

FMA Instructions 2017/2 – Instructions on establishing an alternative investment fund manager (AIFM)

Instructions on establishing an alternative investment fund manager (AIFM) under the Liechtenstein Alternative Investment Fund Managers Act of 19 December 2012 (*Gesetz vom 19. Dezember 2012 über die Verwalter alternativer Investmentfonds, AIFMG*; hereinafter referred to as the “AIFM Act”) and the Liechtenstein Alternative Investment Fund Managers Ordinance of 22 March 2016 (*Verordnung vom 22. März 2016 über die Verwalter alternativer Investmentfonds, AIFMV*; hereinafter referred to as the “AIFM Ordinance”)

Reference:	FMA GL 2017/2
Addressees:	–
Re.:	Authorisation of AIFMs under the AIFM Act and AIFM Ordinance
Place of publication:	Website
Date of publication:	16 January 2017
Last amended on:	–

These Instructions provide an overview of the authorisation procedure on establishing an AIFM in Liechtenstein under the AIFM Act. Unless otherwise specified, these Instructions also apply to self-managed alternative investment funds (AIFs), insofar as the governing bodies of the AIF act in place of the AIFM. Decisions regarding individual cases will be made solely on the basis of legislative provisions and instructions issued by the Financial Market Authority Liechtenstein (hereinafter referred to as the “FMA”) in the capacity of supervisory authority. Please contact the FMA for further information.

1. General information

Entities intending to manage an AIF or market units of an AIF on a professional basis, either in or from Liechtenstein, must be authorised by the FMA prior to commencing business (Article 28(1) of the AIFM Act).

In accordance with Article 29(2) of the AIFM Act, in addition to investment management and marketing, the authorisation granted may also cover activities of administration and activities related to the assets of the AIF, as specified in Article 29(2)(b) of the AIFM Act.

As well as authorising the management of AIFs, the FMA may grant authorisation for AIFMs to provide the following services, as specified in Article 29(3) of the AIFM Act:

- a) Management of portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis
- b) Where the authorisation extends to services under a):
 1. Investment advice
 2. Safe keeping and administration
 3. Reception and transmission of orders

As a minimum, the investment management activities of AIFMs must involve portfolio management or risk management.

Self-managed AIFs are only permitted to manage their own assets (Article 29(5) of the AIFM Act).

Authorisation to operate an AIFM or self-managed AIF will only be granted if all the conditions set out in Article 30 of the AIFM Act are met (including registered office, guarantee in respect of the proper conduct

of business, business plan, organisational structure, capital base, remuneration policy and delegation arrangements).

1.1. Name of entity

In accordance with Article 27(4) of the AIFM Act, entities may only use words or expressions indicating AIFM activities in the business name, in any descriptions of the purposes of the business and in business advertising if they have been authorised to operate as an AIFM. The FMA will verify that the name of the entity is acceptable from a regulatory perspective.

1.2. Qualifying holdings

Shareholders with qualifying holdings (10% or higher) must satisfy the applicable eligibility requirements in view of the requirement to ensure sound and prudent management of the AIFM (Article 30(1)(d) of the AIFM Act).

1.3. Head office and legal form

The registered office and the head office of the AIFM must be situated in Liechtenstein (Article 30(1)(d) of the AIFM Act). The AIFM must be a legal entity. In certain circumstances, AIFMs may take the form of self-managed limited partnerships or limited liability partnerships (Article 25 of the AIFM Ordinance).

1.4. Guarantee in respect of the proper conduct of business

The persons charged with the management of AIFMs must meet the professional and personal requirements to ensure the proper conduct of business at all times (Article 30(1)(b) of the AIFM Act). Any persons designated to manage the business must, in particular, be appropriately qualified for the intended position on the basis of their education and career history. The FMA generally requires a minimum of three years of relevant full-time experience.

The persons concerned must be able, in general, to discharge their responsibilities within the AIFM properly, having regard to their place of residence as well as the AIFM's infrastructure, organisational structure and investment strategy. All members of the Executive Board and Board of Directors must have sufficient time to exercise their role (see Article 30(4) of the AIFM Ordinance). They must have a good reputation as business professionals.

In assessing such individuals, the FMA may refer to their curriculum vitae (CV), educational certificates, evidence of employment and employer's references.

1.5. Business plan

AIFMs must submit a viable business plan (Article 30(1)(c) of the AIFM Act). In accordance with Article 28(2) of the AIFM Ordinance, the business plan must include information on the organisation, staff, premises and office equipment as well as a projected balance sheet and projected profit and loss account, as verified by the auditors, for at least the first three financial years. The time frames for attaining the projected targets are to be indicated.

1.6. Organisational structure

AIFMs must have a suitable permanent establishment in Liechtenstein, both in terms of staffing and premises, and the organisational structure required for the performance of their functions. AIFMs must have:

- a Board of Directors or Supervisory Board responsible for overall management, supervision and

- control (Article 26 of the AIFM Ordinance);
- an Executive Board responsible for operations which must be composed of not less than two members with joint responsibility for performing the relevant functions; the members may not concurrently serve on the Board of Directors.

The entity shall establish the following positions and functions, depending on the nature, volume and complexity of its operations and the type and range of services supplied:

- a Compliance function;
- an Internal Audit function;
- a Risk Management function;
- an authority responsible for dealing with investor complaints.

In addition, appropriate procedures must be established for dealing with breaches of the AIFM Act and market abuse legislation by employees (in particular insider dealing).

