

INFORMATION FOR
NON-EU AIFMs
ABOUT THE
MARKETING OF AIFs
IN AUSTRIA
PURSUANT TO
ARTICLE 47 AIFMG

This Version: 15th February 2023

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Overview of Versions

Date of Version	Adaptations
01 October 2020	<ul style="list-style-type: none"> Initial version
03 November 2020	<ul style="list-style-type: none"> Clarifications regarding the notification by AIFMs authorised in the United Kingdom from 01 January 2021 onwards Editorial amendments
15 February 2023	<ul style="list-style-type: none"> Clarifications regarding the notification by AIFMs authorised in the United Kingdom deleted Editorial amendments

I. Introductory Remarks

This guidance note applies to non-EU AIFMs that wish to market units or shares in the AIFs that they manage in Austria without a passport. Marketing in Austria as defined in the Alternative Investor Fund Managers Act (AIFMG; Alternative Investmentfonds Manager-Gesetz) means the direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in Austria. With regard to non-EU AIFMs such marketing of AIFs in Austria may only occur on the basis of Article 47 AIFMG.

The FMA is using this guidance note to simplify marketing notifications and to inform non-EU AIFMs about the requirements they are subject to, both in terms of the notification procedure as well as the legal conditions for marketing.

Regarding such AIFMs that currently already market AIFs in Austria, it is worth considering that they are expected to lose their status as EU-AIFMs with effect from 01.01.2021, and will hence be classified as non-EU AIFMs. Where they intend to continue marketing the AIFs that they manage in Austria, a notification procedure pursuant to Article 47 AIFMG will therefore have to be instigated in a timely manner.

A courtesy translation of the AIFMG can be downloaded from the FMA website at:
<https://www.fma.gv.at/download.php?d=2084>

II. Notification for marketing an AIF in Austria pursuant to Article 47 AIFMG

Austria has made use of the option stipulated in Article 42 of Directive 2011/61/EU in Article 47 AIFMG and has created a basis for the marketing of AIFs in Austria without a passport. Article 47 AIFMG defines the requirements for the notification and marketing of AIFs that are managed by non-EU AIFMs. In any case, before commencing such marketing, non-EU AIFMs shall instigate a notification procedure pursuant to Article 47 AIFMG. Only once this procedure has been concluded in a positive manner can marketing in Austria commence.

The notification relates to the AIF. In the case that a non-EU AIFM wishes to market more than one AIF in Austria, a separate notification letter shall be required for every AIF. If a non-EU AIFM notifies several AIFs for marketing, reference may be made to documents already submitted in other notification procedures. Accordingly, the multiple submission of such documents is not required.

A notification pursuant to Article 47 AIFMG does not authorise AIFs to be marketed to retail investors or qualified retail investors as defined in the AIFMG. Where marketing to non-professional investors is intended, this must also be notified by means of a notification in accordance with Article 49 AIFMG. The FMA has published a separate [guidance note](#) about this case.

For the notification pursuant to Article 47 AIFMG, a notification letter is to be submitted to the FMA containing the documentation and information pursuant to Annex 3 to the AIFMG, as well as submitting additional supplementary information and confirmations. Notification letters should be sent to the e-mail address aifm@fma.gv.at. The name of the non-EU AIFM and the AIF in question must be stated precisely. The FMA accepts documentation by way of a direct link, electronically or physically. In the case that links are sent, then the link must lead directly to the requested document.

The size of electronic submissions shall not exceed 30 MB. Attachments should be compressed into a Zip file as required, or the content may also be split into several e-mails.

Pdf, doc and docx file formats are permitted.

A. List of all necessary documents for the marketing notification pursuant to Article 47 AIFMG

The notification letter must contain both general information as well as specific information about the non-EU AIFM and the AIF.

a. General information

- A notification letter, including a programme of operations, information about the AIFs the AIFM intends to market and information about where the non-EU-AIFM is registered;

