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# CMS Guide to Passporting – Rules on Marketing Alternative Investment Funds in Europe

November 2019



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The purpose of this guide is to provide a broad overview of the key elements of passporting regulations applicable to EEA AIFs in the countries covered in this guide. The guide makes no claims as to completeness and does not constitute legal advice. In the case of AIFMs based in Non-EEA (third country) jurisdictions wishing to market their funds in the EEA, you are referred to our '**CMS Guide to Private Placement of Funds**'.

Entities marketing a passported EEA AIF may additionally need to comply with licence requirements and these requirements are not covered in the guide. The information contained herein is no substitute for specific legal advice. If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact or persons mentioned in this guide.

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# Introduction

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The EU Commission promoted passporting rights as one of the key benefits for hedge, private equity, real estate and other alternative investment fund managers authorised under the Alternative Investment Fund Managers Directive (“AIFMD”).

However, we are now experiencing impediments to the passporting rights as certain domestic regulators are imposing ‘border controls’, and fund managers need to pay fees and comply with various other requirements in order to market their funds cross-border.

The diversity of the domestic rules makes it challenging for AIFMD authorised managers to assess the costs and various other requirements for penetrating the EU market. This guide provides a road map, which will hopefully assist managers in understanding the costs and other requirements under AIFMD, other EU directives and domestic regulations.

We are grateful to the numerous contributors to this guide. If you would like more information about passporting within the AIFMD framework, you are welcome to get in touch with us or – with regard to particular jurisdictions – the relevant contributor firms (contacts detailed on pages 41 - 44).

Amanda Howard, André Lebrecht and Daniel Voigt.

Information provided as of November 2019.

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The information contained in this Guide is for general purposes only and does not purport to constitute legal or professional advice from CMS or any other firm and as a consequence may not be relied upon.

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### 1. EEA AIFMs

AIFMs authorised in their EEA home State may exercise the right to passport their national licence allowing them to manage and market units or shares of AIFs to professional investors in Austria or other EEA States on a freedom of services and / or branch basis. The activities of the AIFM may begin as soon as the AIFM receives confirmation from the competent authority of its home State that the documents and information pursuant to Annex 4 of the Austrian Alternative Investment Fund Managers Act ("**AIFMA**") as well as the certificate of permission pursuant to Section 31 AIFMA have been submitted to the Austrian Financial Market Authority ("**FMA**").

AIFMs are required to submit the aforementioned documents and information to the competent authority of their home State, who will forward them on to the FMA on their behalf.

If an EEA licensed AIFM intends to provide marketing activities for an AIF to retail investors in Austria, the AIFM must also submit a notification containing the information required under Section 49 AIFMA to the FMA. According to Section 49 AIFMA, an AIFM must be authorised to market AIFs to retail investors in its home State, and needs to meet the conditions for marketing AIFs to professional investors in Austria. The type of AIF must also be an approved type of fund in order for it to be offered to retail investors. The AIFMA sets out restrictions on the type of funds which can be offered to retail investors.

### 2. Third country AIFMs

A Non-EU AIFM may notify EEA AIFs managed by it for distribution to Professional Investors in Austria. The Non-EU AIFM must appoint a legal representative in Austria, who will represent the AIFM in and out of court, and acts as authorised recipient and contact person of the Non-EU AIFM in Austria. Any correspondence between the FMA and fund investors, on one side, and the AIFM on the other side, shall be made via the legal representative. The legal representative, together with the Non-EU AIFM, will be responsible for the compliance regarding management and marketing activities. The Non-EU AIFM must file a distribution notification with FMA in writing if it intends to market AIFs in Austria. Such notification must contain comprehensive information about the AIFM and the relevant AIFs.

### 3. Fees

The FMA will charge a fee of EUR 1,100 for processing the documents submitted in accordance with Annex 4 of AIFMA and the certificate of permission (as discussed in paragraph 1 above). In the case of umbrella funds, the fee will increase by EUR 220 per sub-fund, which is calculated from the second sub-fund. In addition, the FMA will charge an annual fee of EUR 600 for monitoring compliance with the obligations arising from the AIFMA. This fee will increase by EUR 200 per sub-fund which, again, is calculated from the second sub-fund.



# Belgium

## 1. EEA AIFMs

AIFMs authorised in their EEA home State may exercise passport rights for management and marketing in Belgium in relation to most types of AIF, on a services and / or branch basis. In order to do so, the Belgian law on AIFs sets out several conditions to be fulfilled.

Regardless of whether an existing passport to do management business under another single market directive (such as UCITS) is held, EEA AIFMs are required to make a separate notification to their home State competent authority if intending to manage or market an EEA AIF on a passported basis. The home State competent authority will send the management passport notification to the Belgian Financial Services and Markets Authority ("**BFSMA**") on behalf of the EEA AIFM.

Please note that in the case of a public offer of the AIF's units in Belgium, registration of the AIF with the BFSMA and approval of a prospectus will be required.

## 2. Third country AIFMs

AIFMs based in non-EEA (third country) jurisdictions wishing to market EEA and / or Non-EEA AIFs in the UK will be required to comply

with the National Private Placement Regime, as well as the financial promotion rules.

## 3. Fees

To date, no application fee for outward or inward AIFMD passport notifications has been announced by the BFSMA. However, each and all financial institutions subject to prudential supervision in Belgium (including AIFs and AIFMs) have to pay a variable fee and / or a fixed fee to the BFSMA annually. In this respect, AIFMs have to pay a variable fee<sup>1</sup> and AIFs have to pay an annual fee between EUR 375 and EUR 3,000<sup>2</sup>.

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<sup>1</sup> Each year, a global contribution budget for the operating expenses of the BFSMA is fixed (about EUR 77,19m in 2018) and each different category of financial institutions has to participate in a fixed proportion to this budget. The category encompassing the AIFMs has to contribute with a 2.49% proportion of the global contribution budget. The 2.49% contribution is itself divided between the financial institutions of that category on the basis of criteria such as their regulatory capital, revenues, and balance sheet.

<sup>2</sup> Calculated in proportion to the amount of assets under management in the previous year.



# Bulgaria

## 1. EEA AIFMs

An AIFM, authorised by the competent authority of its home State may manage and market AIFs in Bulgaria directly and / or through a branch provided that a notification is sent by the competent authority of its home State to the Bulgarian Financial Supervision Commission (“**FSC**”), accompanied by the documents specified in the Collective Investment Schemes and Other Undertakings for Collective Investments Act (“**CISOU CIA**”), and a confirmation that the AIFM is licensed by the competent authority of its home State.

Regardless of whether an existing passport to conduct management business under another single market directive (such as UCITS) is held, EEA AIFMs are required to make a separate notification to their home State competent authority if they intend to manage or market AIFs on a passported basis.

AIFMs marketing AIFs in Bulgaria are allowed to do so only to professional investors. Marketing to non-professional investors within Bulgaria is permitted only with respect to national investment funds (a new fund structure introduced by the CISOU CIA following the implementation of the AIFMD), which involves the preparation and approval of a prospectus.

## 2. Third country AIFMs

AIFMs established in Non-EEA jurisdictions may market in Bulgaria AIFs not offered in other EEA jurisdictions provided that certain requirements are met. Such requirements include, amongst others, that (i) the AIFM complies with the requirements of the CISOU CIA; (ii) cooperation arrangements are in place between Bulgaria and the AIF’s and / or AIFM’s country of origin; and (iii) the marketing by the Non-EEA AIFM has been approved by the FSC.

## 3. Fees

The FSC tariff provides for (i) a one-off license fee of EUR 4,000, and (ii) an annual administration fee of EUR 2,000 for the AIFM and EUR 1,000 for each managed fund.





# Channel Islands (Jersey and Guernsey)

## 1. EEA AIFMDs

### Jersey

Jersey is not within the EEA and is known as a 'third country' for the purposes of AIFMD.

As the first 'third country' to announce a strategy of implementing an AIFMD 'opt-in' regime, Jersey now has the regulatory framework to offer a fully AIFMD compliant solution for fund managers. Furthermore, Jersey is expected to be in the first wave of appointed Non-EEA countries to benefit from the passporting regime. Once that regime has been implemented, Jersey will be in a position to provide full optionality for fund managers to elect to use EU / EEA member states' private placement regimes or EU / EEA passporting according to the needs and strategies of the funds for which they act.

### Guernsey

Guernsey is not within the EEA and is known as a 'third country' for the purposes of AIFMD.

In response to AIFMD and to cater for its global client base, Guernsey has adopted a dual regime where there are two parallel regulatory regimes for investment funds: the existing regime remains in place for managers and investors not requiring an AIFMD fund, including those using EU national private placement regimes and those marketing to Non-EU investors; and an opt-in regime which is fully compliant with AIFMD. With regard to marketing in countries of the EU and wider EEA, Guernsey will transition to full passporting as and when that regime is implemented at a European level for third countries.

## 2. Marketing into Jersey and Guernsey as a non-EEA jurisdiction

### Jersey

Please refer to the 'CMS Guide to Private Placement of Funds' for detail on the Jersey legal and regulatory considerations regarding the selling of securities into Jersey. In brief, a consent will need to be obtained

under the Control of Borrowing (Jersey) Order 1958 ("**COBO**") unless an exemption to COBO is available (for example, there is an exemption for limited companies and unit trusts (i) which do not have a "relevant connection" with Jersey and (ii) where the offer to invest is not an offer to the public or the offer is valid in the United Kingdom or Guernsey). Additionally, any person conducting marketing or promotional activities in Jersey will need to hold a licence as a fund distributor under the Financial Services (Jersey) Law 1998 or benefit from an exemption to that law (such as the 'overseas persons' exemption where the fund falls into certain regulatory classifications).

### Guernsey

As Guernsey does not form part of the EEA, AIFMD does not apply to the selling of securities in funds, wherever based, into Guernsey.

Please refer to the 'CMS Guide to Private Placement of Funds' for detail on the Guernsey legal and regulatory considerations regarding the selling of securities into Guernsey. In brief, under Guernsey law the "promotion" of fund interests is a restricted activity which requires a licence from the Guernsey Financial Services Commission ("**GFSC**"), pursuant to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended) ("**POI Law**"). However, there are certain exemptions, including: (i) if the promotion is being aimed at those holding a licence under Guernsey's regulatory laws (including the POI Law), (ii) certain exempt non Guernsey schemes can be freely promoted and (iii) the "passive" rather than "active" promotion by an "Overseas Person" of fund interests in or from within the Bailiwick of Guernsey.

## 3. Fees

### Jersey and Guernsey

The statutory fees will depend upon the individual circumstances involved, including the regime selected.



# Croatia

## 1. EEA AIFMs

AIFMs authorised in their EEA home State may exercise passport rights for management and marketing in Croatia in relation to those types of AIF for which they have been granted authorisation in their EEA home State. These rights may be exercised directly (i.e. on a services basis) and / or on a branch basis.

