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AIFMD – Initial  
Guidance And  
Advice For The  
Sub-Threshold  
AIFM



# AIFMD – Initial Guidance And Advice For The Sub-Threshold AIFM

## A What is the AIFMD?

The Alternative Investment Fund Managers Directive (the “AIFMD”) is a piece of European legislation borne largely out of European politicians’ response to the financial crisis of 2008 to 2009. It entered into force throughout the EEA on 21 July 2011 and was required to be implemented by member states on 22 July 2013. The aim of the AIFMD is to bring a harmonised regulatory framework across the EEA for alternative investment fund managers (AIFMs) in the EEA and to enhance investor protection. To this end, it covers a large number of areas, including:

- conduct of business
- remuneration
- delegation
- reporting and transparency
- risk
- liquidity
- depositary duties and liabilities
- valuation

By nature of its EEA application, it provides a passport for managing and distributing alternative investment funds (AIFs) to professional investors throughout the EEA.

As indicated by its name, the AIFMD hinges on the investment manager and it is this entity which is regulated, which then impacts upon the fund.

## B Who is affected by the AIFMD?

The triggers for the AIFMD to apply are the actions and location of the AIFM and, as described above, its impact falls largely on the AIFM, but also to an extent on the fund (the “AIF”).

This leads to ask who is an AIFM and what is an AIF? Looking directly at the definitions in the legislation:

1. “AIFs” are collective investment undertakings, including investment compartments thereof, which:
  - (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
  - (ii) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC (i.e. are not UCITS funds).
2. “AIFMs” are legal persons whose regular business is managing one or more AIFs; and
3. “managing AIFs” means performing at least the investment management functions of portfolio management and/or risk management of an AIF.

The AIFMD itself states that it applies to:

- (a) EU AIFMs which manage one or more AIFs irrespective of whether such AIFs are EU AIFs or non-EU AIFs;
- (b) non-EU AIFMs which manage one or more EU AIFs; and
- (c) non-EU AIFMs which market one or more AIFs in the European Union irrespective of whether such AIFs are EU AIFs or non-EU AIFs.



Thus, the definitions of each are broad. The AIFMD covers funds which are open and closed ended, in and outside the EEA, regardless of their legal structure, and the EEA managers (i.e. those who carry out portfolio management and/or risk management functions) of all those funds as well as non-EEA managers marketing funds in the EU.

To summarise, an AIF is any fund which is not covered by the UCITS IV Directive (thus including hedge funds, private equity funds, commodity funds, venture capital funds, real estate funds and investment trusts, but not including “true” managed accounts which have a single investor) and an AIFM is the entity which is appointed to be the portfolio and/or risk manager of such an AIF. Each AIF must have one AIFM, with delegation of either risk management or portfolio management (but not both) being permissible, subject to AIFMD rules.

Please note that it is possible for the internal management of an AIF not to appoint an AIFM, but in this case, the AIF will be deemed self-managed for AIFMD purposes and itself considered the AIFM. It will therefore be required to act as such in accordance with the AIFMD.

## C Key Features of the AIFMD for sub-threshold AIFMs

### 1 Calculation of thresholds and regulatory capital requirements

The impact of the AIFMD on AIFMs depends on the size of the assets under management of the AIFM, which determines whether the AIFM is a full-scope AIFM or a sub-threshold AIFM. When calculating assets for this threshold, the assets under management of every AIF managed by the AIFM must be included and derivative instruments should be converted into their equivalent position in the underlying asset. This calculation must be completed at least annually.

Full-scope AIFMs are those AIFMs whose assets under management exceed €100 million, or €500 million where the portfolios of AIFs consist of AIFs that are unleveraged and where investors cannot redeem their interest in the first five years

after investing. Full-scope AIFMs are required to comply with all aspects of the AIFMD.

AIFMs whose assets under management fall below the full-scope threshold will fall into the category of small, or sub-threshold, AIFM and will be regulated as such (although a small AIFM may elect to be regulated as a full-scope AIFM). This can be described as falling under a “register and report” regime.

## 2 What are “Small AIFMs”?

A small AIFM would be considered an AIFM which manages portfolios of AIFs whose assets under management:

- (a) including any assets acquired through use of leverage, in total do not exceed a threshold of €100 million; or
- (b) in total do not exceed a threshold of €500 million where the portfolios of AIFs consist of AIFs that are unleveraged and where investors cannot redeem their interest in the first five years after investing.

Small AIFMs are required to be registered with, or authorised by, the FCA, although they may opt in to the full requirements of the AIFMD.

An authorised sub-threshold AIFM is referred to as a “small authorised UK AIFM” and a registered sub-threshold AIFM is referred to as a “small registered UK AIFM”. Both types of AIFM are required to comply with the requirements set out in Article 3 of AIFMD (which mainly relate to reporting) and in addition, small authorised UK AIFMs will be subject to existing regulatory requirements.

## 3 Small registered UK AIFMs

Small registered UK AIFMs must fall into one of the categories set out in regulation 10 of the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773), which, in summary, allow for the registration of:

- (a) internally managed, closed-ended investment companies (such as investment trusts);



- (b) external managers of certain property funds;  
or
- (c) managers of European Social  
Entrepreneurship Funds and European  
Venture Capital Funds.

Please note that small AIFMs of property funds are subject to a registration regime rather than being classed as small authorised UK AIFMs. They will consequently be classed as small registered UK AIFMs.

Sub-threshold AIFMs which do not fall into (a), (b) or (c) above will be classed as small authorised UK AIFMs.

#### 4 Small authorised UK AIFMs

Firms which are currently authorised persons or new entities wishing to become small authorised UK AIFMs (and which have not opted into the full scope of the AIFMD) will need to be authorised by the FCA to undertake the new regulated activity of “managing an AIF” and they are required to supply at least the following:

- (i) information as to why a change in status is being sought (if applicable);
- (ii) a summary regulatory business plan;
- (iii) the details of the AIFs that the AIFM manages; and
- (iv) information as to whether the firm is able to continue to satisfy the threshold conditions as a result of the change in permission or the application in the case of a new entity.

Whilst being a small authorised AIFM is better for AIFMs from an administrative and cost perspective, small authorised AIFMs will currently not be able to benefit from a pan-EU marketing passport. This means that all promotions to investors (professional only) within the EU must be made on the basis of each member state’s National Private Placement Regime.

*For information on becoming a full-scope UK AIFM please see our guidance note “AIFMD – Initial Guidance and Advice”*

#### 5 Ongoing requirements for small UK AIFMs

In addition to identifying themselves and the AIFs they manage upon authorisation, small UK AIFMs will also need to:

- (i) provide information on the investment strategies of the AIFs they manage (including information on the main categories of assets in which the AIF may invest, the main market sectors which are the focus of their investment strategies and a description of the AIF’s borrowing policy);
- (ii) periodically report on the main instruments in which they trade, their principal exposures and the main concentrations of the AIFs that they manage; and
- (iii) establish procedures for ongoing monitoring of assets under management and ensuring notification procedures are in place to notify the FCA if assets under management move. It is worth noting that being classed as a small AIFM is not permanent and the categorisation will change should the aggregate net asset value of the AIFs managed rise above the threshold stated above on more than a temporary basis.

**This document is for general guidance only. It does not constitute advice  
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