policy will need to be provided. There is no need to provide details of the applicant firm's AIFM code staff.



Appendix 1

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Austria	<p>On 5 July 2013, the Austrian Parliament adopted the AIFM law¹.</p> <p>In April 2013, the Austrian Financial Market Authority (FMA) issued a first version of guidelines (FAQ) based of the latest version of the draft bill.</p> <p>On 28 May 2013, an amended draft bill was issued and deposited at parliament.</p> <p>On 23 April 2013, the draft bill² to implement AIFMD was deposited at the Austrian Parliament. The consultation period ended on 8 May 2013.</p>	<p>The AIFM law was adopted on 5 July 2013.</p>
Belgium	<p>On 3 April 2014, the Belgian Senate voted³ the bill of law of AIFMD transposition. The bill of law will be transferred back to the chamber and then to the king.</p> <p>On 20 March 2014, the bill of law was voted⁴ at the chamber and transferred to the Senate.</p> <p>On 10 March 2014, a bill of law⁵ proposal regarding AIFMD transposition was introduced to the Belgian Parliament.</p> <p>On 2 July 2013, the Belgian Financial Services and Markets Authority (FSMA) has published a question and answer document⁶ on the transitional period.</p>	<p>AIFMD transposition is delayed.</p>
Bulgaria	<p>On 10 December 2013, the Bulgarian National Assembly adopted the act for amendment and supplement to the Collective Investment Schemes and Other Undertakings for Collective Investments Act (the 'Act'⁷). The act was published in the Bulgarian State Gazette on 20 December 2013.</p> <p>On 15 October 2013, the draft bill⁸ for amendment to the Collective Investment Schemes and Other Undertakings for Collective Investments Act was presented to the Bulgarian National Assembly.</p>	<p>The AIFM law was adopted on 10 December 2013 and published in the Official Journal on 20 December 2013.</p>
Croatia	<p>On 25 January 2013, the Croatian Parliament adopted the AIFM Law⁹ by which AIFMD was transposed into the Croatian legal system.</p> <p>On 8 February 2013, the Law on Alternative Investment Funds was published in the Official Journal No. 16/2013 and entered into force on 1 July 2013 when Croatia acceded to the EU.</p>	<p>The transposition is effective as of 1 July 2013, the date by which Croatia entered the EU.</p>

¹ http://www.parlament.gv.at/PAKT/VHG/XXIV/BNR/BNR_00814/fname_314949.pdf

² http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00516/index.shtml

³ <http://www.senate.be/www/?M1val=/publications/viewPub.html&COLL=S&LEG=5&NR=2777&VOLGNR=2&LANG=fr>

⁴ <http://www.lachambre.be/FLWB/pdf/53/3432/53K3432003.pdf>

⁵ <http://www.lachambre.be/FLWB/pdf/53/3432/53K3432001.pdf>

⁶ http://www.fsma.be/~media/Files/fsmafiles/circ/en/2013/fsma_2013_11-1.ashx

⁷ http://www.fsc.bg/public/upload/files/menu/ZDKISDPKI_2013.pdf

⁸ <http://parliament.bg/bills/42/302-01-29.pdf>

⁹ http://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_16_265.html

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Cyprus	<p>On 4 July 2013, the AIFM Law of 2013 (L. 56(I)/2013)¹⁰ was enacted by the Cyprus House of Representatives, transposing AIFMD into national law. The law came into effect following its publication in the Official Journal on 5 July 2013.</p> <p>On 15 May 2012, the Cyprus Securities and Exchange Commission (CySEC) together with the Ministry of Finance organized a presentation of the first draft. The public consultation period ended on 21 May 2012.</p> <p>On 11 April 2012, the regulatory authorities in Cyprus released a first draft of this law.</p>	<p>The AIFM law was adopted on 4 July 2013 and published in the Official Journal on 5 July 2013.</p>
Czech Republic	<p>On 19 August 2013, the Act No. 204/2013¹¹ on Investment Companies and Investment Funds became effective.</p> <p>On 3 July 2013, the senate approved the bill of new Act on Investment Companies and Investment Funds¹². The act becomes effective after the signature of the Czech president and its publication in the Collection of Laws of the Czech Republic.</p> <p>On 23 April 2013, the budget committee submitted the draft with the amendments¹³ to the Czech Parliament and recommended its approval.</p> <p>On 27 February 2013, the budget committee has suspended consultation on the draft until 28 March 2013 in order to receive amendments to the draft.</p> <p>On 6 February 2013, the Czech Parliament submitted the draft¹⁴ to its budget committee for consultation.</p> <p>On 17 January 2013, the final draft was submitted to the Czech Parliament.</p> <p>On 20 December 2012, the Czech government approved the final draft of the new act on investment companies and investment funds which implements AIFMD.</p>	<p>The AIFM law was adopted on 19 August 2013.</p>