- The name of the legal representative of the non-EU AIFM including information about its registered office;
- A confirmation of the legal representative of the non-EU AIFM that they are in a position to fulfil their duties, to represent the non-EU AIFM both in court and outside of courts as well as to act as a point of contact for the investors of the AIFs in question and is at least adequately staffed to be able to exercise the compliance function under the AIFMG and Directive 2011/61/EU;
- A confirmation by the competent authorities in the home country of the non-EU AIFM as well as the AIF that the AIF as well as the non-EU AIFM fulfil all requirements under the AIFMG (with the exception of Part 6), Directive 2011/61/EU and delegated legal acts enacted on the basis of the Directive;
- 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.
- A declaration by the non-EU AIFM that it obliges itself to observe the requirements set forth in the AIFMG, in Directive 2011/61/EU and delegated legal acts enacted on the basis of the Directive, for the entire duration of the marketing of the AIF in Austria;
- Proof of payment of the fee pursuant to Article 47 para. 6 AIFMG¹ (see Chapter II).

b. Specific information about the non-EU AIFM

- A programme of activity setting out the organisational structure of the non-EU AIFM including information on how the non-EU AIFM complies with its obligations on the basis of the AIFMG (with the exception of Part 6), Directive 2011/61/EU and delegated legal acts enacted on the basis of the Directive;
- information on the persons effectively conducting the business of the non-EU AIFM, as well as information about any potential controlling influence that such persons have in another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance company in other Member States;
- information on the identities of the non-EU AIFM's shareholders or members, that have a qualifying holding in the non-EU AIFM whether the qualifying holding is direct or indirect, whether they are natural or legal persons, as well as about the amounts of those holdings;

¹ Or following receipt of the payment statement pursuant to Article 9 of the CBDF-Regulation.

- Information about potential holdings in other AIFMs, UCITS management companies, investment firms, credit institutions or in insurance companies in other Member States by persons holding a qualifying holding;
- Details about the remuneration policy and practices as defined in Article 13 of Directive 2011/61/EU;
- a description of how the non-EU AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, the legal or economic links of such investors with the AIF or the non-EU AIFM;
- Information about arrangements for the delegation and sub-delegation of functions as defined in Article 20 of Directive 2011/61/EU to third parties that were agreed upon, especially with regard to delegated management functions pursuant to Annex I of Directive 2011/61/EU, including the designation of the delegate;
- Information about all depositary functions delegated by the depositary including the designation of the delegate;
- Information about all conflicts of interest which could arise from the delegation of duties;
- Information about how the non-EU AIFM addresses professionally liability risks arising from its business activities such as additional own funds or by a professional indemnity insurance.

c. Specific information about the AIF

- The AIF rules or instruments of incorporation;
- Information on where the master AIF is established if the AIF is a feeder AIF;
- A description of the AIF, or any information on the AIF available to investors. This description must contain the following information:
 - A description of the investment strategies and objectives of the AIF, including the types of underlying funds, in the case of the AIF being a fund of funds;
 - The type of assets the AIF is allowed to invest in as well as any investment restrictions;
 - the techniques that the AIF may employ and all associated risks;
 - the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF;

- Information about the procedures by which the AIF may change its investment strategy or investment policy, or both;
- a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- Information about the risk profiles and other characteristics of the AIF;
- a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Article 19 of Directive 2011/61/EU;
- a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgements in the territory where the AIF is established;
- Information about how investors are informed at least annually about the following:
 - the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
 - any new arrangements for managing the liquidity of the AIF;
 - the current risk profile of the AIF and the risk management systems employed by the non-EU AIFM to manage those risks;
 - Where leveraged financing is used, any changes to the maximum level of leverage which the non-EU AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
 - the total amount of leverage employed by the AIF;
- the identity of the depositary of the AIF;
- the identity of the statutory auditor and other service providers that the AIF uses;
- the identity of the prime broker and a description of any material arrangements between the AIF and its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;
- the AIF's latest annual report;
- the latest net asset value of the AIF or the latest market price of the unit or share of the AIF as at the time of submission of the notification;

- the historical performance of the AIF;
- Information about the marketing strategy in Austria;
- the procedure and conditions for the issue and sale of units or shares;

B. Language requirements for the documents

All documents mentioned in this guidance note required to be submitted during the notification procedure may be submitted in either German or English. Documents in other languages are not accepted by the FMA.