EEA AIFMs are required to make a separate notification to their home State competent authority if intending to manage or market an EEA AIF on a passported basis. The home State competent authority will send the passport notification to the Croatian Financial Services Supervisory Agency (*Hrvatska agencija za nadzor financijskih usluga*) ("**HANFA**") on behalf of the EEA AIFM. The EEA AIFM will be allowed to market AIFs in Croatia to professional investors<sup>3</sup> upon notification by the home State competent authority that the relevant passport notification<sup>4</sup> has been sent to HANFA.

In order to market AIFs to retail investors, HANFA's authorisation is required. Documents which need to be translated into Croatian and conditions which need to be fulfilled in that regard are prescribed by the ordinance on units in AIFs (*Official Gazette No. 26 /2019*).<sup>5</sup>

## 2. Third country AIFMs

Generally, Non-EEA AIFMs are allowed to perform their activity in Croatia on a branch basis

or directly on a services basis if they have been granted authorisation by the competent authority of the Member State of reference (determined under Articles 127 to 136 of the Croatian Act on AIFs). Non-EEA AIFMs also need HANFA's authorisation to market AIFs to retail investors. For specific rules applicable to retail investors, please see the ordinance on units in AIFs (*Official Gazette no. 26 /2019*).

## 3. Fees

HANFA charges fees in relation to the inward and outward AIFMD passport notifications up to the maximum amount of HRK 60,000 (approximately EUR 8,100) depending on AIFMs/AIFs in question.<sup>6</sup>

In addition, AIFMs and EEA AIFMs performing their activities in Croatia in relation to AIFs established in Croatia are obliged to pay a fee to HANFA amounting to 0.3 (% per thousand) of the total assets of such AIF.<sup>7</sup> The fee is payable per each AIF established in Croatia.

In addition, HANFA charges fees for supervision on a monthly basis, in the overall annual amount varying from HRK 14,000 to 30,000 (approximately EUR 1,800 – 4,000) per AIF. In the case of an umbrella AIF, HANFA charges an additional marketing supervision fee per AIF under the umbrella.

<sup>3</sup> Professional investors are: (i) investors defined as such under Croatian Capital Market Act (clients who possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that these incur, including for example investment companies, credit institutions, insurance companies, collective investment schemes, pension funds, etc.) and (ii) persons treated as such at their own request under prescribed conditions.

<sup>4</sup> The notification needs to include a programme of operations, stating in particular the services which it intends to perform and identifying the AIFs it intends to manage. In addition, in the case of a branch passport right, the notification needs to include data on organisational structure, address of the branch and data on persons responsible for the management of the branch.

<sup>5</sup> Croatian text available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2019\\_03\\_26\\_541.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2019_03_26_541.html)

<sup>6</sup> Full guidance (in Croatian) on fee charges for AIFMD passporting can be found at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2019\\_03\\_26\\_538.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2019_03_26_538.html)

<sup>7</sup> Full guidance (in Croatian) on fee charges can be found [https://narodne-novine.nn.hr/clanci/sluzbeni/2018\\_12\\_112\\_2187.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2018_12_112_2187.html)





# Cyprus

## 1. EEA AIFMs

AIFMs authorised in their EEA home State may exercise passport rights for the management and marketing of most types of AIFs in Cyprus on a services and / or branch basis. In order to do so, EEA AIFMs are required to satisfy certain notification and marketing organisation requirements.

Regardless of whether an existing passport to conduct management business under another single market directive (such as UCITS) is held, EEA AIFMs are required to make a separate notification to their home State competent authority if they intend to manage or market an EEA AIF on a passported basis. The home State competent authority will send the management passport notification to the CySEC on behalf of the EEA AIFM.

In order to exercise a branch passport right in Cyprus, EEA AIFMs will not need to comply with any additional requirements, other than those provided under Article 33 of the AIFMD.

A full scope EEA AIFM wishing to market a Cypriot AIF, or EEA AIF<sup>8</sup> to retail (as well as professional) investors in Cyprus may do so, provided the following conditions are met:

- In the case of an EEA AIF, prior authorisation for marketing to retail investors has been received by the CySEC and the AIF at issue is not an unregulated AIF; and
- In the case of a Cypriot AIF, such AIF must have been authorised by the CySEC as eligible for marketing to retail investors. The extent of such eligibility will depend on the regulatory categorisation of the AIF upon its authorisation.
- In the case of an EEA AIF targeting professional investors in Cyprus, it may do so

under observance of the AIFMD notification procedure, in order to obtain access to the Cypriot market, and observance of the local marketing requirements laid down in the CySEC Marketing Directive, in order to lawfully carry out marketing activities in Cyprus.

## 2. Third country AIFMs

AIFMs based in Non-EEA jurisdictions wishing to market AIFs to professional investors in Cyprus will be required to comply with requirements, under the AIFM Act, and additional national private placement rules. The AIFMD requirements transposed by the AIFM Act comprise Non-EEA jurisdiction FATF compliance, regulators' cooperation arrangements and compliance with the transparency, disclosure, reporting and private equity provisions, where applicable. The additional national rules, laid down in the CySEC Marketing Directive, require the Non-EEA AIFM to be licensed in its home jurisdiction and to submit a relevant notification to the CySEC, in which its licensing and AIFMD compliance (as set out above) are certified. Following such notification, marketing to professional investors in Cyprus can commence.

## 3. Fees

Cyprus does not charge an application or notification fee for inward AIFMD passport notifications unless such application relates to marketing by a non-EU AIFM or to the marketing of units of a non-EU AIF. Applications relating to marketing to retail investors in Cyprus will attract an application fee to CySEC. EEA AIFMs passporting into Cyprus on a branch basis are not required to pay periodic fees on the regulated activities they conduct in Cyprus.

<sup>8</sup> Subject to the Cypriot AIF or EEA AIF not being a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF.



## 1. EEA AIFM

Non-Czech AIFMs authorised in their EEA home State may exercise passport rights for management of AIFs in the Czech Republic on a services and / or branch basis. To obtain a passport, the EEA AIFM must notify its competent home State authority, which will then send the passport notification to the Czech National Bank (“CNB”). Once the EEA AIFM has received the notification from its competent home State authority, that it has sent the passport notification to the CNB, the EEA AIFM can manage a Czech based AIF and / or offer units in an EEA AIF that it manages in the Czech Republic.

A notification is a sufficient condition for a private placement in relation to the EEA AIF to professional investors in Czech Republic. On the other hand, a private placement to persons other than professional investors is possible under additional conditions that (i) such an investment into an AIF may be offered publicly or (ii) there is a maximum of 20 addressees.

Besides notification, the additional conditions for a public offering to qualified investors are: (i) a manager’s licence under the AIFMD to exceed a decisive limit and (ii) registration with the CNB.

As for a public offering to the EEA AIFM to nonqualified investors, beside the manager’s licence, the notification and the registration with the CNB, it is necessary that (i) the EEA AIF is comparable with a local special fund (i.e. non-UCITS), while the CNB decides in this matter upon an application submitted by the manager, as well as (ii) an establishment of the relevant contact point in the Czech Republic.

## 2. AIFMs

AIFMs based in Non-EEA jurisdictions wishing to manage or distribute units of the EEA AIF in the Czech Republic will be required to apply for permission by the CNB. Moreover, the EEA AIF other than Czech based AIF needs to be registered with the CNB before the third country AIFMs may start to offer investments in the AIF.

## 3. Fees

The CNB does not charge an application fee for outward or inward AIFMD passport notifications. The CNB does not currently charge any periodic fees on the regulated activities the EEA AIFM is conducting in the Czech Republic.

However, there is a EUR 190 administrative fee in relation to an application to the CNB for an evaluation of comparability between the foreign AIF and the local special fund.

An application for the license of a third country AIFM in the Czech Republic shall be subject to a fee amounting to CZK 100,000 (approx. EUR 4,000).



### 1. EEA AIFMs

AIFMs authorised in their EEA home State may exercise passport rights for the marketing of EEA based AIFs to professional investors in Denmark under the passporting regime provided for by the AIFMD.

Regardless of whether an existing passport to conduct management business under another single market directive (such as UCITS) is held, EEA AIFMs are required to make a separate notification to their home State competent authority if they intend to market an EEA AIF on a passported basis. The home State competent authority will send the management passport notification to the Danish Financial Supervisory Authority (“FSA”) on behalf of the EEA AIFM.

An EEA AIFM wishing to market an EEA AIF to retail (as well as professional) investors in Denmark may do so provided that their home State competent authority has (i) submitted a passport notification to the FSA to market the AIF to professional investors and (ii) submitted a separate application to the FSA in accordance with Executive Order No. 797 of 26 June 2014 on Marketing to Retail Investors, together with a number of other documents and information, including the constitutional documents for the AIF, the Private Placement Memorandum, the Subscription Agreement, Key Investor Information Documents, Annual Report and the name of the appointed depository.

### 2. Third country AIFMs

AIFMs based in Non-EEA jurisdictions wishing to market Non-EEA AIFs to professional investors in Denmark will be required to apply to the FSA for a marketing permission in accordance with Executive Order No. 798 of 26 June 2014 on Marketing of Non-EEA AIFs to Professional

Investors. Denmark has chosen to ‘gold-plate’ the AIFMD Article 42 regime by requiring the appointment of a depository to carry out the ‘depo-light’ functions, and the provision of a reciprocity statement by the AIF’s home State regulator or, if unavailable due to the characteristics of the AIF, by a qualified lawyer.

Likewise, Non-EEA AIFMs wishing to market EEA AIFs to professional investors in Denmark will be required to apply to the FSA for a marketing permission in accordance with Executive Order No. 799 of 26 June 2014 on Marketing of EEA AIFs to Professional Investors, and provide various information and documentation (as under the Article 42 regime), including documentation evidencing that the AIFM is permitted to manage the AIF. A depository would need to be appointed; however, there is no requirement for a reciprocity statement.

A Non-EEA AIFM may market EEA and / or Non-EEA AIFs to retail investors in Denmark if the AIFM has obtained permission to market the AIF to professional investors in Denmark and has applied to the FSA for a marketing permission in accordance with Executive Order No. 797 of 26 June 2014 on Marketing to Retail Investors, and has provided various information and documentation (as under the Article 42 regime) including, in respect of Non-EEA AIFs, documentation from the supervisory authority in the AIF’s home State evidencing that the AIF is subject to supervision. A depository would also need to be appointed.

### 3. Fees

There is no fee payable for the application or registration itself, but the AIFM is subject to an annual fee of approximately DKK 5,100 (in 2018) per fund or per compartment thereof. The fee is subject to annual adjustments.



Estonia has fully implemented AIFMD with a new Investment Funds Act taking effect on 10 January 2017.

### 1. EEA AIFMs

AIFMs who are authorised in their EEA home State may exercise passport rights for management and marketing in Estonia on a cross-border or branch basis. The requirements for passporting are stipulated in the Investment Funds Act.

