

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

December 2024



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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 in the countries listed in this guide.

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 52 to 55).

Amanda Howard, Matthias Kuert and Daniel Voigt.

Information provided as of December 2024.

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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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# Summary Table

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>AUSTRIA</b>	Yes	The EEA AIFM requests their home State authority to submit a notification and certificate of permission to the FMA. Once the EEA AIFM receives confirmation that the documents have been submitted, the EEA AIFM may begin activity.	Notification must be accompanied by all information required under Section 31 AIFMA.	Yes – the non-EEA AIFM must appoint a legal representative in Austria. The notification must be accompanied by a confirmation of compliance with AIFMA / AIFMD issued by the competent authorities of the home State.	Processing fee of EUR 1,100 and EUR 220 per sub-fund. Annual monitoring and compliance fee of EUR 600 per fund and EUR 200 per sub-fund.	Yes – an EEA licensed AIFM must inform FMA about pre-marketing activities to potential professional investors within two weeks after the start of the first pre-marketing activity.
<b>BELGIUM</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to BFSMA. Once submitted, the AIFM may begin activity.	Notification is required regardless of whether a passport under another single market directive is held.	Yes – the non-EEA AIFM must comply with the National Private Placement Regime and financial promotion rules.	Variable supervisory fee for AIFMs acting through a Belgian branch and annual supervisory fee for AIFs of EUR 434 – EUR 4,329.	Yes – EEA AIFMs may commence pre-marketing of EEA AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Belgium, provided that the FSMA receives a pre-marketing notification letter from the AIFM within two weeks of starting such pre-marketing activity.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>BULGARIA</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the FSC. Once submitted, the AIFM may begin activity.	Notification must be accompanied by a certificate of licence in the home State as well as all documents required under CISOUCA.	Yes – there must be cooperation arrangements between Bulgaria and the home State. The non-EEA AIFM must have approval from FSC and satisfy the CISOUCA requirements.	One-off license fee of EUR 4,000. Annual supervision which varies depending on the type and extent of the license/registration and on the number of managed funds.	Yes – EEA AIFMs may commence pre-marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Bulgaria, provided that the Bulgarian Financial Supervision Commission receives a pre-marketing notification letter within two weeks of starting such pre-marketing activity.
<b>CHANNEL ISLANDS (JERSEY AND GUERNSEY)</b>	Yes – neither are within the EEA so are known as 'third countries' for the purposes of AIFMD.	Jersey: the fund (or its governing body) will need to obtain a COBO consent from the JFSC to permit the circulation of the fund's prospectus in Jersey. Certain exemptions to that requirement are available for companies and unit trusts.  Guernsey: the EEA AIFM must obtain a licence from GFSC.	Jersey: notification requirements will generally apply if a Jersey service provider will be appointed to the fund.  Guernsey: Individual requirements under the GFSC must be complied with.	AIFMD does not apply to the selling of securities of funds into Jersey and Guernsey. Jersey and Guernsey funds may be marketed into the EEA using member states' NPPR regimes and are expected to be two of the first non-EEA countries to benefit from the passporting regime.	Statutory fees may apply.	Yes – both EEA AIFMs and Non-EEA AIFMs may commence pre marketing AIFs which are not yet established (or established but have not obtained all regulatory consents required in the AIF's home jurisdiction) to potential investors in Jersey and Guernsey.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>CROATIA</b>	Yes	<p>The EEA AIFM requests their home State authority to submit a notification to HANFA.</p> <p>Upon notification by the home State authority that the passport notification has been sent to HANFA, the AIFM may market to professional investors.</p>	Notification must detail the services that the AIFM intends to perform and the AIFs it intends to manage. authorisation from HANFA is required in order to market to retail investors.	Yes – the non-EEA AIFM must have been granted authorisation by the Member State of reference. HANFA's authorisation is also required in order to market to retail investors.	<p>Notification fee of up to HRK 60,000 (approximately EUR 8,100).</p> <p>Supervision fees of HRK 20000 – 30,000 (approximately EUR 2,700 – 4,000).</p>	Yes – EEA AIFMs are authorised to conduct pre-marketing activities in Croatia, unless the information provided to professional investors are sufficient for investors to commit to acquiring units of a certain AIF, have features of forms for registration of units or similar documents, whether in draft or final form or have the features of a prospectus, rules, AIF's articles of association or offer documents of an AIF that has not yet been established, in its final form.
