

INFORMATION CONCERNING
THE MARKETING OF EU-AIF
IN AUSTRIA
(ART. 31 AIFMG/ART. 32 AIFMD)

Last Update: 01.03.2023

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SUMMARY OF VERSIONS

Date of version	Adaptations
20.12.2013	<ul style="list-style-type: none"> Chapter 1.3. (Fees according to Art. 31 Abs. 4 AIFMG)
18.02.2014	<ul style="list-style-type: none"> Chapter 1.3 (Fees according to Art. 31 Abs. 4 AIFMG)
17.03.2014	<ul style="list-style-type: none"> Renumbering (eg Chapter I.1-> Chapter I.A) Chapter Introductory Remarks Chapter I.B (AIFM-Attestation pursuant to Art. 31 para 3 AIFMG (which corresponds to Art. 32 para 3 Directive 2011/61/EU)) Chapter I.C (Fees pursuant to Art. 31 Abs. 4 AIFMG)
17.12.2021	<ul style="list-style-type: none"> Chapter 1.A (Documents and information pursuant to Schedule 4 of Art. 30 AIFMG (which corresponds to Annex IV Directive 2011/61/EU)) Amendments due to CBDF implementation

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 other language than demanded have to be translated by the AIFM. Resulting translation costs have to be borne by the AIFM.

The Alternative Investment Fund Manager Act (AIFMG) is available in German under the following link:

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008521>

I. REQUIREMENTS OF MARKETING IN AUSTRIA

A. DOCUMENTS AND INFORMATION PURSUANT TO SCHEDULE 4 OF ART. 30 AIFMG (WHICH CORRESPONDS TO ANNEX IV DIRECTIVE 2011/61/EU)

The below listed documents and information have to be submitted to the competent authority of the home Member State. The competent authority of the home Member State has to submit these documents and information to the Austrian Financial Market Authority:

- (a) A notification letter, including a programme of operations identifying the AIFs the AIFM intends to market, and information on where the AIFs are established;
- (b) the AIF rules or instruments of incorporation;
- (c) identification of the depositary of the AIF;
- (d) a description of, or any information on, the AIF available to investors;
- (e) information on where the master AIF is established if the AIF is a feeder AIF;
- (f) any additional information referred to in Art. 21 AIFMG (corresponds to Art. 23 para 1 Directive 2011/61/EU) for each AIF the AIFM intends to market;
- (g) the indication of the Member State in which it intends to market the units or shares of the AIF to professional investors;
- (h) information about arrangements made for the marketing of AIFs and, where relevant, information on the arrangements established to prevent units or shares of the AIF from

being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF;

- (i) the details necessary, including the address, for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authorities of the host Member State.

Additionally to the notification letter a proof of payment of the stipulated fees (see chapter I.C) has to be submitted.

The intention to market to retail investors requires an additional notification in accordance with Art. 49 AIFMG (Art. 43 RL 2011/61/EU).

B. AIFM-ATTESTATION PURSUANT TO ART. 31 PARA 3 AIFMG (WHICH CORRESPONDS TO ART. 32 PARA 3 DIRECTIVE 2011/61/EU)

The competent authority of the home Member State has to submit a statement that the AIFM concerned is authorised to manage AIFs with a particular investment strategy according to Art. 31 para 3 (corresponds to Art. 32 para 3 of Directive 2011/61/EU).

All documents mentioned in chapter I and II have to be submitted in German or in English.

C. FEES PURSUANT TO ART. 31 PARA 4 AIFMG

Under Art. 31 para 4 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 Austrian Financial Market Authority to start processing the notification pursuant to Art. 31 AIFMG the following fee has to be paid in advance:

- **EUR 1,100** for processing the submitted documents (see chapter I.A and I.B)
- this fee increases for EU-AIF containing several sub-funds (umbrella funds) by **EUR 220 for each additional sub-fund** starting with the second sub-fund.

Examples: amount of the notification fee for an new single AIF = EUR 1,100; for a new umbrella fund with two sub-funds = EUR 1,320; for two new sub-funds of an already notified umbrella fund in Austria = EUR 440

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 Part 6 of the AIFMG in the amount of

- **EUR 600** for **each AIF** registered in Austria per 1st of January of the respective year
- this fee increases for EU-AIF containing several sub-funds (umbrella-funds) by **EUR 200 for each additional sub-fund** starting with the second sub-fund.

Examples: amount of the annual fee for a single AIF = EUR 600; for an umbrella fund with two sub-funds = EUR 800

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

The fees pursuant to Art. 31 para 4 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), Account Number 1-1552-5, with the Oesterreichische Nationalbank, Otto-Wagner-Platz 3, 1090 Vienna, Austria, Bank Code 00100, IBAN: AT550010000000115525, BIC: NABAATWW.

The name of the fund, investment company and/or the management company 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 account 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. 31 para 4 AIFMG must be documented.

D. SUBMISSION OF DOCUMENT

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 declared clearly and exactly.

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

The FMA accepts all documents via direct link, electronically or physically.

The email should list all changes and only contain direct links.

The following document formats should only be used: pdf, doc and docx

II. PRESENTATION OF A POWER OF ATTORNEY IN CASE OF NOTIFICATION BEING SUBMITTED BY THIRD PARTIES

If a notice is submitted by third parties, a power of attorney has to be presented to the FMA. If a person authorised to represent parties intervenes professionally, a service authorisation is sufficient documentation.

III. DE-NOTIFICATION

The marketing of EU AIFs in Austria notified pursuant to Art. 31 AIFMG may be revoked provided that the conditions listed below are met (*see Art. 32a of Directive (EU) 2019/1160 amending Directive 2011/61/EU*).

The AIFM shall send a notification letter containing the information listed below to the competent authorities of its home Member State. The competent authorities shall forward the notification letter to the FMA and ESMA no later than 15 working days after it is complete and shall inform the AIFM of the forwarding without delay.

- A blanket offer to repurchase or redeem all AIF units or shares held by investors in Austria is made, which is publicly available for a period of at least 30 working days and is addressed individually - directly or through financial intermediaries - to all investors in Austria whose identity is known;
- the announcement of the intention to terminate the arrangements for the marketing of units or shares of some or all of its AIF in Austria is made by means of a publicly available medium, including electronic means, which is customary for the marketing of AIF and suitable for a typical AIF investor;
- any contractual arrangements with financial intermediaries or agents shall be amended or terminated with effect from the date of de-notification in order to prevent any new or further direct or indirect offering or placement of AIFs.

As of this date, the AIFM shall refrain from any new or further direct or indirect offering or placement of units or shares of the AIF it manages in Austria.

For a period of 36 months from that date, the AIFM shall not engage in any pre-marketing in Austria in relation to units or shares of the EU AIF referred to in the notification letter or in relation to comparable investment strategies or investment concepts.



The AIFM shall provide the investors who maintain their investments in the EU AIF with the information required under Art. 20 and 21 AIFMG.