An EEA AIFM can manage an AIF established in Estonia on a cross-border basis by submitting relevant documents to the Estonian Financial Supervision Authority (the “EFSA”) through the competent authority of its home State. Similarly, in order to establish a branch for managing an AIF in Estonia, an EEA AIFM must submit relevant documents to the EFSA via its home State competent authority. In both cases the EEA AIFM may commence management of an AIF once the EFSA has received proper information from the home State competent authority.

Marketing of an EEA AIF in Estonia is possible through the private placement regime. In order to do this the EEA AIFM must make a notification to the EFSA through its home State competent regulator. After the EFSA has received the proper information, the EEA AIFM may commence marketing.

Marketing of a Non-EEA AIF by an EEA AIFM is possible if the AIF is not marketed in any other EEA State and if the AIF is marketed through a private placement. Submitting a notification with relevant documents to the EFSA is required. The EFSA will notify the EEA AIFM 30 business days after it has received the relevant documents if the EEA AIFM is allowed to commence marketing in Estonia.

Additionally, we would like to note that Estonia has implemented Article 43 of the AIFMD into the local

law, which allows public placement of an EEA AIF in Estonia if the public placement of the EEA AIF is also permitted in the home State of the AIF. A public offer of a fund may be commenced after receipt of consent of the EFSA and Estonian regulation regarding public placement applies.

### 2. Third country AIFMs

Estonia has implemented Article 42 of AIFMD, allowing marketing of a Non-EEA AIF by a Non-EEA AIFM provided that the AIF is not marketed in any other EEA countries and the marketing is done in the course of a private placement. A notification is to be submitted to the EFSA who will inform the Non-EEA AIFM 30 business days after the receipt of the respective documents whether it is allowed to start marketing. Public placement is also available to the Non-EEA AIFM; the relevant provisions of the Investment Funds Act apply.

In addition, Non-EEA AIFMs wishing to market or manage AIFs in Estonia need to comply with local management and placement regimes (i.e. private and public placement).

### 3. Fees

No fees are payable for the AIFMD notifications by EEA AIFMs and Non-EEA AIFMs (this applies to both management and marketing in the course of private placement). A processing fee of EUR 600 is paid upon application for the registration of public placement (applies to both EEA and Non-EEA AIFMs). EEA AIFMs are required to pay periodic supervision fees (i) in proportion of the share of assets of the AIF managed by its branch in Estonia or (ii) in proportion of the share of assets of the Estonian AIF managed on a cross-border basis.

In addition, certain processing and supervision fees are applicable to marketing or managing funds outside the AIFMD passport.

A stylized map of Finland is shown in the top left corner. The landmasses are in a light beige color, and the surrounding water bodies are in white. The word "Finland" is written in a large, black, sans-serif font over the map.

# Finland

## 1. EEA AIFMs

The AIFMD has been implemented in Finland through the Act on Alternative Investment Fund Managers (Fi: laki vaihtoehtorahastojen hoitajista, 162 / 2014) (the “**AFMA**”), which entered into force on 15 March 2014. The AFMA does not impose any additional requirements on EEA AIFMs wishing to manage or market EEA AIFs in Finland than what is required by of the AIFMD

An EEA AIFM may manage an AIF in Finland without establishing a branch or a subsidiary directly, on a cross-border basis in accordance with the notification procedure set out in Chapter 19, section 2 of the AFMA and based on Article 33 of the AIFMD. An EEA AIFM may also be entitled to establish a branch in Finland in accordance with Article 33 of the AIFMD. Furthermore, EEA AIFMs may market EEA AIFs under their management in Finland on a cross-border basis by way of the notification procedure provided for in Chapter 19, section 5 of the AFMA and based on Article 32 of the AIFMD.

If an EEA AIFM intends to market AIFs under its management also to non-professional investors in Finland, it must meet certain further requirements set out in Chapter 13 of the AFMA in its marketing, including preparing and making available a key investor information document for the AIFs in question.

The content requirements for such documents are specified in the AFMA and in a separate Decree issued by the Ministry of Finance (228 / 2014).

EEA AIFMs are required to make a separate passporting notification under the AFMA regardless of whether an existing passport to conduct management business under another regime (such as UCITS) is held.

As regards Brexit, there is no legislative initiative proposing temporary exemption for the marketing by UK AIFMs or EEA AIFs into Finland under the marketing passport as prescribed in Article 32 of the AIFMD. This would mean that UK AIFMs will have to comply with provisions of AFMA applicable to Non-EEA AIFMs when marketing units in an AIF that is established either in an EEA State or a Non-EEA State after a no-deal Brexit.

## 2. Third Country AIFMs

A Non-EEA AIFM may market in Finland units in an AIF that is established either in an EEA State or a Non-EEA State after submitting a written notification to the Finnish Financial Supervisory Authority (*Finanssivalvonta*) (“**FIN-FSA**”). Marketing may commence once the AIFM has received an acknowledgement thereof from the FIN-FSA. To receive the acknowledgement, Non-EEA AIFMs must comply with the requirements set out in Chapter 20, section 3 of the AFMA (being the national private placement rules), which, to a large extent, correspond to the requirements set out in Article 42 of the AIFMD. Furthermore, for the purposes of the reporting obligations under the AIFMD, the FIN-FSA must be periodically provided with certain information on the AIFM and any AIF managed by it and marketed in Finland.

Where a Non-EEA AIFM markets in Finland, the AIFs can only be marketed to professional investors.



### 3. Fees

The processing of notifications in the FIN-FSA is subject to fixed processing fees. The fees charged for various notifications are listed in the relevant schedule. These schedules are available on the webpage<sup>9</sup> of the FIN-FSA.

Furthermore, periodic charges are levied on (i) EEA AIFMs who manage AIFs in Finland either through a branch or without a branch, and (ii) Non-EEA AIFMs marketing AIFs in Finland if the Non-EEA AIFM is operating through a branch in Finland.

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<sup>9</sup> <https://www.finanssivalvonta.fi/en/about-the-fin-fsa/powers-and-funding/funding/supervision-and-processing-fees/>



# France

## 1. EEA AIFMs

AIFMs authorised in their EEA home State may exercise passport rights for management and marketing in France in relation to most types of AIF, on a services and / or branch basis. In order to do so, the French Financial Authority (*Autorité des marchés financiers*) ("**AMF**") requires the AIFM to satisfy certain service conditions set out, amongst other things, in the AMF Instruction no. 2008–03.

Regardless of whether an existing passport permitting management business under another single market directive (such as UCITS) is held, EEA AIFMs are required to make a separate notification to their home State competent authority if they intend to manage or market an EEA AIF on a passported basis. The home State competent authority will send the management passport notification to the AMF on behalf of the EEA AIFM.

EEA AIFMs will need to send the following documents to their home State competent authority if contemplating management of French AIFs on a cross-border basis:

- A programme of activity detailing the service or services that they wish to provide and identifying the AIFs that they plan to manage; and
- A statement indicating that their home State competent authority has authorised them under AIFMD.

EEA AIFMs will need to send the following documents to their home State competent authority if exercising a branch passport in France:

- A programme of activity detailing the service or services that they wish to provide and identifying the AIFs that they plan to manage;
- The organisational structure of the branch
- A French address from which documents may be requested along with the names and contact details of the branch's directors; and

- A statement indicating that their home State competent authority has authorised them under AIFMD.

## 2. Third country AIFMs

AIFMs based in Non-EEA jurisdictions who wish to market AIFs in France will be required to request marketing authorisation from the AMF.

In order to market in France either a Non-EEA AIF or an EEA AIF which is managed by a Non-EEA AIFM, the Non-EEA AIFM must comply with security and transparency rules which are equivalent to those applicable in France. Such marketing of a Non-EEA AIF or an EEA AIF which is managed by a Non-EEA AIFM is also subject to the set-up of a mutual exchange data system related to the Non-EEA AIFM between the AMF and the competent authority of the Non-EEA AIF or EEA AIF.

## 3. Fees

France does not charge an application fee for outward or inward AIFMD passport notifications. However, as an AIFM is an entity supervised by the AMF, the AMF requires AIFMs that passport into France on a services basis or as a branch to pay periodic fees. Such periodic fees should be paid annually to the AMF. They are calculated on the basis of the amount of the assets under management (i) wherever their localization at 31 December of the previous year; and (ii) notified at the latest on 30 April of the current year, on which a determined rate is applied.

Regarding the marketing of an EEA AIF in France, please note that the passporting of a foreign AIF is subject to the payment of an AMF fee ("**Redevance**") up front and annually (around EUR 2,000 per AIF / per sub-fund). In addition to the documents to be provided under the AIFM passport stated under Article 32 of the AIFMD, evidence of payment of the AMF Redevance shall be provided to the AMF.



## 1. EEA AIFMs

German law distinguishes as to which type of investors the EU AIF shall be distributed to.

### (a) *Distribution to Semi-Professional and Professional Investors in Germany*

EU AIFs managed by EU AIFMs may be distributed in Germany by using the European marketing passport provided in the AIFMD. The passport permits distribution of the EU AIF to Semi-Professional and Professional Investors in Germany. For EU feeder AIFs the passport is only available if the master AIF is an EU AIF managed by an EU AIFM. In order to obtain such a passport for an EU AIF for Germany, its EU AIFM must notify the home State regulator as to every EU AIF which it intends to distribute in Germany. The home State regulator will notify the Federal Financial Supervisory Authority (“**BaFin**”) thereof. The requirements are laid down in the national law applicable to the EU AIFM which should be in accordance with Article 32 of the AIFMD. BaFin verifies whether (i) the notification file submitted by the home State regulator is complete, (ii) the home State regulator has issued a statement that the relevant EU AIFM is authorised to manage the relevant AIFs, and (iii) the documents have been submitted in a language customarily used in international finance. BaFin further verifies whether the agreements with distribution partners prevent distribution to retail investors.

Marketing in Germany may commence as soon as the competent authorities in the EU AIFM’s home Member State have informed the EU AIFM that its notification has been transmitted to BaFin. Marketing is subject to further requirements vis-à-vis approaching investors, in particular regarding the form of information disclosure.

### (b) *Distribution to retail investors in Germany*

An EU AIFM may also notify an EU AIF managed by it for distribution to retail investors in Germany.

However, it cannot rely in this respect on the EU marketing passport. In order to obtain such marketing permission, the EU AIFM must file a notification to BaFin directly indicating its intention to distribute an

EU AIF to retail investors in Germany. Approval is only granted if a number of requirements specified in the German Capital Investment Code are adhered to (e.g. more detailed prospectuses, adherence to certain structural requirements, etc.). Marketing may not commence until formal approval has been obtained from BaFin.

## 2. Third country AIFMs

A Non-EU AIFM may notify EU AIFs managed by it for distribution to retail, Semi-Professional or Professional Investors in Germany. Distribution notifications must be filed to BaFin directly. BaFin will only grant its approval if certain structural and documentary requirements are fulfilled. The Non-EU AIFM must comply with ongoing reporting obligations vis-à-vis the investors and BaFin. Marketing cannot commence until formal approval has been obtained from BaFin.

## 3. Brexit

In case of a so called Hard Brexit UK AIFs may be distributed in Germany according to the relevant distribution notification procedure for non-EU AIFs.