<b>CYPRUS</b>	Yes	<p>The EEA AIFM requests their home State authority to submit a notification to CySEC. Once submitted, the AIFM may market to professional investors. Once granted authorisation from CySEC, the AIFM may market to retail investors.</p>	For non-EEA AIFMs, the notification must be accompanied by certification of license in home State and a statement containing all of the information required by Annex IV of compliance with the AIFMD.	Yes – the non-EEA AIFM must comply with AIFM Act requirements and the national private placement rules.	<p>Application fee for non-EEA AIFMs or the marketing of non-EU AIFs.</p> <p>Application fee for marketing to retail investors, payable to CySEC.</p>	Yes – an EEA AIFM can engage in pre-marketing of an AIF in Cyprus to the extent that the information provided to potential professional investors does not enable such investors to commit to acquiring units or shares of a particular AIF; and does not amount to a subscription form or similar document, whether in draft or final form; and does not amount to constitutional documents, a prospectus or offering documents of a not-yet established AIF in a final form.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>CZECH REPUBLIC</b>	Yes	<p>The EEA AIFM requests their home State authority to submit a notification to the CNB. Once the home State authority confirms to the AIFM that the notification has been forwarded to the CNB, the AIFM may market non-publicly to the professional investors.</p> <p>Public offering in any EEA AIF in the Czech Republic is subject to a registration of the fund in the relevant list maintained by the CNB.</p>	<p>The notification is a condition for a private placement in relation to the EEA AIF to the professional investors in the Czech Republic.</p> <p>In respect of a public offering to the qualified investors, the notification must be accompanied by documentation of a manager's licence under the AIFMD as well as registration with the CNB.</p> <p>Additional conditions apply in respect of private placement to persons other than professional investors or public offering to the nonqualified investors</p>	Yes – the non-EEA AIFM must be granted marketing permission by the CNB, and the fund must be registered in the relevant CNB list.	<p>Registration and renewal fee related to the registration of the fund no longer apply. Administration fee of EUR 200 for an evaluation of comparability.</p> <p>License application fee of CZK 50,000 - 100,000 (approximately EUR 2,000 - 4,000) for non-EEA AIFM.</p>	Yes – above-threshold EEA may commence pre-marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in the Czech Republic, provided that the CNB receives a pre-marketing notification letter within two weeks of starting such pre-marketing activity.
<b>DENMARK</b>	Yes	<p>The EEA AIFM requests their home State competent authority to submit a notification to the Danish FSA.</p> <p>A separate application is required when marketing to retail investors.</p>	The notification and/or application must be accompanied by all relevant information required by the Danish AIFM Act.	<p>Yes – non-EEA AIFM can be granted marketing permission by the Danish FSA. In addition to the requirements under the AIFMD Article 42 regime a depository must be appointed and a reciprocity statement must be provided by the home State competent authority or by a qualified lawyer.</p> <p>Further, documentation must be provided from the relevant authorities in the home country of the Non-EEA AIF and Non-EEA AIFM that evidences that the Non-EEA AIF and Non-EEA AIFM are covered by a corporation agreement (MoU) between the Danish FSA and the relevant authorities in their respective home country.</p>	<p>There is no application fee, but the AIFM is required to pay an annual fee to the Danish FSA. The annual fee is between DKK 4,100 and DKK 8,000 (depending on the type of marketing license) and is subject to annual adjustments.</p>	Pursuant to the Danish AIFM Act Section 88 a (implementing the AIFMD Article 30a) an EEA AIFM may commence pre-marketing except where the information presented to potential professional investors is sufficient to allow investors to commit to acquiring units or shares of a particular AIF; amounts to subscription forms or similar documents whether in a draft or a final form; or amounts to constitutional documents, a prospectus or offering documents of a not-yet-established AIF in a final form.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>ESTONIA</b>	Yes	The EEA AIFM requests their home State authority to submit a notification and the relevant documents to the EFSA. Once submitted, the AIFM may begin activity.	Notification must be accompanied by all relevant information required by the Investment Funds Act.	Yes – the non-EEA AIFM may market a non-EEA AIF provided that (i) the AIF is not marketed in any other EEA countries and (ii) the marketing is done in the course of private placement.	Processing fee of EUR 600 per registration of public placement for both EEA and non-EEA AIFMs.  EEA AIFMs must pay periodic supervision fees.	Yes – an EEA AIF can be marketed by an EEA AIFM to professional investors and an AIFM must ensure the documentation of pre-marketing does not constitute as an offer or an invitation to subscribe for the units or shares and that the provided information is not conclusive. A pre-marketing notification has to be submitted to the EFSA via the regulator of the AIFM's home state.