¹⁰ [http://www.cysec.gov.cy/Downloads/LawsRegulations/N56\(I\)-2013.pdf](http://www.cysec.gov.cy/Downloads/LawsRegulations/N56(I)-2013.pdf)

¹¹ <http://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=6473>

¹² <http://www.psp.cz/sqw/text/tiskt.sqw?o=6&ct=896&ct1=0&v=PZ&pn=2&pt=1>

¹³ <http://www.psp.cz/sqw/text/tiskt.sqw?o=6&ct=896&ct1=1>

¹⁴ <http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=896&CT1=0>

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Denmark	<p>On 12 July 2013, the AIFM law was published in the Official Journal.</p> <p>On 16 May 2013, the Danish Parliament adopted the Danish law¹⁵ to implement the AIFMD.</p> <p>On 1 March 2013, the Danish draft bill¹⁶ L175 for AIFMD implementation was presented to the Parliament.</p> <p>On 12 December 2012, the Danish FSA issued a consultation for a draft act of the AIFMD law. The consultation ended on 9 January 2013.</p>	<p>The AIFM law was adopted on 16 May 2013 and was published in the Official Journal on 12 July 2013.</p>
Estonia	<p>On 22 July 2013, Estonian Parliament has adopted a legal act Finantsinspeksiooni seaduse ja investeerimisfondide seaduse muutmise ning sellega seonduvalt teiste seaduste muutmise seadus¹⁷ which renewed the contents set forth within the Estonian Investment Fund Act, Investeerimisfondide seadus¹⁸, specifying the law, including partial implementation of AIFMD. The requirements for AIF had to be implemented by 22 July 2014.</p>	<p>The AIFM law has been partially adopted.</p>
Finland	<p>On 25 March 2014, the Finnish Ministry of Finance issued its AIFMD decrees (226/2014¹⁹, 227/2014²⁰, 228/2014²¹, 229/2014²², 230/2014²³, 231/2014²⁴).</p> <p>On 7 March 2014, the Finnish AIFMD Act (162/2014)²⁵ was signed into law by President Sauli Niinistö. The AIFMD Act came into force on 15 March 2014.</p> <p>On 26 November, the Finnish FSA hosted a briefing on the upcoming reporting requirements. The Finnish AIFM legislation came into force during the first quarter of 2014.</p> <p>On 5 September 2013, the Ministry of Finance presented a proposal for a new AIFM law (HE 94/2013 vp)²⁶, including proposals for a number of amendments to existing Finnish legislation.</p> <p>On 25 June 2013, the Ministry of Finance presented a bill draft²⁷ of the AIFM Law.</p> <p>On 30 April 2013, the Ministry of Finance presented a discussion draft²⁸ of the AIFM Law. The public consultation period ended on 29 May 2013.</p> <p>On 21 December 2012, the Ministry of Finance presented a discussion draft²⁹ of the general part of the AIFM Law. The public consultation period ended on 31 January 2013.</p>	<p>The AIFM law was passed on 7 March 2014 and came into effect 15 March 2014.</p>

¹⁵ <http://93.176.78.166/Lov.aspx?Itemld=7B12D273-3FC7-4646-8D1C-645BBAD179A6>

¹⁶ http://www.ft.dk/Rlpdf/samling/20121/lovforslag/L175/20121_L175_som_fremsat.pdf

¹⁷ <https://www.riigiteataja.ee/akt/112072013002>

¹⁸ <https://www.riigiteataja.ee/akt/112072013005>

¹⁹ <http://www.edilex.fi/saadoskokoelma/20140226.pdf>

²⁰ <http://www.edilex.fi/saadoskokoelma/20140227.pdf>

²¹ <http://www.edilex.fi/saadoskokoelma/20140228.pdf>

²² <http://www.edilex.fi/saadoskokoelma/20140229.pdf>

²³ <http://www.edilex.fi/saadoskokoelma/20140230.pdf>

²⁴ <http://www.edilex.fi/saadoskokoelma/20140231.pdf>

²⁵ <http://www.finlex.fi/fi/laki/alkup/2014/20140162>

²⁶ <http://21771.145.20/TRIPviewer/show.asp?tunniste=HE+94/2013&base=erhe&palvelin=www.eduskunta.fi&f=WORD>

²⁷ http://www.hare.vn.fi/upload/Asiakirjat/18845/203915_20130626_Luonnos_hallituksen_esitykseksi_AIFMD.pdf