## 4. Fees

### (a) *Marketing to Semi-Professional and Professional Investors*

Fees charged for distribution permission are dependent on the statutory seat of the AIFM and AIF. BaFin charges a one-time fee for the notification by (i) an EU AIFM of EUR 435 per single EU AIF or sub-fund, and (ii) a Non-EU AIFM of EUR 1,545 per single EU AIF or sub-fund. In addition, in case of a Non-EU AIFM BaFin charges EUR 1,270 per EU AIF or sub-fund per annum.

### (b) *Marketing to retail investors*

BaFin charges a fee of EUR 1,545 per EU AIF or sub-fund notified to it. That fee is identical for EU AIFMs and Non-EU AIFMs.

Note: Different rules apply to (i) EU AIFM marketing Non-EU AIFs and (ii) Non-EU AIFM marketing Non-EU AIFs. These are not described herein.



# Greece

## 1. EEA AIFMs

Law 4209 / 2013 (effective from 21 November 2013, except for some interim provisions that have different effective dates) implemented the AIFMD.

In addition, Law 4209 / 2013 designates the Hellenic Capital Market Commission ("**HCMC**") as the competent national authority to carry out the implementation of the AIFMD in Greece and to assume supervisory duties with regard to AIFM activity.

Law 4209 / 2013 does not regulate the activities of AIFs but rather those of AIFMs. As per the provisions of the AIFMD, it introduces the principle of one AIFM per AIF. In particular, the scope of Law 4209 / 2013 covers the following AIFMs: (i) All Alternative Investment Funds Management Sociétés Anonymes ("**AIFMSAs**") i.e., Greek AIFMs managing one or more AIFs; (ii) EU or Non-EU AIFMs which manage one or more Greek AIFs; and (iii) EU or non-EU AIFMs which market one or more AIFs in Greece.

Law 4209 / 2013 distinguishes the activities of management and marketing of AIFs to professional investors. A further distinction is made on the basis of the entity undertaking the management and / or marketing (i.e. whether it is an AIFMSA, an EU AIFM or a Non-EU AIFM) as well as on the basis of the AIFs which are managed and / or marketed (i.e. depending on whether it is an EU AIF or a Non-EU AIF). AIFMSAs are allowed to manage EU and Non-EU AIFs under certain conditions. Marketing of EU AIFs in Greece by AIFMSAs is also allowed under certain conditions. Marketing in other EU States requires the prior notification of the competent supervisory authority of the relevant EU State by the HCMC. EU AIFMs duly authorised by the competent supervisory authority of their home State are allowed to manage AIFs established in Greece. Marketing of EU AIFs by EU AIFMs in Greece is allowed following receipt by the HCMC of the relevant notification from the competent supervisory authority of the home State.

## 2. Third country AIFMs

Non-EU AIFMs are not allowed under Law 4209 / 2013 (until the enactment of a relevant delegated act by the European Commission) to manage or market any AIFs (EU or Non-EU) in Greece. Marketing of Non-EU AIFs in Greece without a passport is currently (until the enactment of a relevant delegated act by the European Commission) allowed only to AIFMSAs under certain conditions. Marketing of Non-EU AIFs in Greece with a passport will be allowed once the European Commission has adopted the delegated Act referred to under Article 68(6) of AIFMD, and from the date disclosed therein. Also, Greece opted not to implement Article 42 of AIFMD which provides the conditions for Non-EU AIFMs to make offerings to professional investors within an EU State without a passport via private placement.

## 3. Fees

Greece does not charge an application fee for inward AIFMD passport notifications. In particular, an EU AIFM planning to market any AIFs in Greece must obtain a passport from the Regulator of their country of establishment. They also need to file a notification to the HCMC but no notification fees are charged. On the contrary, Greek AIFMs pay fees for passport notifications, namely:

- A Greek AIFM planning to market an EU AIF in Greece must file a prior notification to the HCMC. The notification fees are EUR 1,000, plus a 2.4% stamp duty per AIF.
- A Greek AIFM planning to market any AIFs abroad must file a prior notification to the HCMC. The notification fees are EUR 100, plus a 2.4% stamp duty per AIF and per country of intended marketing. Greek AIFMs also pay an annual contribution fee of EUR 1,000, plus a 2.4% stamp duty to the HCMC.
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### 1. EEA AIFMs

AIFMs authorised in their EEA home State may exercise passport rights for the relevant regulated services (including management and marketing distribution of funds) in Hungary in relation to most types of AIF, on a services and / or branch basis. In order to do so, Act XVI of 2014 on Collective Investment Firms and their Managers (**"Investment Funds Act"**) requires the AIFM to satisfy certain service conditions.

Regardless of whether an existing passport to conduct management business under another single market directive (such as UCITS) is held, EEA AIFMs are required to make a separate notification to their home State competent authority if they intend to manage or market an EEA AIF on a passported basis.

The home State competent authority will send the management passport notification to the Central Bank of Hungary (*Magyar Nemzeti Bank*) ("**MNB**") on behalf of the EEA AIFM.

EEA AIFMs will need to comply with Hungarian legal requirements on prudential operations, outsourcing, conflicts of interest and risk management, as set out in the Investment Funds Act and other laws, if they are exercising a branch passport in Hungary.

A full scope EEA AIFM wishing to market either a Hungarian AIF or an EEA AIF to retail (as well as professional) investors in Hungary may do so if their home State competent authority has submitted a passport notification to the MNB to market the AIF to professional investors. However, if the AIF takes the form of an unregulated collective investment scheme, the AIFM may not promote any type of funds (including EEA AIFs) to Hungarian investors.

### 2. Third country AIFMs

AIFMs based in Non-EEA jurisdictions who wish to market AIFs in Hungary will be required to comply with the provisions of the Investment Funds Act on operational rules and reporting requirements. The MNB must also have a cooperation agreement in place with the relevant home State regulators and the Non-EEA AIFM may not be incorporated in a jurisdiction which appears on the FATF list as a non-cooperating country.

### 3. Fees

Hungary does not charge an application fee for outward or inward AIFMD passport notifications. However, EEA AIFMs passporting into Hungary as a branch are required to pay periodic fees on the regulated activities they conduct in Hungary.

The MNB does not require AIFMs that passport into Hungary on a services basis to pay periodic fees.



# Ireland



## 1. EEA AIFMs

AIFMs authorised in their EEA home State may exercise passport rights for management in Ireland in relation to AIFs in the scope of AIFMD, on a services and / or branch basis, provided that the AIFM is authorised to manage the relevant type of AIF.

Regardless of whether an existing passport to perform management business under another single market directive (such as UCITS) is held, EEA AIFMs are required to make a separate notification to their home State competent authority if they intend to manage an AIF domiciled in Ireland on a passported basis. The home State competent authority will send the management passport notification to the Central Bank of Ireland (“CBI”) on behalf of the EEA AIFM.

In relation to marketing, a full scope EEA AIFM authorised in an EEA State other than Ireland which would like to market an Irish AIF or EEA AIF to professional investors in Ireland may do so in compliance with the requirements set out by its home State competent authority. A full scope EEA AIFM authorised in Ireland which would like to market an Irish AIF or EEA AIF<sup>10</sup> to professional investors in Ireland may do so by applying to the CBI directly using a prescribed form, which is available from the CBI website:  
<http://www.centralbank.ie>.

## 2. Third country AIFMs

AIFMs based in Non-EEA jurisdictions who wish to market AIFs to professional investors in Ireland must apply to the CBI for approval of those AIFs intended to be marketed in Ireland. Marketing of such an AIF may commence once the CBI confirms receipt of the notification and consents to the marketing.

## 3. Fees

Ireland does not currently charge an application fee for outward or inward AIFMD passport notifications.

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<sup>10</sup> As long as it is not a feeder AIF, the master AIF of which is managed by a Non-EEA AIFM or is a Non-EEA AIF.



### 1. EEA AIFMs

Asset management companies authorised in their EEA home State as AIFMs under the AIFMD may carry out asset management activities in Italy, for which they are authorised to do in their home State, either through a branch or on a cross-border basis.

Under Article 41-ter of the Consolidated Financial Act (Legislative Decree no. 58 / 1998) (“CFA”), in order to carry out such asset management activities, prior notification to the Bank of Italy is required. The EEA home State competent authority must inform the Bank of Italy, who will promptly forward such communication to Consob, the Italian Securities Market Supervisory Authority.

Specific requirements apply for the management of Italian AIFs by EEA AIFMs. For example, in order to manage an Italian AIF, EEA AIFMs must be authorised to manage AIFs in their home State with similar characteristics.

EEA AIFMs operating in Italy through a branch must comply with a number of Italian legal / regulatory provisions, including conduct rules, conflict of interest provisions, and disclosure requirements.

### 2. Third country AIFMs

The Bank of Italy, following a consultation with Consob, may authorise Non-EEA AIFMs to manage Italian or other EEA AIFs, or to market in the EU such managed AIFs provided that Italy qualifies as a ‘Member State of Reference’ under Article 4 (z) and Article 37 (4) of AIFMD. Once authorised, the relevant AIFM will be registered in the special section of the Registry of Asset Management Companies held by the Bank of Italy under Article 35 of the CFA. Non-EEA AIFMs that have been authorised in other EEA countries may manage Italian AIFs either through a branch or on a cross-border basis by following the notification process under Article 41-ter of the CFA (see

paragraph 1 above on EEA AIFMs for a further explanation).

Non-EEA AIFMs operating in Italy through a branch must comply with a number of Italian law / regulatory provisions, including conduct rules, conflict of interest provisions, and disclosure requirements.

### 3. Fees

Each year Consob issues specific resolutions determining the fees payable for the following year by supervised entities, including foreign asset management companies operating in Italy, either through a branch or on a services basis.

The fees due to Consob for the 2019 financial year are determined by the Consob Resolution no. 20767 of 28 December 2018, which sets out that for each public offering of AIFs, AIFMs shall pay to Consob fees of EUR 3,895.00 plus:

- (a) in case of offering their units and shares to the public following the filing of a prospectus (with the exclusion of listed funds / sub-funds or funds / subfunds having one or more listed classes): an amount of EUR 1,945.00 for each fund or for each subfund (if any), for which, as of 2 January 2019 a public offering is pending, with the exclusion of funds / subfunds which are listed (or have listed unit classes) and two funds / subfunds, which shall be exempt from the calculation of such additional fee;
- (b) in case of units or shares subscribed by Italian residents as of 2 January 2019 (in respect of public offerings that closed in the previous year/s): an amount of EUR 1,375.00 for each fund or for each sub-fund;
- (c) in case of marketing of units or shares of AIFs following the completion in the previous year of the marketing procedure

under Articles 43 or 44 of the CFA: an amount of EUR 1,775.00 for each fund or, where applicable, for each sub-fund;

- (d) in case of AIFMs enrolled as of 2 January 2019 in the relevant Asset Managers' Registry held by the Bank of Italy and offering (their own or third parties') funds to retail clients in Italy, where the marketed volumes exceed EUR 100,000.00:
- (i) for volumes up to EUR 1,000.000.00: EUR 4,000.00;
  - (ii) for volumes up to EUR 10,000.000.00: EUR 12,000.00;
  - (iii) for volumes up to EUR 100,000.000.00: EUR 20,000.00;
  - (iv) for volumes up to EUR 1,000,000,000.00: EUR 28,000.00;
  - (v) for volumes up to EUR 3,000,000,000.00: EUR 36,000.00;
  - (vi) for volumes exceeding EUR 3,000,000,000.00: EUR 42,000.00.