<b>FINLAND</b>	Yes	The EEA AIFM requests their home State authority to submit a notification and the relevant documents to the FIN-FSA. The EEA AIFM may start marketing the EEA AIF in Finland as of the date of receiving a notification to that effect from its home State authority.	No separate authorisation/notification (in addition to Article 32 passporting) is required in case the EEA AIF is only marketed to professional clients.  A separate authorisation from the FIN-FSA is required if the EEA AIFM intends to market units in EEA AIF to retail investors.	Yes – the non-EEA AIFM must submit a written notification to FIN-FSA. Marketing may begin on receipt of a marketing authorisation from the FIN-FSA.	Fixed notification charges (and in certain circumstances periodic supervisory charges) may apply.	Yes – both EEA AIFMs and Non-EEA AIFMs may commence pre marketing of AIFs to potential investors in Finland, provided that the FIN-FSA receives a pre marketing notification letter within two weeks of starting such pre marketing activity.
<b>FRANCE</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the AMF. Once submitted, the AIFM may begin activity.	Notification must be accompanied by relevant documents depending on whether the AIFM intends to manage a French AIF on a cross-border basis or exercise a branch passport in France.	Yes – the non-EEA AIFM must be granted marketing permission by the AMF.	Annual supervisory fees that are calculated in relation to the management assets.	Both EEA AIFMs and, theoretically, Non EEA AIFMs may commence pre marketing AIFs which are not yet established or not yet compliant with the applicable marketing procedures, to potential professional investors in France, provided that the AMF receives a pre marketing notification letter within two weeks of starting such pre marketing activity.



Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>GERMANY</b>	Yes	The EEA AIFM requests their HMSA to submit a notification to BaFin. Once HMSA has confirmed the submission to BaFin the AIFM may market to professional investors.	Notification must be accompanied by certification of licence in the home State. Notification must be approved by BaFin if the AIFM intends to market to retail investors.	Yes – the non-EEA AIFM must apply for marketing permission by the BaFin.	Notification fee of EUR 466 per single EU AIF or sub-fund for an EEA AIFM and EUR 1,641 per single EU AIF or sub-fund for a non-EEA AIFM. Annual marketing fee of EUR 113.	Yes –The EEA AIFM requests their HMSA to submit a notification to BaFin. Non-EEA AIFMs must inform BaFin about pre-marketing activities to Semi Professional and Professional Investors in Germany within two weeks after the start of the first pre-marketing activity. Pre-marketing vis-à-vis retail investors is not permitted.
<b>GREECE</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the HCMC. Once submitted, the AIFM may begin activity.	Notification must be accompanied by certification from the home State that the relevant EU AIFM is authorised to manage AIFs.	No – non-EEA AIFMs are not allowed to manage or market any AIFs in Greece.	Notification fee of EUR 1,000 plus 2.4% digital transaction duty per sub-fund/compartiment or AIF for AIFMs who seek to market AIF in Greece; fee of EUR 150 plus 2.4% digital transaction duty per sub-fund/compartiment or AIF for Greek AIFMs who seek to market abroad.  In addition, annual contribution fee of EUR 1,000 plus 2.4% digital transaction duty per sub-fund/compartiment or AIF.	Yes – EU AIFMs can initiate pre-marketing as long as the information provided by them to professional investors is not adequate for the latter to subscribe to the units or shares of an AIF; does not amount to subscription forms or similar documents (whether in draft or final form) and does not amount to constitutional documents, any prospectus or offering documents of a not-yet established AIF in a final form.
