

INFORMATION ON MARKETING
OF AIF TO RETAIL INVESTORS
IN AUSTRIA
ACCORDING TO
ARTICLE 49 AIFMG
(Art. 43 DIRECTIVE 2011/61/EU)

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INTRODUCTORY REMARKS

All documents mentioned in this information have to be submitted in German or in English to the Austrian Financial Market Authority (FMA). Documents that are in another language than demanded have to be translated by the AIFM. Resulting translation costs have to be borne by the AIFM.

The Federal Act on Alternative Investment Funds (AIFMG) is available in German and English.

I. REQUIREMENTS FOR THE MARKETING OF AIF TO RETAIL INVESTORS IN AUSTRIA

Requirements for marketing AIF to retail investors in Austria in accordance with Art. 49 para 1 subpara 1 – 3 AIFMG (Art. 43 RL 2011/61/EU):

1. the AIF is admitted for marketing to retail investors in its home Member State **AND**
2. the AIF is admitted for marketing to professional investors in Austria pursuant to Art. 31 or 47 AIFMG (Art. 32, 42 Directive 2011/61/EU) **AND**
3. the AIF is materially equivalent to AIF-types that are admitted for the marketing to retail investors in Austria pursuant to Art. 48 para 1 AIFMG (Art. 43 RL 2011/61/EU), i.e.
 - units of real estate funds pursuant to the ImmoInvFG (Immobilien-Investmentfondsgesetz - Real Estate Investment Funds Act).
 - AIF pursuant to chapter 3, Section 1 of the Investmentfondsgesetz (InvFG 2011),
 - AIF in real estate pursuant to Art. 48 para 1 subpara 3 AIFMG,
 - AIF pursuant to Art. 48 subpara 7, 8a, 8c and 8e AIFMG or
 - the AIF is an AIF that is materially equivalent to an UCITS pursuant to Directive 2009/65/EU but is managed by a non EU-AIFM.

This list is exhaustive and cannot be supplemented by ways of interpretation.

If these criteria are fulfilled, the AIFM has to notify the FMA of each AIF separately. Documents, that have already been submitted in notification cases in accordance with Art. 31, 38 and 47 AIFMG, do not have to be transmitted twice. In such a case a reference to the previously transmitted information is sufficient.

The AIFM has to submit the following documents and information to the FMA (chapter I.A – I.E.):

A. DOCUMENTS AND INFORMATION PURSUANT TO SCHEDULE 3 OF THE AIFMG (WHICH CORRESPONDS TO ANNEX III DIRECTIVE 2011/61/EU)

1. A notification letter, including a programme of operations identifying the AIF the AIFM intends to market and information on where the AIF are established;
2. the AIF rules **or** instruments of incorporation;
3. identification of the depositary of the AIF;
4. a description of, **or** any information on, the AIF available to investors;
5. information on where the master AIF is established if the AIF is a feeder AIF;
6. any additional information referred to in Article 23 para 1 Directive 2011/61/EU for each AIF the AIFM intends to market.
7. Additionally to the notification letter a proof of payment of the stipulated fees (see chapter I.E.) has to be submitted.

B. CONFIRMATION OF THE HOME MEMBER STATE

The notification letter has to include a confirmation of the competent authority of the home Member State of the AIF, that the AIF is admitted for marketing to retail investors (Art. 49 para 3 subpara 3 AIFMG).

In addition, in case of non-EU-AIFM or non-EU-AIF:

a confirmation of the competent authority of the home Member State of the non-EU AIFM or the non-EU AIF that the non-EU AIFM or/and the non-EU AIF fulfills

- all requirements pursuant to Directive 2011/61/EU (excluding chapter 6) as well as all delegated acts based on this Directive,
- **AND**, in case of Art. 49 para 1 subpara 3 letter e AIFMG, that the AIF is materially equivalent to an UCITS in accordance with Directive 2009/65/EU;

C. SEMI-ANNUAL REPORT

A semi-annual report has to be attached to the notification letter. The semi-annual report has to be drawn up within two months after each half accounting year. A semi-annual report has not to be attached to the notification letter if it was not necessary to draw up such a report under the applicable law until the notification. From the start of the marketing the AIFM has to draw up semi-annual reports.

D. FEES PURSUANT TO ART. 49 AIFMG

Under Art. 49 AIFMG a one-time registration fee as well as a regular annual fee has to be paid for all foreign AIFs registered for marketing in Austria.

Notification fee: To enable the FMA to start processing the notification pursuant to Art. 49 AIFMG the following fee has to be paid in advance:

- **EUR 2,200** for processing the submitted document pursuant to Art. 49 AIFMG (see chapter I.A. to I.B.);

- this fee increases for AIF containing several subfunds (umbrella-funds) by **EUR 440 for each additional sub-fund** starting with the second sub-fund.