No application fee is payable in respect of outward or inward passport notifications by asset management companies.



# Latvia

## 1. EEA AIFMs

Under the Law on Alternative Investment Funds and their Managers 2013 (“**LAIFM**”), AIFMs may operate either as registered or authorised managers. AIFMs registered in their EEA home State are only entitled to market units or shares to professional investors upon receipt of permission from the Latvian regulator, the Financial and Capital Market Commission (“**FCMC**”). As LAIFM does not provide an opportunity for registered AIFMs to operate through a branch, marketing may be carried out directly.

Authorised AIFMs may market units or shares of EEA and Non-EEA AIFs to professional and assessed retail investors as soon as the FCMC has received notification by the EEA home State’s competent authority that the relevant passport notification has been sent, along with copies of those documents required for authorisation under AIFMD.

However, authorised AIFMs are only allowed to provide the full scope of services if they manage an AIF which is registered in Latvia. An authorised AIFM may commence respective services directly or through a branch upon receipt of a notification from the home State’s competent authority, along with the documents required for authorisation under AIFMD and an attestation on authorisation in their home State by the FCMC.

## 2. Third country AIFMs

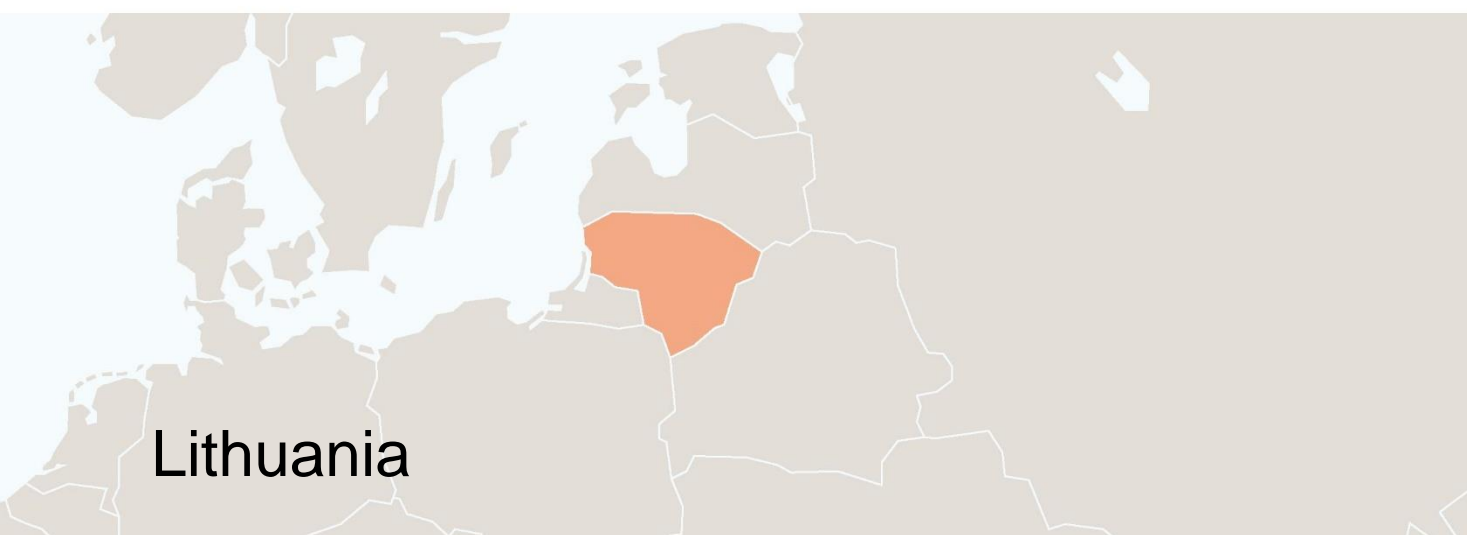
AIFMs domiciled in Non-EEA jurisdictions wishing to manage an AIF registered in Latvia, or market units or shares of EEA and Non-EEA AIFs in Latvia, must apply for an authorisation from the FCMC. However, certain AIFMs may be exempt from requiring certain documents for authorisation, due to the specific legislative requirements of their domicile jurisdiction. In order to obtain an authorisation, the AIFM must have a representative in Latvia who has the required skills and competencies, as well as the funds, to provide the services.

## 3. Fees

AIFMs are not subject to any application fees when operating under the passporting regime. AIFMs shall pay a fee for fund registration (EUR 1,422) and making amendments to documents submitted for such registration (EUR 426).

Authorised and registered AIFMs must pay an annual supervision fee in the amount of 0.033% from the average quarterly asset value of funds operated but no less than EUR 3,557 or EUR 900 per year respectively.

Additionally, AIFMs shall pay a single supervision fee for marketing units or shares of the fund in Latvia in the amount of EUR 1,209 per each fund (EEA or third country funds). If operating through a branch, the annual fee for branch supervision is calculated as a percentage (1%) of the gross income generated by the Latvian branch per quarter, but no less than EUR 2,134.



### 1. EEA AIFMs

Pursuant to the Law on Management Companies of Alternative Collective Investment Undertakings of the Republic of Lithuania, AIFMs authorised in their home EEA State may establish and manage AIFs in Lithuania on a cross-border and / or branch basis, provided that the AIFMs are authorised to manage the relevant type of AIFs.

The requirements for cross-border notification or branch establishment notification are stipulated in the Law on Management Companies of Alternative Collective Investment Undertakings of the Republic of Lithuania. The competent authority of a home EEA State shall send a cross-border notification or a branch establishment notification to the Bank of Lithuania ("**BoL**") on behalf of the EEA AIFM. In both cases the EEA AIFM may commence management of an AIF once BoL has received proper information from the competent authority of the EEA AIFM's home State.

Authorised EEA AIFMs may market EEA AIFs in Lithuania to professional investors (as defined under *Annex II of Directive 2004 / 39 / EC (MiFID)*). In order to commence marketing in Lithuania, a notification to BoL must be made through the competent authority of the respective EEA State regulator. After BoL has received proper information, the marketing to professional investors may be commenced. A Non-EEA AIF managed by the EEA AIFMs can be marketed in Lithuania subject to authorisation by BoL, which is conditional on certain requirements (e.g. cooperation agreement between BoL and a competent authority of the respective Non-EEA AIF's home State, the respective Non-EEA AIF's

home State should not be included on the FATF list of non-cooperating states etc.)

Additionally, we would like to note that Lithuania has chosen to implement Article 43 of the AIFMD. Therefore, marketing and placement of AIFs to retail investors in Lithuania is now permitted, however it is subject to authorisation by BoL and several requirements do apply. In order to commence marketing in Lithuania, the competent authority of a home EEA State shall send a notification to the BoL on behalf of the EEA AIFM. After the BoL has received proper information and has given an authorisation, the marketing to retail investors may be commenced. The same procedure applies for a Non-EEA AIF managed by the EEA AIFMs.

### 2. Third country AIFMs

Non-EEA AIFMs, which have been authorised in another EEA state of reference, are entitled to the same passporting rights as EEA AIFMs. Marketing in Lithuania of Non-EEA AIFs managed by Non-EEA AIFMs are subject to cooperation agreements between the competent authorities of Lithuania, Non-EEA AIFMs and respective AIFs.

### 3. Fees

Currently, there is no state fee for processing a marketing notification of an EEA AIF or Non-EEA AIF.

The state fee for the establishment of a collective investment undertaking could vary from EUR 223 to EUR 790 depending on the form of the undertaking.

AIFMs are required to pay periodic supervision fees of approximately 0.02% of the value of assets managed by AIFs established in Lithuania.





# Luxembourg

## 1. EEA AIFMs

AIFMs authorised in their EEA home State may exercise passport rights for management and marketing of EEA AIFs to professional investors in Luxembourg.

Regardless of whether an existing management and / or marketing passport under the UCITS directive is held, EEA AIFMs are required to make a separate notification to their home State competent authority when they intend to manage or market an EEA AIF on a passported basis in Luxembourg.

The home State competent authority will send the passport notification and the certificate set out under Article 32.3 of the AIFM Directive to the CSSF if the EEA AIFM intends to distribute EEA AIFs to professional investors in Luxembourg. The EEA AIFM can commence its distribution activities in Luxembourg from the date of notification by the home State competent authority to the CSSF.

The passport is valid only for the marketing of EU AIFs to professional investors in Luxembourg. Currently no EU passport exists for the marketing of AIFs to retail investors. In its Regulation no. 15 / 03 of 26 November 2015, the CSSF has set forth the conditions pursuant to which non-Luxembourg AIFs can be marketed to retail investors in Luxembourg. Any such marketing is subject to the prior authorisation of the CSSF. To be eligible for authorisation, the AIF must comply with a specific risk spreading policy and determine at least once per month the issue and redemption price. The AIF must further appoint a credit institution in Luxembourg to act as paying agent. Additional marketing rules, including compliance with the consumer code, apply.

## 2. Third country AIFMs

Non-EU AIFMs must notify the CSSF prior to any marketing activities in Luxembourg. Currently,

AIFMs based in Non-EEA (third country) jurisdictions wishing to market EEA AIFs to professional investors in Luxembourg are required to conduct distribution on a private placement basis and to comply with the following requirements:

- the Non-EU AIFM must comply (i) with the relevant requirements on the annual report of AIF (Article 22 of the AIFM Directive), disclosure to investors (Article 23 of the AIFM Directive) and reporting obligations to competent authorities (Article 24 of the AIFM Directive), as well as, where relevant, the provisions on the acquisition of control (Articles 26 to 30 of the AIFM Directive) and (ii) with Section XIII (Guidelines on disclosure) of ESMA's guidelines on sound remuneration policies under the AIFM Directive and (iii) the Luxembourg consumer code;
- there are appropriate cooperation arrangements to ensure efficient exchange of information for systemic risk oversight between the competent authorities of the Member States where the AIFs are marketed, the EEA AIF Member State and the supervisory authority of the Non-EEA AIFM.

## 3. Fees

The CSSF will charge a lump sum fee for the marketing of EEA AIFs in Luxembourg of EUR 2,650 for a stand-alone AIF and of EUR 5,000 for an AIF with compartments. The same fee will thereafter be charged on an annual basis. The CSSF does not charge an application fee for a AIFM passport notification.



# Malta

## 1. EEA AIFMs

The Investment Services Act (Alternative Investment Fund Manager (Passport) Regulations) applies to Maltese AIFMs providing services in a home State or EEA State as well as to EEA AIFMs providing services in Malta, whether through a branch or under the freedom to provide services.