<b>HUNGARY</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the MNB. Once submitted, the AIFM may begin activity.	Separate notification for retail investors is not required. However, unregulated CISs may not be promoted to Hungarian investors.	Yes – there must be cooperation arrangements between the MNB and the home State. The non-EEA AIFM must comply with provisions in the IFA.	Supervisory fees for all EEA AIFMs passporting into Hungary via a branch. No fees are payable in the notification process.	Yes – EU AIFMs may commence pre-marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Hungary, provided that the MNB receives a pre-marketing notification letter within two weeks of starting such pre-marketing activity.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>IRELAND</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the CBI. Once approved, the AIFM may begin activity.	Notification must be accompanied by certification from the home State that the relevant EU AIFM is authorised to manage AIFs.	Yes – the non-EEA AIFM must be granted marketing permission by the CBI.	Currently, there are no fees.	Yes - EEA AIFMs may commence pre-marketing AIFs which are not yet established, to potential investors in Ireland subject to the requirements of regulation 31A of the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) as amended.
<b>ITALY</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to Consob. Once submitted, the AIFM may begin activity.	Notification must be accompanied by a certification from the home State that the relevant EEA AIFM is authorised to manage AIFs.	Yes – the non-EEA AIFM must be granted marketing permission by the Bank of Italy and Consob.	Each year, Consob issues specific resolutions to determine all fees payable.	Yes – EEA AIFMs can carry out pre-marketing activities of reserved AIFs vis-à-vis professional investors in Italy provided that CONSOB receives a prior notification by the competent home state Authority of the relevant EEA AIFM, to whom Consob can request further information on the pre-marketing activities that are envisaged or that have already been performed.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>LATVIA</b>	Yes	The EEA AIFM requests their home State authority to submit a notification and the relevant documents to the Bank of Latvia. Once submitted, the AIFM may begin activity.	Notification must be accompanied by necessary documents required under Art. 66 of the Law on Alternative Investment Funds and their Managers of Latvia (Annex IV of the AIFMD) and an attestation on authorisation in the EEA AIFM's home State.	Yes – the non-EEA AIFM must be granted marketing permission by the Bank of Latvia to market EEA AIFs and appoint a legal representative in Latvia. Marketing of non-EEA AIFs managed by non-EEA AIFMs is prohibited.	One-off supervision fee of EUR 1,209 per each EEA AIF or non-EEA AIF. Additional registration and yearly supervision fees apply to locally established AIFs and operations through a branch in Latvia.	Yes – Only EEA AIFMs may commence pre-marketing of EEA to potential professional investors in Latvia without having to notify the Bank of Latvia provided that a prior notification in accordance with the respective legal regulations of the EEA AIFM's home country has been made to the national competent authority. Nonetheless, the Bank of Latvia is entitled to request the national competent authority of the respective EEA AIFM to disclose information pertaining to pre-marketing having taken place in Latvia.