²⁸ <http://www.hare.vn.fi/upload/Asiakirjat/18845/2446811183660826.PDF>

²⁹ <http://www.hare.vn.fi/upload/Asiakirjat/18845/229334661970189.PDF>

Member state	Draft/consultation paper/proposal	Implementation date and additional information
France	<p>On 24 July 2013, AIFMD was transposed³⁰ into French law by the Council of Ministers (Cabinet).</p> <p>On 24 July 2013, the French regulator, Autorité des Marchés Financiers (AMF) published a consultation³¹ on the changes of Book IV of the general regulations transposing AIFMD.</p> <p>On 12 July 2013, AMF published AIF guidelines³².</p> <p>On 12 June 2013, AMF launched a public consultation³³ on Book III modifications regarding Providers. The consultation closed for comments on 7 July 2013.</p> <p>On 17 April 2013, the French treasury launched a public consultation³⁴ on the draft regulations to transpose the AIFMD into French law. The consultation closed for comment on 15 May 2013.</p> <p>On 16 April 2013, AMF published AIFM guidelines³⁵ in a Q&A format.</p> <p>On 26 July 2012, the AMF published its final report³⁶ on the transposition of the AIFM.</p> <p>On 15 June 2012, the AMF published a draft report³⁷ of the AIFMD Stakeholders Committee on the transposition of the AIFMD in France, which was out for public consultation until 6 July 2012.</p>	<p>AIFM law was adopted on 24 July 2013.</p>

³⁰ <http://www.gouvernement.fr/gouvernement/cadre-juridique-de-la-gestion-d-actifs>

³¹ <http://www.amf-france.org/Publications/Consultations-publiques/Annee-en-cours.html?docId=workspace://SpacesStore/fa301635-2a88-4bce-acf5-72af40da5544>

³² http://www.amf-france.org/documents/general/10799_1.pdf

³³ http://www.amf-france.org/documents/general/10872_1.pdf

³⁴ http://www.tresor.economie.gouv.fr/7146_textes-de-transposition-de-la-directive-aifm-consultation-publique

³⁵ http://www.amf-france.org/documents/general/10799_1.pdf

³⁶ http://www.amf-france.org/documents/general/10529_1.pdf

³⁷ http://www.amf-france.org/documents/general/10437_1.pdf

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Germany	<p>On 11 April 2014, the German federal government published a draft³⁸ law amending Kapitalanlagegesetzbuch³⁹ (KAGB). Inter alia, the draft focuses on the new distinction between open and closed-ended AIFs introduced by European Commission's draft Delegated Regulation⁴⁰.</p> <p>On 23 December 2013, the AIFM Tax Adaption Law has been published in the Official Journal <i>Bundesgesetzblatt</i>.</p> <p>On 29 November 2013, the German Federal Council (Bundesrat) agreed to the draft AIFM Tax Adaption Law⁴¹ adopted by the Federal Parliament (Bundestag) on 28 November 2013</p> <p>On 10 July 2013, the AIFM law KAGB was published in <i>Bundesgesetzblatt</i>.</p> <p>On 26 June 2013, the conciliation committee failed to resolve the dispute on the AIFM Tax Adaptation Law. The negotiations are postponed⁴² and expected to restart again in September. The BMF has issued a draft circular to extend the validity of the pre-AIFMD investment tax regime until new legislation will have come into effect.</p> <p>On 7 June 2013, the Bundesrat agreed to the draft KAGB adopted by the Bundestag on 16 May 2013. Therefore, Germany is the first country adopting AIFMD.</p> <p>On 30 January 2013, the German Federal Government published the a draft addressing the tax implications of the AIFMD.</p> <p>On 12 December 2012, the German federal government presented their final draft.</p> <p>On 20 July 2012, the Ministry of Finance presented a discussion draft of the AIFM-Law (with a consultation period until 17 August).</p>	<p>The AIFM law was adopted on 16 May 2013 and published in the Official Journal on 10 July 2013.</p> <p>The AIFM tax law became effective on 24 December 2013.</p>

³⁸ <http://dipbt.bundestag.de/dip21/brd/2014/0150-14.pdf>

³⁹ http://ec.europa.eu/internal_market/investment/docs/alternative_investments/131217_delegated-regulation_en.pdf

⁴⁰ <http://dipbt.bundestag.de/dip21/btd/18/000/1800068.pdf>

⁴¹ http://www.bundesrat.de/cln_350/SharedDocs/Auschuesse-Terme-To/va/ergebnis/17wp/2013-06-26-Ergebnis;templateId=raw;property=publicationFile.pdf/2013-06-26-Ergebnis.pdf

⁴² http://www.bundesrat.de/cln_350/SharedDocs/Drucksachen/2013/0301-400/375-13;templateId=raw;property=publicationFile.pdf/375-13.pdf