An EEA AIFM which intends to manage Maltese AIFs directly without a branch must inform its home State regulatory authority of its intention and present a programme of operations stating the particular services which it intends to perform. The documentation received from the EEA AIFM, together with a statement to the effect that the EEA AIFM is authorised by the home State regulatory authority is then transmitted to the Malta Financial Services Authority (“**MFSA**”) following which the EEA AIFM may commence operations in Malta.

An EEA AIFM wishing to establish a branch must, in addition to the above mentioned documentation, provide information to its home State regulatory authority on the organisational structure of the branch, contact details of the person responsible for the management of the branch and the address in the home Member State or EEA State of the AIF from which documents may be obtained. Following receipt of confirmation of the transmission of the documentation to the MFSA, the EEA AIFM may commence the provision of its services in Malta.

An EEA AIFM wishing to market an EEA AIF may do so in accordance with the Investment Services Act (Marketing of Alternative Investment Funds) Regulations. The EEA AIFM must first present a notification to its home State regulatory authority containing the information set out in Annex IV of

the AIFMD. Within twenty working days of receipt of the notification file, the MFSA must also receive a statement to the effect that the EEA AIFM is authorised to manage EEA AIFs. Upon transmission of the notification file to the MFSA, the EEA AIFM may begin marketing the EEA AIF in Malta. Certain additional requirements apply when marketing to retail investors or marketing a European feeder fund.

## 2. Third country AIFMs

A Non-EEA AIFM may market a Non-EEA AIF or an EEA AIF which it manages in Malta to professional investors. The marketing of such AIFs is subject to the rules set out in the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations and is subject to the local private placement regime. Marketing to retail clients is subject to additional requirements including a formal application for authorisation, as well as a related application fee.

## 3. Fees

The Investment Services Act (Fees) Regulations set fixed fees in relation to EEA AIFMs passporting through a branch. Such European AIFMs are subject to an application / notification fee of EUR 1,250 as well as an annual / supervisory fee of EUR 4,000. There are no fees applicable when passporting under the freedom to provide services.

Marketing of units or shares of an AIF by an EEA or Non-EEA AIFM is subject to an application / notification fee of EUR 2,500 per AIF and an annual / supervisory fee of EUR 3,000 per AIF. In cases where the AIF has sub-funds, an application / notification fee of EUR 450 and an annual / supervisory fee of EUR 500 per sub-fund is applicable.



# The Netherlands

## 1. EEA AIFMs

AIFMs who are authorised in their EEA home State that has implemented the AIFMD may exercise passport rights for management and marketing of AIFs to professional investors (*professionele beleggers*) in the Netherlands on a services and / or branch basis.

To obtain a passport, the EEA AIFM must notify its home State competent authority, which will then send the passport notification to the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*) (“**AFM**”). Once the EEA AIFM has received the notification from its home State competent authority that it has sent the passport notification to the AFM, the EEA AIFM can manage a Dutch AIF and / or offer units in an EEA AIF that it manages in the Netherlands.

In the event that an EEA AIFM manages a Dutch AIF and / or offers units in an EEA AIF that it manages in the Netherlands through a Dutch branch, it must comply with certain Dutch law provisions regarding conduct supervision.

It is also possible for EEA AIFMs to manage a Dutch AIF that offers units to non-professional investors (*niet-professionele beleggers*) in the Netherlands and / or offer units in an EEA AIF that it manages to non-professional investors in the Netherlands by means of its passport. The EEA AIFM should notify the AFM of its intention to perform the aforementioned services. If an EEA AIFM offers units in an AIF to non-professional investors in the Netherlands, the Dutch ‘top-up’ rules will apply, which are rules concerning the business operations, the information to investors and supervisory authorities, the powers of supervisory authorities, the depository and the proper treatment of investors. The Dutch ‘top-up’ rules do not apply to an AIFM that offers units to non-professional investors in the Netherlands if

the units have a nominal value of at least EUR 100,000 or can only be acquired for an equivalent value of at least EUR 100,000 per investor.

## 2. Third country AIFMs

Non-EEA AIFMs that wish to offer units in an AIF in the Netherlands and / or manage a Dutch AIF may make use of the Dutch third country regime. Reference is made to the ‘CMS Guide to Private Placement of Funds’.

## 3. Fees

The AFM does not charge any fees for outward or inward AIFMD passport notifications, nor does it charge any periodic fees for EEA AIFMs that passport into the Netherlands. However, it may be that the AFM will charge fees for passport notifications in the future. In the event that a passported EEA AIFM establishes a branch in the Netherlands, the AFM will charge fees for the supervision of the applicable provisions regarding conduct supervision under Dutch law, such as for the suitability and integrity test of the daily policymakers or co-policymakers of the EEA AIFM, if applicable.



# Norway

## 1. EEA AIFMs

After clarification of certain constitutional issues, the AIFMD was included in the EEA agreement between the EFTA countries (which includes Norway) and the EU by decision of the EEA joint committee on 30 September 2016, published in the Official Journal on 23 February 2017.

AIFMs authorised in their EEA home State may exercise passport rights for management and marketing in Norway in relation to most types of AIF, on a services and / or branch basis.

Regardless of whether an existing passport to do management business under another single market directive (such as UCITS) is held, EEA AIFMs are required to make a separate notification to their home State competent authority if intending to manage or market an EEA AIF on a passported basis. The home State competent authority will send the management passport notification to the Norwegian Financial Supervisory Authority ("**Finanstilsynet**") on behalf of the EEA AIFM.

An EEA AIFM wishing to market a Norwegian AIF or EEA AIF<sup>11</sup> to professional investors in Norway may do so if its home State competent authority has submitted a passport notification to Finanstilsynet to market the AIFM. If the EEA AIFM wishes to market a Norwegian AIF or EEA AIF to retail investors in Norway, the EEA AIFM must submit an application to Finanstilsynet documenting that the AIF may be marketed to retail investors in its home State and that applicable Norwegian requirements for such marketing will be complied with, for example, the preparation of a key investor information document and the conduct of a suitability test.

## 2. Third country AIFMs

AIFMs based in Non-EEA jurisdictions wishing to market AIFs in Norway will be required to comply with the Norwegian private placement regime.

## 3. Fees

Norway does not charge an application fee for outward or inward AIFMD passport notifications. EEA AIFMs passporting into Norway on a branch basis are required to pay periodic fees on the regulated activities they are conducting in Norway.

Periodic fees will be calculated by Finanstilsynet in accordance with mechanisms decided by the Ministry of Finance. EEA AIFMs will receive a discount to reflect the reduced scope of the Norwegian Regulator's responsibilities in respect of them.

Finanstilsynet does not require AIFMs that passport into Norway on a services basis to pay periodic fees.

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<sup>11</sup> Subject to the Norwegian AIF or EEA AIF not being a feeder AIFM, the master AIFM of which is managed by a Non-EEA AIFM or is a Non-EEA AIFM.



# Poland

## 1. EEA AIFMs

In March 2016 the AIFMD was implemented into Polish law and it came into force at the beginning of June that year.

Since the implementation of AIFMD in Poland, AIFMD provisions on exemptions, general arrangements for business activity, depositaries, leverage, transparency and supervision apply to certain entities.

Under Polish law several types of entities can be recognized as AIFs, i.e. (a) a specialized open-end investment fund ("SFIO"), (b) a closed-end investment fund ("FIZ") and (c) an alternative investment company ("ASI"), i.e. a joint-stock company, a limited partnership and limited joint-stock partnership (having a capital company as a general partner) or an European company, if their only business activity (subject to exceptions) is the collection of assets from investors for the purpose of investing them for those investors and in accordance with their investment policy.

The SFIO and the FIZ are managed by the Investment Fund Company ("TFI"), whereas the ASI is managed by the ASI Manager ("ZASI") (hereinafter together as "AIFMs"). These entities are required to hold a permit issued by the Polish Financial Supervision Authority ("PFSA") or to be registered in the AIFMs register depending on the value of assets under the management (except for TFIs, which are always required to hold a permit to manage the SFIO or FIZ). What is more, AIFMs can transfer the management obligations to the AIFMs from the Member State under the management agreement.

EEA AIFs can be admitted to trading in Poland among professional and, under certain circumstances, individual investors. EEA AIFMs may introduce EEA AIFs managed by them to

trading in Poland upon a notification served on the PFSA. This notification must be provided by the EEA AIFMs home State competent authority and it must include EEA AFI internal regulations and a letter of confirmation stating that the EEA AIFM is authorized to manage EEA AIFs.

## 2. Third country AIFMs

Non-EEA AIFMs can establish their presence in Poland upon the PSFA authorization and in certain circumstances based on an entry in the AIFMs register. Unless Polish implementing legislation provides otherwise, the same provisions as in the case of AIFMs with a seat in Poland apply to Non-EEA AIFMs and Non-EEA AIFs. In addition, Non-EEA AIFMs are requested to provide the PFSA with a statement on the competent authority the supervision of which they are subject to.

## 3. Fees

Poland does not charge any application fees for passporting notifications, however, certain fees might be charged subject to secondary legislation on the costs of capital market supervision.

There is also a fee of EUR 4,500 for registration in the register maintained by the PFSA.





# Portugal

On 24 February 2015 Law 16 / 2015 was published, as amended by the Decree-Law 124 / 2015 of 7 July 2015, which implements the **AIFMD**.

## 1. EEA AIFMs

An AIF duly authorised by a national regulator may passport into Portugal either by establishing a branch or under the freedom to provide services, provided that the Portuguese Securities Commission (hereafter “**CMVM**”) receives a communication from the home State competent authority of the alternative investment fund manager (“**AIFMs**”). However, the AIFM is only able to market AIF units in Portugal when notified by CMVM, which may deny such activity in the event the AIFM (i) does not comply with applicable laws, (ii) is not duly authorised by the appropriate competent authority and (iii) does not present the mandatory documentation required by law.

## 2. Third country AIFMs

An AIFM established in a country other than Portugal may passport to Portugal if previously authorised by CMVM. The procedure for such authorisation follows the Implementing Regulation (EU) 448 / 2013 of the Commission of 15 May 2013. Such authorisation is required to undertake the following activities:

- Manage one or more AIFs, implemented in Portugal and earmarked exclusively to qualified investors;
- Marketing, exclusively with qualified investors, as provided in Article 30 of the Portuguese Securities Code (“**PSC**”), several AIF of the European Union or third countries to the European Union (“**Third Country**”), as long as Portugal is the member state where most of those AIFs are marketed.

Authorisation by CMVM is also required to:

- Manage one or more European Union AIFs, as long as most of the AIF is implemented in Portugal or the majority of the volume of the assets are managed in Portuguese territory;

- Marketing an exclusively European Union AIF or an exclusively Third Country AIF, as long as Portugal is the implementation member state or the only member state where such marketing is envisaged;
- Marketing of several European Union AIFs, as long as Portugal is the implementation state or the member state where the majority of such marketing is envisaged.