<b>LIECHTENSTEIN</b>	Yes	The EEA AIFM sends a notification to their home member State authority (HMSA) which forwards the notification to the FMA. Once submitted, the AIFM may begin activity.	Notification must be accompanied by all required documents according to Art 32 AIFMD.  For marketing to retail investors additional documentation is necessary according to Art 151 AIFMG-L.	Yes – if the home member state of the non-EEA AIFMs is not on the FATF list of non-cooperative countries. A cooperation agreement between FMA and HMSA is a further pre-condition.	Notification fee professional investors only; CHF 500 per (sub-) fund for the notification.  Notification fee retail investors: CHF 750 for single funds and CHF 1'125 for Umbrella Funds including one sub-fund, CHF 375 for each additional sub-fund  Annual supervisory fee of CHF 1'250 per (sub-) fund.	Yes – EEA AIFMs may commence pre-marketing AIFs which are not yet established to potential professional investors in Liechtenstein, provided that the FMA receives a pre marketing notification letter within two weeks of starting such pre marketing activity.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>LITHUANIA</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the BoL. Once submitted, the AIFM may begin activity.	Notification must comply with the Law on Management Companies of Alternative Collective Investment Undertakings of the Republic of Lithuania.	Yes – non-EEA AIFMs which are authorised in another EEA State of reference are entitled to same passporting rights as EEA AIFMs.	State fee of EUR 223 – EUR 826 for establishing a collective investment.	Yes – pre-marketing of AIFs which are not yet established or established, but not yet compliant with the applicable marketing procedures, to professional investors is allowed. AIFMs must inform BoL about pre-marketing activities to professional investors in Lithuania within two weeks after the start of the first pre-marketing activity.
<b>LUXEMBOURG</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the CSSF. Once submitted, the AIFM may begin activity.	Notification may only be made in relation to a passport for marketing to professional investors.	Yes – the non-EEA AIFM must notify the CSSF prior to any marketing activities in Luxembourg.	Annual marketing fee of EUR 3,000 for a stand-alone foreign law AIF and EUR 5,500 for a foreign law AIF with compartments.	Yes – both EEA AIFMs and Non-EEA AIFMs may commence pre marketing AIFs which are not yet established, or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Luxembourg, provided that the CSSF receives a pre marketing notification letter within two weeks of starting such pre marketing activity.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>MALTA</b>	Yes	The EEA AIFM notifies their home State authority of their intent to market in Malta. Once the EEA AIFM's home State authority confirms to the EEA AIFM that it transmitted the notification to the MFSA, the EEA AIFM may begin activity.	Notification may only be made in relation to a passport for marketing to Professional Investors and it must comply with the Investment Services Act (Marketing of Alternative Investment Funds) Regulations.	Yes – the non-EEA AIFM must comply with the Investment Services Act (AIFM) (Third Country) Regulations and the local private placement regime.	Notification fee of EUR 2,500 and annual supervisory fee of EUR 3,000 for marketing of an EEA AIF by EEA or non-EEA AIFM, and EUR 450 notification fee and EUR 500 annual supervisory fee per AIF sub-fund. When an EEA AIFM markets an EEA AIF in Malta, no annual supervisory fee will be payable from the 16th sub-fund upwards.	Yes – EEA AIFMs are allowed to engage in pre-marketing of an EEA AIF in Malta to Professional Investors to test their interest in an EEA AIF or compartment which is not yet established or which is established but not yet notified for marketing and which does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment. In Malta, pre-marketing rules were not extended to non-EEA AIFMs and/or non-EEA AIFs.
<b>MAURITIUS</b>	No, Mauritius is not subject to any EU AIFs requirement and has its own regulatory requirements.	N/A	N/A	Yes - marketing of securities of foreign funds to retail investors may only be made through the holder or a representative of an investment dealer licence or an investment adviser licence.	N/A	Mauritian laws do not provide for specific pre-marketing rules
<b>THE NETHERLANDS</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the AFM. Once submitted, the AIFM may begin activity.	Separate notification is required if the AIFM intends to manage a Dutch AIF that offers units to non-professional investors.	Yes – the non-EEA AIFM must comply with the Dutch third country regime.	Supervisory fees may apply for EEA AIFMs established via branch.	Yes - EEA AIFMs engaging in pre marketing activities in the Netherlands need to submit a pre marketing notification form to their competent regulator prior to engaging in pre marketing activities.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>NORWAY</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the FSAN. Once submitted, the AIFM may begin activity.	Separate application is required if the AIFM intends to manage a Norwegian AIF that offers units to non-professional investors.	Yes – the non-EEA AIFM must comply with the Norwegian private placement regime.	Fees between NOK 5,000 and NOK 30,000 per fund may be levied for marketing applications submitted after 1.1.2024. Annual fees of up to NOK 10,000 may be levied per manager with one or more funds approved for marketing in Norway. See full section for specific fee levels.	Yes – licensed EEA AIFMs may commence pre marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Norway, provided that the Norwegian Financial Supervisory Authority (NSF) receives a pre marketing notification letter within two weeks of starting such pre marketing activity.