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Greece	On 21 November 2013, the AIFM law 4209-2013 ⁴³ was published in the official gazette of the government.	AIFMD was adopted in November 2013.
Hungary	Currently not available. A press release ⁴⁴ by the Hungarian National Bank refers to the ESMA opinion and it appears that the transposition of the AIFMD law is currently not one of the priorities of the Hungarian National Bank.	AIFMD transposition is delayed.
Ireland	<p>On 16 July 2013, the AIFM law (No. 257 of 2013)⁴⁵ was adopted. On 3 July 2013, the Central Bank of Ireland (CBI) published a second edition of a question and answer document⁴⁶. This second edition includes new additional questions along with amendments to questions detailed in the first version.</p> <p>On 3 July 2013 the CBI issued guidance on a number of topics to assist users of the AIF Rulebook. The various guidance replaces all the guidance previously collected in the AIF handbook⁴⁷ published in February 2013. The guidance notes are available on the CBI website⁴⁸.</p> <p>On 15 May 2013, the Central Bank of Ireland published its AIF Rulebook, a Q&A document and draft applications forms to allow AIFMs to apply for authorisation which are available on their website⁴⁹.</p> <p>On 1 February 2013, the CBI published a feedback statement and the revised AIF handbook based on the feedback to the consultation paper CP60.</p> <p>On 30 October 2012, the Irish CBI published a consultation paper CP60⁵⁰ on the implementation of the AIFMD (with a consultation period until 11 December).</p>	The AIFM law was adopted on 16 July 2013.

⁴³ http://www.hcmc.gr/photos/kefalaiagora/files/N.4209-2013_21012014.pdf

⁴⁴ http://felugyelet.mnb.hu/hirek_udjonsagok/AIFMD_kozlemeny_130909.htm

⁴⁵ <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0257.pdf>

⁴⁶ [http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/QandA%20AIFMD%203%20JULY%202013%20FINAL%20\(3\).pdf](http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/QandA%20AIFMD%203%20JULY%202013%20FINAL%20(3).pdf)

⁴⁷ <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP60%20Implementation%20of%20Alternative%20Investment%20Fund%20Managers/AIF%20Handbook%20-%20Draft%202.pdf>

⁴⁸ <http://www.centralbank.ie/regulation/industry-sectors/funds/rulebook/Pages/default.aspx>

⁴⁹ <http://www.centralbank.ie/regulation/industry-sectors/funds/Pages/AIFMD.aspx>

⁵⁰ <http://www.centralbank.ie/regulation/poldocs/consultation-papers/documents/cp60%20implementation%20of%20alternative%20investment%20fund%20managers/cp60%20alternative%20investment%20fund%20manager%20directive.pdf>

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Italy	<p>On 26 June 2014 the Bank of Italy and CONSOB published a consultation on the implementation measures at a regulatory level, as a result of the transposition of directive 2011/61/EC (AIFMD). The consultation covers changes to the following secondary legislation:</p> <ul style="list-style-type: none"> – “Joint Regulation Bank of Italy – CONSOB” for the organization and control of intermediaries providing investment services and collective investment management; – CONSOB’s “Intermediaries Regulation” and “Issuers Regulation”; – Bank of Italy’s “Regulation on Collective Investment Undertakings”. <p>Observations, comments and suggestions may be sent within 60 days from the date of publication to CONSOB or Bank of Italy.</p> <p>On 9 March 2014, the legislative decree of 4 March 2014 for the implementation of AIFMD came into force. It was published in the Official Journal Gazzetta Ufficiale⁵¹ on 25 March 2014 and entered into force on 9 April 2014. The Legislative Decree has defined the rules for the authorization, operation and transparency of AIFMs who manage and/or market alternative investment funds (AIFs) in the EU.</p> <p>On 6 August 2013, parliament issued the law n.36⁵² delegating the government to modify the financial rules according to AIFMD. The government preliminarily approved on 4 December 2013 the frame of legislative decree regarding the transposition of the AIFMD.</p> <p>On 26 July 2013, CONSOB and the Bank of Italy issued a resolution⁵³ allowing for an initial and partial implementation of AIFMD, particularly regarding the marketing of EU AIFs.</p> <p>On 8 July 2013, the AIFM draft bill ddl 587 art 1, art 9⁵⁴ was approved by the upper house (senato delle repubblica). The draft bill is currently subject to analysis by lower house of parliament. The bill will delegate the government to modify the financial rules according to AIFMD.</p> <p>On 3 July 2013, the Italian Government has opened a public consultation⁵⁵ focused on the detailed changes of the rules. The consultation ends on the 26 July 2013.</p>	<p>The AIFM transposition law was adopted on 4 March 2014. It was published in the Official Journal on 25 March 2014 and entered into force on 9 April 2014.</p>