For the purposes of granting an authorisation, Portugal shall always be the member state of reference for the procedure, and the AIFM must always appoint a legal representative established in Portugal. The CMVM's decision is notified to the applicant within three months of the application date. The authorised AIFM may manage other AIFs located in the European Union, earmarked exclusively to qualified investors, directly or by implementing branches in such countries.

Regarding the marketing in Portugal of units in an AIF established in a Third Country, this may only occur with qualified investors and AIFMs must comply with the applicable rules to Portuguese established AIFs concerning the disclosure of information and documentation. Together with the duty to inform the AIF investors, CMVM must also be notified of the intention of marketing such units in Portugal. The regulator will then make a decision within 20 days from receiving the request. In the event the authorisation of the AIF is granted in a European country other than Portugal, CMVM needs to receive, from the competent authority of that country, the notification process, and the information regarding that process, of all AIFs managed by the applicant and a certificate that proves that the applicant is authorised to manage the AIFs concerned.

## 3. Fees

CMVM does not charge fees in relation to the procedure described above. The only cost that may arise is if the AIFs are managed by a management entity registered with CMVM – in which case a monthly fee of EUR 100 is due.



# Romania

Since April 2015 when the Law 74 / 2015 regarding managers of alternative investment funds was enacted, which, together with the RFSA Regulation 10 / 2015, ensured the near-complete implementation of the Alternative Investment Fund Managers Directive (“AIFMD”), the Romanian legislator has not enacted any new laws regulating alternative investment funds.

## 1. EEA AIFMs

Under the Law 74 / 2015, EEA AIFMs authorised in their home State may market EEA and Non-EEA AIFs in Romania, on a services and / or branch basis. EEA AIFMs shall be entitled to market EEA AIFs once a notification is submitted to the RFSA by the competent authority in their home State. EEA AIFMs may also market third country AIFs, provided that the same notification procedure is complied with. In this latter case, the RFSA is entitled to submit objections to the European Securities and Markets Authority in relation to the competent authority’s assessment regarding compliance by an AIFM with the relevant legal provisions.

The RFSA Regulation 10 / 2015 provides that, when advertising EEA AIFs to retail investors, EEA AIFMs are required to:

- follow the notification procedure outlined above;
- comply with the publicity and transparency requirements applicable to publicly distributed Non-UCITS; and
- be authorised to perform investment consulting services.

## 2. Third country AIFMs

Non-EEA AIFMs that are authorised to market EEA or Non-EEA AIFs in another Member State may conduct the same activities in Romania on a passported basis, provided that the respective competent authority sends a notification file to which the RFSA does not object.

## 3. Fees

The current implementing legislation does not set out the fees relating to the passporting procedures. Certain fees ranging from approximately EUR 1000 to EUR 3,100 per year are currently established by way of secondary legislation (the RFSA Regulation 16/2014 regarding the revenues of the RFSA) for the supervision exercised by the RFSA in relation to the distribution of AIFs by EEA AIFMs. Additional fees may be established, potentially by way of secondary legislation



# Slovakia

## 1. EEA AIFMs

The establishment and management of AIFMs in Slovakia are subject to the Act no. 203 / 2011 Coll. on Collective Investment (“**Act on Collective Investment**”) AIFMs which are authorised in their EEA home State may exercise passport rights for the management of most types of AIFs in Slovakia on a services and / or branch basis.

Irrespective of whether an existing passport to conduct management business under another single market directive (such as UCITS) is held, EEA AIFMs must provide a separate notification to their home State competent authority where they have the intention of managing or distributing an EEA AIF on a passported basis. The home State competent authority will send the management passport notification to the National Bank of Slovakia.

Where an EEA AIFM intends on distributing securities of a Slovak AIF or an EEA AIF to professional investors by means of a private placement in Slovakia, they may do so if the EEA AIFM's home State competent authority has provided a passport notification to the National Bank of Slovakia in order to market the AIF to professional investors. For the distribution of securities of a Slovak AIFs or EEA AIFs to retail investors, it is required to have approval by the National Bank of Slovakia.

## 2. Third country AIFMs

AIFMs must apply for approval from the National Bank of Slovakia if they are based in Non-EEA jurisdictions and intend on distributing AIFs in Slovakia. Under the Act on Collective Investment, non-EEA AIFMs may distribute foreign AIFs in Slovakia provided they notify the National Bank of Slovakia.

## 3. Fees

Applications for permission by the National Bank of Slovakia are subject to a fee, however the National Bank of Slovakia does not charge an application fee for outward or inward AIFMD passport notifications. More details about the fees are available on the National Bank of Slovakia's website.



# Slovenia

## 1. EEA AIFMs

### (a) *Distribution to Professional Investors*

EU AIFs managed by EU AIFMs may exercise passport rights for management of EU AIFs in Slovenia, after receiving a notice from its home State's competent authority that the required notice and documents have been provided to The Securities Market Agency in Slovenia (*Agencija za trg vrednostnih papirjev*, "ATVP").

### (b) *Distribution to Non-professional Investors*

EU AIFs managed by EU AIFMs may be distributed in Slovenia to Non-professional Investors if the requirements of the Investment Funds and Management Companies Act ("**ZISDU-3**") are adhered to.

Marketing of EU AIFs by EU AIFMs in Slovenia is allowed following the receipt by the ATVP of a relevant notification from the competent supervisory authority of the home State.

## 2. Third country AIFMs

A non-EU AIFM may provide services including marketing only if it obtains prior approval by the ATVP, unless it has already obtained an approval in another EU member state. ATVP will grant the approval if certain structural and documentary requirements are met.

## 3. Fees

ATVP charges a fee of EUR 210 for the notification process (in the case of umbrella schemes, each investment compartment is subject to the duty to pay fees) and an annual supervisory fee of EUR 840 per each EU AIF (in the case of umbrella schemes, each investment compartment is subject to the duty to pay fees) for supervising compliance with the rules regarding marketing of units or shares of an EU AIF managed by an EU AIFM to professional investors.



# Spain

The AIFMD was transposed into Spanish law by means of Law 22 / 2014 of 12 November on venture capital entities, other closed-ended collective investment schemes and their management companies ("**Law 22/2014**") and came into force on 14 November 2014.

## 1. EEA AIFMs

According to the letter of the law, EEA AIFMs would be able to manage and market open and / or closed-ended EEA and Non-EEA AIFs in Spain on a services and / or branch basis.

If an EEA AIFM wishes to manage and market open and / or closed-ended EEA AIFs to professional investors located in Spain, a passporting process must be carried out in order to legally offer those EEA AIFs. The passporting process would be similar to that foreseen for UCITS. The process will involve the EEA State competent authority sending a management passport notification to the Spanish stock market regulator ("**CNMV**") on behalf of the EEA AIFM.

On the other hand, if an EEA AIFM wishes to manage and market open and / or closed-ended Non-EEA AIFs to professional investors located in Spain, an authorization process must be carried out in order to legally offer those Non-EEA AIFs.

Finally, if an EEA AIFM wishes to manage and market AIFs, regardless of whether they are open or closed-ended or EEA or Non-EEA, to retail investors located in Spain, an authorisation process must be carried out in order to legally offer those AIFs.

## 2. Third country AIFMs

If a third country AIFM wishes to manage and market AIFs, regardless of whether they are open or closed-ended or EEA or Non-EEA, to either retail or professional investors located in Spain, an authorisation process must be carried out in order to legally offer those AIFs.

## 3. Fees\*

EEA and / or third country AIFMs established in Spain as a branch could be required to pay periodic fees depending on the regulated activities they are conducting there. However, such fees will not apply to AIFMs passported into Spain on a services basis.

The CNMV does not charge an application fee for outward or inward AIFMD passport notifications. However, upon registration, AIFs will have to pay a lump sum of EUR 2,500 and from registration onwards an annual flat fee of EUR 3,000.

\* Please note that these fees depend on The General Government Budgets. Elections are taking place in November 2019, consequently these fees may change.





# Sweden

## 1. EEA AIFMs

Please note that the term ‘passporting’ is only used in Sweden for pure notification procedures.

AIFMs authorised as AIFMs in their EEA home State can exercise passporting rights to market AIFs based within the EEA to professional investors in Sweden on a services and / or branch basis. In order to do so, the Swedish Alternative Investment Act (*Sw. Lag (2013:561) om förvaltare av alternativa investeringsfonder*, the “**SAIFM Act**”) requires the AIFMs intending to market EEA AIFs to professional investors in Sweden to make a notification to their home State competent authority. The home State competent authority will send the management passport notification to the Swedish Financial Supervisory Authority (“**SFSA**”) on behalf of the EEA AIFM.

An AIFM intending to market Non-EEA AIFs and / or AIFs to non-professional investors and / or retail clients must apply for a marketing licence with the SFSA. Consequently, the passporting rules are not applicable to such AIFs.

## 2. Third country AIFMs

AIFMs based in Non-EEA jurisdictions wishing to market AIFs in Sweden will be required to apply for a marketing licence with the SFSA.

## 3. Fees

Sweden does not charge an application fee for inward AIFMD marketing passport notifications. Sweden does, however, charge an application fee for all licence applications.

The SFSA does not require AIFMs that passport into Sweden on a services basis to pay periodic fees.



# Switzerland

## 1. Distribution of AIFs

Switzerland is not a Member State of the EU and is thus not subject to the AIFMD and its respective rules. Switzerland has its own

- (a) set of rules, laid down in the Financial Services Act ("**FinSA**", *Finanzdienstleistungsgesetz*) and the corresponding ordinance ("**FinSO**", *Finanzdienstleistungsverordnung*), as well as the Collective Investment Scheme Act ("**CISA**", *Kollektivanlagegesetz*) and the corresponding ordinance ("**CISO**", *Kollektivanlageverordnung*); and
- (b) terminology related to funds or collective investment schemes ("**CIS**"), the term commonly used in Switzerland for any type of fund, as well as related to the terms retail, professional, institutional and non-qualified and qualified investors.

The statutory regulation on distribution of CIS in Switzerland covers the product (including passporting, cf. sections 2 and 3) and the distributor (section 4). In addition, there are rules on the documentation to be used.

## 2. Product Level

As a matter of principle, any foreign CIS, including AIFs and others, may be marketed and sold in Switzerland. The law provides for three different distribution (selling) options, namely:

- (a) Distribution to the public (non-qualified / retail investors) may only occur if, among other requirements, the foreign CIS is registered for passporting with the Swiss Financial Market Supervisory Authority ("**FINMA**") and if the respective marketing rules are complied with.
- (b) Without passporting (without FINMA registration), foreign CIS may be distributed

to high-net-worth retail clients and private investment structures created for them having declared an "opting out" if, among other requirements, the fund or the investment fund manager has appointed a Swiss representative and a Swiss paying agent and if the respective marketing rules are complied with.

- (c) Without passporting and without such appointments, foreign CIS may be distributed to all other qualified investors, as defined by Swiss law, if the respective marketing rules are complied with.