Examples: amount of the notification fee for a new single AIF = EUR 2,200; for a new umbrella fund with two sub-funds = EUR 1,640; for two new sub-funds of an already notified umbrella fund in Austria = EUR 880

Attention: If further sub-funds of an already in Austria notified umbrella fund are being notified separately (at a later point in time), the payable fee amounts to only EUR 440 for each sub-fund.

Annual fee: In addition, an annual fee has to be paid to the FMA at the beginning of each calendar year for the monitoring of compliance of the obligations under AIFMG in the amount of:

- **EUR 1,200 for each AIF** registered in Austria per 1st January of the respective year;
- This fee increases for AIF containing several sub-funds (umbrella-funds) by **EUR 400 for each sub-fund** starting with the second sub-fund.

Examples: amount of the annual fee for a single AIF = EUR 1,200; for an umbrella fund with two sub-funds = EUR 1,600

The annual fee has to be paid **no later than 15th of January** of the respective year.

The fees pursuant to Art. 49 para 6 AIFMG must be paid to the Account of the Financial Market Authority (“Finanzmarktaufsichtsbehörde”) (pursuant to the Finanzmarktaufsichtsbehördengesetz – FMABG; Financial Market Authority Act, Federal Law Gazette no. I 97/2001 – sub-account for fee collection), with the Oesterreichische Nationalbank (IBAN: AT550010000000115525, BIC: NABAATWW).

The name of the AIF and/or the AIFM to which the fees refer should be indicated as **reference** in the payment order.

It is to be ensured that the whole fee is paid to the amount without deduction of bank charges or other costs. If the fee is not paid within the stipulated timeframe, then this is reason for prohibiting the distribution of units pursuant to Art. 50 AIFMG. The payment of the fees pursuant to Art. 49 para 6 AIFMG must be documented.

II. SUBMISSION OF DOCUMENTS

The submission of documents and information is possible via email to aifm@fma.gv.at. The name of the AIFM and the concerned AIF have to be stated clearly and exactly.

To facilitate and to standardize the notification procedure according to article 49 AIFMG the FMA provides Excel-sheets referring to the different types of AIFs. **Please fill in the relevant sheet correctly and submit it to the E-Mail address mentioned above.**

The size of the email is limited to 30 MB. Data may be zipped. It is also allowed to split up the documents into several emails.

III. ADMISSIBILITY/COMMENCE OF MARKETING

The FMA sends a confirmation if the marketing is admissible. The marketing is allowed by the date of receipt of the confirmation of the FMA.

IV. NOTIFICATION OF CHANGES – ART. 49 PARA 9 AIFMG

Any planned material changes in the submitted documents and information have to be notified to the FMA one month in advance the latest. Unplanned changes of the submitted documents and information have to be notified to the FMA immediately, but within 14 days the latest.

In the case of planned changes that lead to the consequence that the management of the AIF or the AIFM itself infringes the AIFMG or the Directive 2011/61/EU the FMA informs the AIFM that these changes must not be introduced.

If changes infringe the AIFMG or the Directive 2011/61/EU the FMA will use its powers in accordance with Art. 56 et seq. AIFMG (Art. 46 et seq. Directive 2011/61/EU). If necessary the further marketing activities will be prohibited.

V. SUSPENSION OF REDEMPTION OF UNITS

Only in case of exceptional situations a temporary suspension of redemption of units is admissible. The temporary suspension of redemption of units and the end of such a suspension has to be notified to the FMA immediately.

In both cases the AIFM has to inform investors by public disclosure.

VI. END OF MARKETING TO RETAIL INVESTORS

The AIFM has to inform the AIFM of the planned end of marketing AIF to retail investors.

VII. INFORMATION FOR INVESTORS

The AIFM marketing AIF in Austria has to provide Austrian investors with all information and documents, as well as **changes** of them, that it also has to submit to investors of the home Member State of the AIF.

Pursuant to Art. 49 para 4 AIFMG, a key information document pursuant to Regulation (EU) No 1286/2014 on key information documents for packaged retail investment products and insurance products (PRIIPs), OJ No L 352, 9.12.2014, p. 1, or a simplified prospectus as well as any advertising material of the AIF or the AIFM have to state clearly and with **a typographically highlighted warning notice**, that neither the AIF nor the AIFM are under the

supervision of an Austrian Authority. In addition it has to be stated in the same way, that neither a prospectus, nor KID, nor a simplified prospectus have been checked by an Austrian Authority and that no Austrian Authority can be held responsible for the accuracy or completeness of the submitted documents and information. The warning notice has to follow the rules set out in the FMA regulation on „AIF-warning notice“(AIF Warnhinweisverordnung).

Facilities available to retail investors pursuant to Art. 48a AIFMG

As of 2 August 2021, for the marketing of AIF to retail investors in Austria, a facility has to be designated in the course of the notification procedure (cf. Art. 43a Directive (EU) 2019/1160). The contact details of this facility have to be provided to the FMA in the excel-sheet. As of 2 August 2021, the prospectus equally needs to list this facility for the information of Austrian investors (cf. Art. 48a AIFMG).