⁵¹ http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/.originario?atto.dataPubblicazioneGazzetta=2014-03-25&atto.codiceRedazionale=14G00056&elenco30giorni=true

⁵² <http://www.gazzettaufficiale.it/eli/id/2013/08/20/13G00137/sg>

⁵³ http://www.bancaditalia.it/media/notizie/bi-consob-260713;internal&action=_setlanguage.action?LANGUAGE=en

⁵⁴ http://www.senato.it/japp/bgt/showdoc/17/DDLPRES/700289/index.html?part=ddlpres_ddlpres1-articolato_articolato1-articolo_articolo9

⁵⁵ http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_it/regolamentazione_bancaria_finanziaria/consultazioni_pubbliche/Documento_di_consultazione_xversione_cleanx.pdf

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Latvia	<p>On 9 July 2013, the parliament (Saeima) voted, during an exceptional meeting, the AIFM law (Alternatīvo ieguldījumu fondu un to pārvaldnieku likums). The law entered into force on the 7 August 2013.</p> <p>On 8 May 2013, the draft law was submitted to parliament (Saeima) for adoption. The draft law can be found in version of 2 July 2013⁵⁶ and 12 June 2013⁵⁷.</p> <p>On 24 January 2013, the law for the implementation of AIFMD was drafted.</p>	The AIFM law was adopted on 9 July 2013.
Lithuania	On 11 September 2013, the transposition of the AIFMD was discussed by parliament's budget and finance Committee. No draft or consultation paper has been published yet.	AIFMD transposition is delayed.
Luxembourg	<p>On 17 March 2014, the Commission de Surveillance du Secteur Financier (CSSF) published its sixth version of the FAQs⁵⁸.</p> <p>On 18 July 2013, the CSSF published practical guidance in relation to the registration or authorisation under the AIFM Law of AIFM established in Luxembourg⁵⁹.</p> <p>On 15 July 2013, the AIFM (12 July 2013)⁶⁰ law entered into force on the day of its publication in the Official Journal (mémorial n°119 Gestionnaires de fonds d'investissement alternatifs⁶¹).</p> <p>On 11 July 2013, the CSSF published a second version of the frequently asked questions document. The first one was published 18 June 2013⁶².</p> <p>On 10 July 2013, parliament (chambre des députés) voted positively for the law of 12 July 2013 (bill 6471) on implementing AIFMD and asked for an exemption of a second vote.</p> <p>On 18 June 2013, the CSSF published a frequently asked questions⁶³ (FAQs) document concerning the AIFMD, in order to highlight some of the key aspects of the AIFMD from a Luxembourg perspective, and a questionnaire on the AIFM authorization/registration procedure. The CSSF intends to update this document from time to time and reserves the right to alter its approach to any matter covered by the FAQs at any time.</p> <p>On 21 May 2013, parliament issued the bill of law 6471⁶⁴ including amendments by observations of the Council of State (Conseil d'Etat) and of the Parliament's Finance and Budget Commission.</p> <p>On 24 August 2012, the Ministry of Finance submitted a legislative proposal⁶⁵ to parliament for the implementation of AIFMD.</p>	The AIFM law was adopted on 10 July 2013 and entered into force by being published on 15 July 2013.

⁵⁶ <http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/D634AEF346319D16C2257B9B002D935C?OpenDocument>

⁵⁷ <http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/3F50DF9AEF30C4CCC2257B87001F268B?OpenDocument>

⁵⁸ http://www.cssf.lu/fileadmin/files/AIFM/FAQ_AIFMD.pdf

⁵⁹ http://www.cssf.lu/fileadmin/files/Publications/Communiques/Communiques_2013/PR_1332_AIFM_guidance.pdf

⁶⁰ http://www.cssf.lu/fileadmin/files/Lois_Reglements/Legislation/Lois/L_120713_GFIA.pdf

⁶¹ <http://www.legilux.public.lu/leg/a/archives/.../0119/a119.pdf>

⁶² http://www.cssf.lu/fileadmin/files/AIFM/FAQ_AIFMD.pdf

⁶³ <http://www.kpmg.com/LU/en/industry/Fundmanagement/Documents/FAQ-AIFMD-2013.pdf>

⁶⁴ <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6471>

⁶⁵ http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServingServletImpl/?path=/export/exped/sexfpdata/Mag/133/173/113722.pdf