C. Information about the legal representative

The submitted notification letter must in particular contain the name of the legal representative of the non-EU AIFM including information about where they are established. The legal representative of a non-EU AIFM shall be required to have its registered office in Austria. The legal representative shall represent the non-EU AIFM both in court and out-of-court, and is the authorised recipient and point of contact for the non-EU AIFM in Austria.

A notification letter may not be processed where such a legal representative is not named.

D. Information about fees pursuant to Article 47 para. 6 AIFMG

Pursuant to Article 47 para. 6 AIFMG both a one-off notification fee as well as a recurring annual fee is to be paid for every AIF for which marketing in Austria is authorised pursuant to Article 47 AIFMG.

Notification fees: The following fees are to be remitted in advance to the FMA for the processing of the notification:

- EUR 4,500 for every AIF notified for processing the submitted documents (see the documents listed in Chapter II.A.);
- This fee increases by EUR 1,000 per AIF from the second compartment for AIFs that consist of several compartments (umbrella funds).

Examples of Notification Fees:

- Notification fee for a new AIF = EUR 4,500
- Notification fee for a new umbrella fund with two compartments = EUR 5,500
- Notification fee for two new compartments of an umbrella fund already registered in Austria = EUR 2,000.

Annual fees: In addition, for the monitoring of observance of the existing obligations listed under Article 47 paras. 3 and 4 AIFMG the following fee is to be remitted to the FMA at the start of every calendar year of every authorised AIF as of the reporting date of 1 January of this year:

- EUR 2.500 for every AIF authorised as of the reporting date of 1 January of this year;
- This fee increases by EUR 600 per compartment from the second compartment for AIFs consisting of several compartments (umbrella funds).

The annual fee must be paid **by 15th January** of this year.

Examples of Annual Fees:

- Annual fee for an individual fund = EUR 2,500
- Annual fee for an umbrella fund with two compartments = EUR 3,100.

Fees transfers should be made to the **Financial Market Authority's account** (pursuant to the Financial Market Authority Act (FMABG) published in Federal Law Gazette I No. 97/2001 the sub-account for received fees), account no. 1-1552-5, held at the Oesterreichische Nationalbank, Otto-Wagner-Platz 3, A-1090 Vienna, sort code (BLZ) 00100, IBAN: AT550010000000115525, BIC: NABAATWW.

The name of the AIF and/or the name and/or the reference number of the non-EU AIFM to which the notification fee or annual fee relates should be stated in the **purpose of the payment (Verwendungszweck)**.

When making the transfer, care should be taken to ensure that the full amount of the fees are credited to the account, and that the amount received is not reduced by the amount of any bank charges and other costs. In the case of the fee not being paid promptly, the notification package will be rejected. In the case of there being a renewed wish to market AIFs, then a new notification package pursuant to Article 47 AIFMG must be submitted.

III. Updating of documentation and notification of changes

A. Material changes and updating of documentation/notification

Where material changes are made to the documentation submitted as part of the notification letter, for scheduled changes that the non-EU AIFM plans to make, it should submit them in

writing to the FMA at least one month prior to carrying out the change, or in the case of unscheduled changes without delay following the unscheduled change coming into effect. The FMA may prohibit such a change, where the change would lead to the management of the AIF by the non-EU AIFM, or the non-EU AIFM in general now breaches the provisions of the AIFMG, Directive 2011/61/EU or delegated legal acts issued based this Directive.

The language requirements stipulated in chapter II.B. also apply for changes.

B. Notes regarding submission by e-mail

Notifications regarding changes should be sent to the e-mail address aifm@fma.gv.at. The name of the non-EU AIFM and the AIF in question must be stated precisely.

The FMA accepts documentation by way of a direct link, electronically or physically. The documentation must contain a reference to the points that have been amended. In the case that links have been sent, then the changes must be listed and the link must lead directly to the respective document.

The size of electronic submissions shall not exceed 30 MB. Attachments should be compressed into a Zip file as required, or the content may also be split into several e-mails.

Pdf, doc and docx file formats are permitted.

IV. Discontinuation of marketing pursuant to Article 47 para. 8 AIFMG

The non-EU AIFM must notify the FMA without delay about its intention to discontinue the marketing of shares or units of the AIF in Austria. Regarding the AIFs' investors, the information requirements defined in the rules or instruments of incorporation shall apply.

This also applies in the case of the marketing of a compartment being discontinued.