## 3. Passporting

Again as a matter of principle, any foreign CIS may be passported into Switzerland (by way of a registration with FINMA). However, for the passporting of foreign CIS Swiss law requires, among other requirements, that:

- (a) such CIS is domiciled in a jurisdiction which provides for the following:
  - Adequate supervision of the CIS, the asset manager and the custodian;
  - A regulatory framework which requires sufficient organisation of the CIS, the asset manager and the custodian;
  - Adequate investor protection, comparable to the framework applicable to Swiss CIS in Switzerland; and
  - A bilateral agreement on exchange of information between FINMA and the supervisory authority at the domicile of the CIS, the CIS manager and the custodian;
- (b) the CIS appoints a representative and a paying agent in Switzerland; and
- (c) the designation of the CIS is not misleading or deceptive.

Currently, approx. 8200 CIS are passported, and out of those, some 48 were NON-UCITS, which gives evidence that it is very burdensome (if not impossible) to have AIFs (which are NON-UCITS) passported. Accordingly, distribution of AIFs to non-qualified / retail investors is, from a practical perspective, usually not a viable option.

#### 4. Distributor Level

As the marketing of CIS is considered a financial service according to FinSA, distributors of CIS in Switzerland must respect further rules (in addition to the rules on the product level), which provide, in particular, for the following duties:

- Duty to register client advisers in a FINMA approved advisers' register;
- Duty to affiliate with an ombudsman's office;
- Duty to classify investors according to Swiss law (i.e. retail clients, professional clients or institutional clients);
- Duty to comply with certain rules of conduct;
- Duty to comply with certain organizational requirements.

There are certain exceptions from or facilitations to these rules if CIS are marketed to professional or institutional clients only.

FinSA, providing for the rules, entered into effect on 1 January 2020. There are, however, various transitional periods, starting from six months up to two years. As a consequence, most of the rules must not be adhered to immediately, at least if distributors of CIS in Switzerland continue to respect the regime applicable before the FinSA entered into effect.

#### 5. Fees

FINMA charges a registration (passporting) fee of between CHF 2,000 and CHF 20,000 and in addition a periodic fee of CHF 750 (plus CHF 750 for each sub-fund) per annum and fees for each required filing. Such fees will not apply if distribution is limited to qualified investors and / or prudentially supervised financial intermediaries

which requires no passporting and is, from a practical perspective, usually the only option to distribute AIFs in Switzerland.

In addition, the Swiss representative and the Swiss paying agent will charge fees which are subject to negotiation. Possible discounts are available depending on the number of CIS serviced by the representative and paying agent for one manager.



# United Kingdom

## 1. EEA AIFMs

AIFMs, authorised in their EEA home State may exercise passporting rights for management and marketing in the UK in relation to most types of EEA AIF on a services and / or branch basis. In order to do so, the Financial Services and Markets Act 2000 (“**FSMA**”) requires the AIFM to satisfy service conditions set out in Schedule 3.

Regardless of whether an existing passport to do management business under another single market directive (such as UCITS) is held, EEA AIFMs are required to make a separate notification to their home State competent authority if intending to manage or market an EEA AIF on a passported basis. The home State competent authority will then send the management passport notification to the UK Financial Conduct Authority (“FCA”) on behalf of the EEA AIFM.

EEA AIFMs will need to send any approved persons forms to the FCA if exercising a branch passport right to manage an EEA AIF in the UK and persons carrying on ‘controlled functions’ must be approved by the FCA for these purposes, if not currently approved<sup>12</sup>.

A full scope EEA AIFM wishing to market an EEA AIF<sup>13</sup> to retail (as well as professional) investors in the UK may do so if its home State competent authority has submitted a passport notification to the FCA to market the AIF to professional investors or by applying to the FCA directly using the AIFMD marketing permission in the UK form.

The promotion of the AIF to UK investors must be made in accordance with section 21 FSMA and the financial promotion regime and, if an AIF takes the form of an unregulated CIS, section 238 FSMA (see PERG 8.20G in the FCA Handbook).

## 2. Third country AIFMs

AIFMs based in non-EEA (third country) jurisdictions wishing to market EEA and / or Non-EEA AIFs in the UK will be required to comply with the National Private Placement Regime, as well as the financial promotion rules.

## 3. Fees

The UK does not charge an application fee for outward or inward AIFMD passport notifications.

An EEA AIFM passporting into the UK through establishment of a branch is required to pay periodic fees on the regulated activities it is conducting in the UK. Periodic fees will be based on both gross income and funds under management. EEA AIFMs receive a discount to reflect the reduced scope of the FCA’s responsibilities in respect of their oversight. The level of the discount varies depending on the fee-block under which the AIFM falls and according to the division of responsibilities between the home State regulators and other regulators for AIFMs in each fee-block.<sup>14</sup>

The FCA does not require AIFMs that passport into the UK on a services basis to pay periodic fees.

<sup>12</sup> The relevant controlled functions to consider are the money laundering reporting officer [CF11], the customer function [CF30] and possibly the significant management function [CF29].

<sup>13</sup> As long as it is not a feeder AIFM (the master AIFM of which is managed by a non-EEA AIFM) or is a non-EEA AIFM.

<sup>14</sup> Information on how periodic fees are calculated for EEA firms can be found in the FCA’s Fees Manual: <http://fshandbook.info/FS/html/FCA/FEES/4/3#DES123>.

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# Definitions

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<b>Act on Collective Investment</b>	Act no. 203 / 2011 Coll. on Collective Investment (Slovakia)
<b>AFM</b>	Authority for the Financial Markets ( <i>Autoriteit Financiële Markten</i> ) (The Netherlands)
<b>AFMA</b>	Act on Alternative Investment Fund Managers (Finland)
<b>AIF</b>	Alternative Investment Fund, defined in the AIFMD as: “A collective investment undertaking, including investment compartments of such an undertaking, which – raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of these investors; and does not require authorisation pursuant to Article 5 of the UCITS directive”.
<b>AIF Act</b>	Act on Alternative Investment Funds (Cyprus)
<b>AIFM</b>	Alternative Investment Fund Manager, defined in the AIFMD as a legal person whose regular business is managing one or more AIFs
<b>AIFM Act</b>	Act on Alternative Investment Fund Managers (Cyprus)
<b>AIFMA</b>	Alternative Investment Fund Act (Austria)
<b>AIFMD</b>	Alternative Investment Fund Manager Directive of 8 June 2011 (2011 / 61 / EC)
<b>AIFMSAs</b>	Alternative Investment Funds Management Sociétés Anonymes (Greece)
<b>AMF</b>	French Financial Authority ( <i>Autorité des Marchés Financiers</i> )
<b>BaFin</b>	Federal Financial Supervisory Authority (Germany)
<b>BFSMA</b>	Belgian Financial Services and Markets Authority
<b>BoL</b>	Bank of Lithuania
<b>CBI</b>	Central Bank of Ireland
<b>CFA</b>	Consolidated Financial Act (Italy)
<b>CIS</b>	Collective Investment Scheme(s)
<b>CISOU CIA</b>	Collective Investment Schemes and Other Undertakings for Collective Investments Act (Bulgaria)



<b>CNMV</b>	Spanish Securities Market Commission ( <i>Comisión Nacional del Mercado de Valores</i> )
<b>COBO</b>	Control of Borrowing (Jersey) Order 1958
<b>Consob</b>	Italian Securities Market Supervisory Authority ( <i>Commissione Nazionale per le Società e la Borsa</i> )
<b>CSSF</b>	Commission de Surveillance du Secteur Financier (Luxembourg)
<b>CySEC</b>	Cyprus Securities and Exchange Commission
<b>CySEC Marketing Directive</b>	Cyprus Securities and Exchange Commission Directive on Marketing of AIFs
<b>EEA</b>	European Economic Area
<b>EEA AIF</b>	AIF which is registered or authorised in an EEA State under the applicable national law or which is not registered in an EEA State but has its registered office and / or head office in an EEA State
<b>EEA AIFM</b>	An AIFM which has its registered office in an EEA State
<b>EFSA</b>	Estonian Financial Supervision Authority
<b>EFTA</b>	European Free Trade Association
<b>EU AIF</b>	Alternative investment fund not governed by German law but by the law of an EEA member state.
<b>EU AIFM</b>	Alternative investment fund manager which has its registered office outside of Germany but within an EEA member state and which does not fulfil the de minimis exemptions mentioned in the AIFMD.
<b>FATF</b>	Financial Action Task Force
<b>FCA</b>	Financial Conduct Authority (United Kingdom)
<b>FCMC</b>	Financial and Capital Market Commission (Latvia)
<b>Finanstilsynet</b>	Financial Supervisory Authority (Norway)
<b>FIN-FSA</b>	Financial Supervisory Authority (Finland)
<b>FINMA</b>	Financial Market Supervisory Authority (Switzerland)
<b>FMA</b>	Financial Market Authority (Austria)
<b>FSA</b>	Financial Supervisory Authority (Denmark)
<b>FSC</b>	Financial Supervision Commission (Bulgaria)
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>FSMA</b>	Financial Services and Markets Authority (Belgium)

<b>GFSC</b>	Guernsey Financial Services Commission
<b>HANFA</b>	Financial Services Supervisory Agency ( <i>Hrvatska agencija za nadzor financijskih usluga</i> ) (Croatia)
<b>HCMC</b>	Hellenic Capital Market Commission (Greece)
<b>Investments Fund Act</b>	Act XVI of 2014 on Collective Investment Forms and their Managers (Hungary)
<b>ISA</b>	Investment Services Act (Malta)
<b>LAIFM</b>	Law on Alternative Investment Funds and its Managers 2013 (Latvia)
<b>LAIFMA</b>	Luxembourg law transposing the AIFMD
<b>MFSA</b>	Malta Financial Services Authority
<b>MNB</b>	Central Bank of Hungary ( <i>Magyar Nemzeti Bank</i> )
<b>Non-EEA</b>	Non-European Economic Area
<b>Non-EEA AIF</b>	An AIF not qualifying as an EEA AIF
<b>Non-EU AIFM</b>	An AIFM which has its registered office in a state which is not an EEA State
<b>NPPR</b>	National Private Placement Regime
<b>Passport Regulations</b>	Investment Services Act (Alternative Investment Fund Manager (Passport) Regulations) (Malta)
<b>Professional Investor</b>	Professional client within the meaning of Annex II to MiFID
<b>RFSA</b>	Romanian Financial Supervisory Authority
<b>SAIFM Act</b>	Swedish Alternative Investment Act
<b>Semi-Professional Investor</b>	Investor who commits himself to invest at least EUR 200,000 and positive assessment by AIFM regarding his sufficient expertise, experience and knowledge and suitability of investment for him (for more details see Section 1 para. 19 no. 33 German Capital Investment Code)
<b>SFSA</b>	Swedish Financial Supervisory Authority
<b>Third Country Regulations</b>	Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations (Malta)
<b>UCITS</b>	Undertakings for Collective Investment in Transferable Securities

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# Contacts

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