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Malta	<p>On 27 June 2013, the Malta Financial Services Authority (MFSA) published its new Investment Services Rules⁶⁶ and began accepting applications for licenses for managers which wish to be authorized as AIFMs. All existing funds, even de-minims funds, need to submit a self assessment questionnaire by 31 March 2014, to ensure they are licensed in time.</p> <p>On 18 June 2013, the MFSA issued 5 consultation papers on Retail non-UCITS funds⁶⁷ in respect of their adherence to the AIFMD. The consultation period ended on 1 July 2013.</p> <p>On 26 March 2013, the Malta Financial Services Authority (MFSA) issued a consultation document⁶⁸ on the Alternative Investment Fund Rulebook. The consultation closed on 26 April 2013.</p> <p>On 3 December 2012, the MFSA issued a second consultation⁶⁹ on the proposed implementation of the AIFMD. The consultation closed on 11 January 2013.</p> <p>On 3 September 2012, the MFSA issued a consultation paper⁷⁰ on the transposition of the AIFMD. The consultation close on the 30 September 2012</p>	<p>The AIFM law was adopted. It was published in the Official Journal on 27 June 2013.</p>
Netherlands	<p>On 25 June 2013, the bills were published in the Bulletin of Acts, Orders and Decrees, the official bulletin of the Dutch government.</p> <p>On 11 June 2013, the Dutch implementation legislation (bill⁷¹ and amending bill)⁷² was adopted by the Senate (upper house of parliament).</p> <p>On 21 May 2013, the House of Representatives (lower house of parliament) passed the amending bill.</p> <p>On 22 March 2013, the amending bill⁷³ was submitted to parliament.</p> <p>On 2 October 2012, the House of Representatives passed the legislative proposal. Due to a breach with the implementing measures, the Ministry of Finance has announced an amending bill.</p> <p>On 19 April 2012, the Ministry of Finance submitted a legislative proposal⁷⁴ to parliament for the implementation of AIFMD.</p>	<p>The law was adopted on 25 June 2013 and was published in the Official Journal.</p>

⁶⁶ <http://mfsa.com.mt/pages/viewco3tent.aspx?id=509>

⁶⁷ <http://www.mfsa.com.mt/pages/announcement.aspx?id=5579>

⁶⁸ <http://www.mfsa.com.mt/Files/Announcements/Consultation/Documents/AIF%20Rulebook.pdf>

⁶⁹ <http://www.mfsa.com.mt/Files/Announcements/Consultation/Documents/Consultation%20Procedure%2010-2012.pdf>

⁷⁰ http://mfsa.com.mt/Files/Announcements/Consultation/Documents/Consultation%20Document%20-%20AIFMD%20Regulations%2003_09_2012.pdf

⁷¹ <http://www.afm.nl/nl/professionals/afm-voor/aifm/aifm/regelgeving.aspx>

⁷² http://www.eerstekamer.nl/behandeling/20130322/voorstel_van_wet/document3/f=/vj88olvx9bz.pdf

⁷³ http://www.eerstekamer.nl/behandeling/20130322/voorstel_van_wet/document3/f=/vj88olvx9bz.pdf

⁷⁴ <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2012/04/19/voorstel-van-wet-aifm-richtlijn/voorstel-van-wet-aifm-richtlijn.pdf>

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Poland	Currently not available.	AIFMD transposition is delayed.
Portugal	Currently not available.	AIFMD transposition is delayed.
Romania	<p>On 25 November 2013, the Ministry of Public Finance (MPF) published the draft AIFM Law⁷⁵, with an additional Exposition of motives⁷⁶. The Law transposes Directive 2011/61/EU (AIFMD) and the provisions of Article 3 of Directive 2013/14/EU. The AIFM Law will come into force three days after its publication in the Official Journal of Romania.</p> <p>On 9 October 2013, the Financial Supervisory Authority (FSA, formerly NSC) published Norm 13/2013⁷⁷ regarding the transitional procedure for the distribution by professional investors of securities issued by AIFs managed in other EU Member States and regarding the management of Romanian UCITS by AIFMs from Member States. The Norm is applicable until the transposition of the AIFMD into national legislation.</p> <p>On 28 March 2013, the National Securities Commission (NSC) published the draft regulation⁷⁸ for the transposition of the AIFMD. The consultation period closed on 12 April 2013.</p>	The AIFMD law was published 25 November 2013 and was effective 28 November 2013.
Slovakia	<p>On 19 June 2013, the Slovak Parliament (National Council of the Slovak Republic) adopted the draft amendment, which entered into force 22 July 2013.</p> <p>On 10 April 2013, the draft amendment was approved by the Slovak Government.</p> <p>On 21 December 2012, the draft amendment⁷⁹ of the Collective Investment Act transposing AIFMD was submitted by the Ministry of Finance to the legislative process.</p>	The AIFMD transposition came into effect 22 July 2013.