1.7. Initial and minimum capital

In accordance with Article 32 of the AIFM Act, AIFMs are required to have initial capital of at least EUR 125,000 or the equivalent in Swiss francs. Self-managed AIFs are required to have initial capital of at least EUR 300,000 or the equivalent in Swiss francs. In addition, the AIFM's own funds must be equal to or greater than 0.02% of the amount by which the value of the portfolios under management exceeds EUR 250 million or the equivalent in Swiss francs. Notwithstanding the aforementioned capital requirement, the capital held must be equivalent to one quarter of the preceding year's fixed overheads. The capital must be fully paid up prior to commencing business operations.

2. Authorisation procedure

During the authorisation procedure, the FMA will undertake a thorough legal and financial assessment of the applicant's circumstances (please refer to section 3 of these Instructions for specific requirements).

It is important to comment on each issue with reference to any relevant documents appended. A separate list of any appended documents must be provided, arranged in numerical order. The documents submitted will be checked carefully to ensure that the formal requirements are met. The FMA will inform the applicant of any matters that are unclear and need to be corrected.

The applicant should submit the application for authorisation, including all the information and documents referred to in section 3 of these Instructions, by writing to the Liechtenstein Financial Market Authority (FMA), Securities and Markets Division, Legal Department, Landstrasse 109, P.O. Box 279, 9490 Vaduz, Liechtenstein.

If there are any changes in material facts during the authorisation process, the relevant documents must be updated and submitted immediately.

All information provided by applicants will be treated as confidential and subject to professional confidentiality rules.

A fee will be charged in respect of the authorisation procedure, as indicated in section 4 of these Instructions.

The duration of the authorisation process will depend primarily on the coherence, quality and completeness of the information and documents provided at the application stage. Confirmation of receipt is to be sent to applicants within 10 working days of receipt of the complete application. If the application is incomplete, the missing documents are to be requested. In all circumstances, a decision must be made

within three months of receipt of the full set of application documents (Article 31(5) of the AIFM Act).

3. Applying for authorisation

As a general principle, applications for authorisation and the accompanying documents must be submitted in German. The FMA may permit exceptions to this rule.

The application, including all the requisite documents, must be sent to the FMA. Applicants should refer to supporting documents (appendices) where appropriate. Applications for authorisation are to be submitted to the FMA in hard copy and electronic format.

The documents to be provided in support of an application for AIFM authorisation include, in particular:

- request in writing;
- completed application form (the additional supporting documents to be provided are also specified in the application form);
- business plan;
- draft articles of association or deed of partnership;
- declaration of acceptance by a firm of auditors recognised by the FMA (lead auditor);
- evidence of the capital specified (deposit confirmation or bank guarantee);
- calculation of the available and required equity capital;
- confirmation from the Commercial Registry that the entity is registrable;
- documents evidencing that the proper conduct of business is ensured by reason of the persons charged with the administration and management of the entity:
 - descriptions of functions
 - original copies of CVs which must be signed and dated
 - copies of degree certificates, educational certificates, evidence of employment and employer's references demonstrating professional competence and qualifications
 - colour copy of a passport or some other identification document
 - criminal records excerpts (original documents less than three months old)
 - statements pertaining to any pending criminal and administrative proceedings that would affect the performance of duties and an undertaking to notify any relevant changes; these statements must be signed and the originals submitted
 - personal statement as to whether bankruptcy or composition proceedings have been instituted or concluded without the possibility of appeal
- diagram showing the ownership structure down to the last owner;
- guidelines on making investment decisions;
- risk management guidelines including risk map;
- compliance guidelines;
- internal audit guidelines;
- information on remuneration policy;
- description of measures in place to prevent money laundering and terrorist financing;
- delegation agreements.

The Executive Board of the AIFM must also confirm that there are no grounds for refusal as set forth in Article 30(2) of the AIFM Act. It should be noted that the FMA may request additional documents where required.

4. Charges

4.1. Authorisation fee

A fee of CHF 20,000 is generally payable for granting authorisation and, where conditions are imposed, CHF 25,000 (Article 30 in conjunction with Appendix 1(C)(1) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz; FMAG – FMA Act*)).

4.2. Taxes

General information on the taxation of management companies may be obtained from the Liechtenstein Tax Administration (www.stv.llv.li).

4.3. Commercial Register registration fee

The fees chargeable for registration in the Commercial Register and public certification will be as set forth in the Liechtenstein Land and Commercial Register Fees Ordinance (*Verordnung über die Grundbuch- und Handelsregistergebühren*).

5. Notification

Liechtenstein AIFMs are permitted to operate under the right of freedom to provide services within the EEA or by setting up a branch office in the relevant EEA host Member State. By way of notification, AIFMs are required to submit a request to the FMA for this purpose. Instructions on the procedures for notifying AIFM activity are available on the FMA website. Liechtenstein AIFs may also be marketed in other EEA Member States.

6. Expiration and withdrawal of authorisation

The rules governing the expiration and withdrawal of authorisation are set out in Articles 50 and 51 of the AIFM Act. Article 51(1)(e) of the AIFM Act provides, for example, that FMA authorisations may be withdrawn if the management company obtained the authorisation by making false statements or by any other irregular means.

7. Key legislation and legal rules

- Liechtenstein Alternative Investment Fund Managers Act of 19 December 2012 (*Gesetz vom 19. Dezember 2012 über die Verwalter alternativer Investmentfonds; AIFMG – AIFM Act*)
- Liechtenstein Alternative Investment Fund Managers Ordinance of 22 March 2016 (*Verordnung vom 22. März 2016 über die Verwalter alternativer Investmentfonds; AIFMV – AIFM Ordinance*)
- Liechtenstein Persons and Companies Act of 20 January 1926 (*Liechtensteinisches Personen- und Gesellschaftsrecht vom 20. Januar 1926; PGR*)
- Liechtenstein Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung; SPG – Due Diligence Act; DDA*)
- Liechtenstein Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Verordnung vom 17. Februar 2009 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung; SPV – Due Diligence Ordinance; DDO*)