⁷⁵ http://discutii.mfinante.ro/static/10/Mfp/transparenta/proiectlege_administratorifonduriinvestitii11.2013.pdf

⁷⁶ http://discutii.mfinante.ro/static/10/Mfp/transparenta/expunereproiectlege_administratorifonduriinvestitii251113.pdf

⁷⁷ <http://www.cnvmr.ro/pdf/norme/Norma-13-2013.pdf>

⁷⁸ <http://www.cnvmr.ro/pdf/alteacte/Proiect-act-normativ-privind-administratorii-de-fonduri-2013.pdf>

⁷⁹ <https://lt.justice.gov.sk/Document/DocumentDetails.aspx?instEID=-1&matEID=5815&docEID=287930&docFormEID=-1&docTypeID=1&langEID=1>

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Slovenia	<p>On 21 November 2013, the Ministry of Finance announced that Slovenia had received a formal notice from the European Commission with regard to the transposition of the AIFMD into Slovenian legislation.</p> <p>The government has drafted a new act on alternative investment fund managers as well as changes and amendments to the Investment Trusts and Management Companies Act. At the end of November 2013, both drafts were forwarded to the public hearing with attention to prepare a statutory text of the two proposed laws. According to the expectations, the Slovenian National Assembly accepted both laws 2014.</p>	AIFMD transposition is delayed.
Spain	<p>On 12 June 2013, a prospectus of information on the implementation of AIFMD was published. The Comisión Nacional del Mercado de Valores (CNMV) issued a document on how AIFMs shall comply with the AIFMD and regulation 231/2013 until the transposition into national law is complete: www.cnmv.es⁸⁰.</p> <p>On 16 May 2013, the Ministry of Economy and Competitiveness presented two draft bills to implement the AIFMD. The consultation period ended on 3 June 2013.</p> <p>On 5 May 2013, two draft acts were published in Spain to implement AIFMD.</p>	AIFMD transposition is delayed.
Sweden	<p>On 2 July 2013, the Swedish FSA announced its regulations filling the regulatory gap in relations to the act and AIFMD (FFFS 2013:9 – FFFS 2013:22)⁸¹, which entered into force 22 July 2013. The main regulation will be FFFS 2013:10⁸².</p> <p>On 19 June 2013, an AIFM law was published in the Official Journal (Swedish Code of Status).</p> <p>On 18 June 2013, the Swedish Parliament adopted⁸³ the AIFM Act SFS 2013:561⁸⁴ transposing the AIFMD.</p>	The AIFM law was transposed on 18 June 2013 and published in the Official Journal on 19 June 2013.

⁸⁰ <http://www.cnmv.es/>

⁸¹ <http://www.fi.se/Tillsyn/Skrivelser/Listan/Nya-regler-for-forvaltare-av-alternativa-investeringsfonder/>

⁸² <http://www.fi.se/Regler/FIs-forfattningsar/Samtliga-forfattningsar/201310/>

⁸³ <http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Arenden/201213/FiU31/>

⁸⁴ http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfatningssamling/Lag-2013561-om-forvaltare-a_sfs-2013-561/

Member state	Draft/consultation paper/proposal	Implementation date and additional information
United Kingdom	<p>On 16 July 2013, the AIFM regulations (2013 No. 1773) were published as Statutory Instruments⁸⁵. The AIFMD transposition entered into force on 22 July 2013.</p> <p>On 2 July 2013, the Financial Conduct Authority (FCA) published draft notification forms⁸⁶ for the UK's National Private Placement Regime (NPPR) under AIFMD. The FCA is accepting submissions.</p> <p>On 28 June 2013, the FCA (previously Financial Services Authority) issued a policy statement⁸⁷ titled PS13/5 for the Implementation of the AIFMD. The policy statement provides feedback on Consultation Paper CP 12/32⁸⁸ and Consultation Paper CP 13/09⁸⁹ on the implementation of AIFMD. The policy statement also includes rules for the FCA Handbook.</p> <p>On 19 March 2013, the FCA (FSA) issued a second consultation paper⁹⁰ (CP13/9) to cover all persistent issues set out in Annex 6 of the first consultation paper (November 2012).</p> <p>On 13 March 2013, HM Treasury published a second consultation⁹¹ to transpose the AIFMD, including a draft regulation⁹² to be incorporated with the draft regulation attached to the first consultation paper. The response⁹³ was published on 13 May 2013.</p> <p>On 11 January 2013, HM Treasury published a first consultation paper on transposing the AIFMD. The consultation closed on 27 February 2013.</p> <p>On 14 November 2012, the FSA issued a first consultation paper⁹⁴ (CP12/32) on the proposed rules and guidance in respect of the implementation of the AIFMD.</p> <p>On 14 March 2012, HM Treasury published an informal discussion paper, <i>Policy Options for implementing the AIFMD</i>⁹⁵ in the UK. The deadline for comments ended on 4 May 2012.</p> <p>On 23 January 2012, the FSA published a discussion paper⁹⁶ (DP12/1) on implementing AIFMD, which closed for comments on 23 March 2012.</p>	<p>AIFMD transposition entered into force on 22 July 2013.</p>

⁸⁵ <http://www.legislation.gov.uk/uksi/2013/1773/made>

⁸⁶ <http://www.fca.org.uk/firms/markets/international-markets/aifmd/nppr>

⁸⁷ <http://www.fca.org.uk/your-fca/documents/ps13-5-implementation-of-the-aifmd>

⁸⁸ <http://www.fsa.gov.uk/library/policy/cp/2012/12-32.shtml>

⁸⁹ <http://www.fsa.gov.uk/static/pubs/cp/cp13-09.pdf>

⁹⁰ <http://www.fsa.gov.uk/static/pubs/cp/cp13-09.pdf>

⁹¹ http://www.hm-treasury.gov.uk/d/consult_transposition_of_the_aifmd_further_consultation_130313.pdf

⁹² http://www.hm-treasury.gov.uk/d/draft_alternative_investment_fund_managers_regulations_2013.pdf

⁹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198219/transposition_of_the_alternative_investment_fund_managers_directive_response_to_further_consultation_130513.pdf

⁹⁴ <http://www.fsa.gov.uk/static/pubs/cp/cp12-32.pdf>

⁹⁵ http://www.hm-treasury.gov.uk/d/condoc_policy_options_implement_aifmd.pdf

⁹⁶ <http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/discussion/dp12-01.pdf>

Member state	Draft/consultation paper/proposal	Implementation date and additional information
EEA* countries		
Gibraltar	<p>On 15 July 2013, the Government of Gibraltar announced⁹⁷ the transposition of the AIFMD into national law, financial services (AIFMD) regulations 2013⁹⁸, financial services (AIFMD) (fees) regulations 2013⁹⁹.</p> <p>On 6 June 2013, the Financial Services Commission (FSC) published a FAQ document¹⁰⁰ on the transposition of the AIFMD.</p>	The AIFM law was adopted on 15 July 2013.
Iceland	<p>On 30 September 2013, the Ministry of Finance and Economic Affairs appointed a committee which purpose is to prepare a proposal for the implementation of the AIFMD into Icelandic law. The committee consisted of representatives from the Ministry of Finance and Economic Affairs, the Financial Supervisory Authority, the Central Bank of Iceland, the Icelandic Financial Services Association and NASDAQ OMX Nordic (Iceland).</p>	AIFMD transposition is delayed.
Liechtenstein	<p>On 19 July 2013, the amendments to the AIFM law from 2 July 2013¹⁰¹ and from 24 May 2013¹⁰² were published in the Official Journal.</p> <p>On 2 July 2013, the Liechtenstein Government adopted¹⁰³ new amendments to the AIMF law.</p> <p>However, as AIFMD is not yet part of the EEA Agreement (which led to certain amendments in the law and ordinance), both AIFMG and AIFMV are pure national legislative acts with pure national impact. Specifically, no passporting in and out is possible for the time being.</p> <p>From 1 April 2013 onwards, AIFM license applications can be filed with the Liechtenstein Financial Market Authority (FMA).</p>	The AIFM law was adopted on 2 July 2013.

⁹⁷ <https://www.gibraltar.gov.gi/images/stories/PDF/pressoffice/pressreleases/2013/514-2013.pdf>

⁹⁸ <http://www.gibraltarlaws.gov.gi/articles/2013s103.pdf>

⁹⁹ <http://www.gibraltarlaws.gov.gi/articles/2013s104.pdf>

¹⁰⁰ <http://www.fsc.gi/download/AIFMD/AIFMDFAQs.pdf>

¹⁰¹ <https://www.gesetze.li/chrono/0/pdfs/2013259000>

¹⁰² <https://www.gesetze.li/chrono/0/pdfs/2013242000>

¹⁰³ http://www.regierung.li/ministerien/ministerium-fuer-praesidiales-und-finanzen/medienmitteilungen/news/?tx_ttnews%5bt_news%5d=157&cHash=faa821f4e21efe912bc74be4eac1c194

Member state	Draft/consultation paper/proposal	Implementation date and additional information
Norway	As of 1 July 2014, the Norwegian bill has passed through parliament. Further guidance from the regulator and in particular guidance on marketing into Norway is still expected.	As of 1 July 2014, the Norwegian bill has passed through parliament.

- * It allows the EFTA (European Free Trade Association) EEA states to participate in the EU's internal market without being members of the EU.
- Gibraltar is incorporated into the EU by virtue of the UK's membership.
- Iceland, Liechtenstein and Norway belong to the EEA.
- One EFTA member, Switzerland, has not joined the EEA, but has a similar agreement with the EU, though under AIFMD is treated as a third country.

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