<b>POLAND</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the PFSA. Once submitted, the AIFM may begin activity.	Notification must detail the EEA AIF internal regulations and be accompanied by certification that the AIFM is authorised in their home State.	Currently, Polish regulations do not allow third country AIFMs to operate in the territory of Poland.	The registry fee is EUR 300.00 for each AIF in case AIFs are marketed solely within professional investors and EUR 1,200.00 in other cases (with another EUR 1,200.00 for each consecutive sub-fund, starting with a second one or EUR 300 for each sub-fund marketed solely within professional investors). Additional annual fees apply (EUR 300 or EUR 1000 depending on if the AIF is marketed within retail investors and EUR 200 or EUR 500 depending on the same criterion.	Yes – EEA AIFMs may commence directly or through a licensed intermediary pre-marketing of AIFs which are not yet established or established but not yet notified for marketing in accordance with the procedure described above, to potential professional investors in Poland, provided that the PFSA receives a pre-marketing notification within 2 weeks from the starting date of pre-marketing activities.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>PORTUGAL</b>	Yes	The EEA AIFM requests their respective home State authority to submit a notification to the CMVM. Upon receipt of acknowledgement by CMVM, the AIFM may begin activity.	Notification must comply with the Asset Management Regime in force in Portugal and may have to include some additional information considering the AIF and the AIFM home country (EU or third country).	Yes. Certain conditions may have to be met.	If the AIF is managed by an entity registered with CMVM, there is a monthly fee of EUR 125.	Yes – the provision of information or communication, directly or indirectly, about investment strategies or investment ideas by or on behalf of an AIFM to gauge the interest of potential professional investors in an AIF, which is not authorised or has not been notified for marketing in the Member State where the potential investors have their domicile or registered office is allowed in Portugal.
<b>ROMANIA</b>	Yes	The EEA AIFM requests their home State authority to submit a notification and to the RFSA. The AIFM may begin activity once it is registered in the registry kept by RFSA.	Notification must be accompanied by relevant documents depending on whether the AIFM intends to manage a Romanian AIF on a cross-border basis or exercise a branch passport in Romania.	Yes – the non-EEA AIFM must have been granted authorisation by the RFSA as Member State of reference and appoint a legal representative in Romania.	Annual supervision fee ranging from EUR 1,000 to EUR 4,000.	Yes – EEA AIFMs may commence pre-marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Romania, provided that the EEA AIFM sent a pre-marketing notification letter to their home State competent authority within two weeks of starting such pre-marketing activity, which in turn is directly transmitted to the RFSA.

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>SINGAPORE</b>	<p>No, Singapore is not subject to any EU AIF requirements and has its own regulations.</p> <p>However, offers of such funds may be made in limited circumstances and on a restricted basis pursuant to applicable exemptions under Singapore law (such as only to institutional investors or accredited investors).</p>					
<b>SLOVAKIA</b>	Yes	The EEA AIFM requests their home State authority to submit a notification to the National Bank of Slovakia. Once informed of the submission by the home state authority, the AIFM may begin activity to professional investors.	Notification is sufficient in case of marketing to professional investors. The permission of the National Bank of Slovakia is required if the AIFM intends to market to retail investors.	Yes – the non-EEA AIFM with Slovakia as reference state must be granted the permission by the National Bank of Slovakia.	Application fee for permission by the National Bank of Slovakia. Annual supervision fees may apply.	Yes – EEA AIFMs may commence pre-marketing AIFs which are not yet established or established but not notified to the NBS, to potential professional investors in Slovakia, provided that the NBS receives a pre-marketing notification letter within two weeks of starting such pre-marketing activity in writing or in an electronic form.
<b>SLOVENIA</b>	Yes	The EEA AIFMs must request their home State authority to submit a notification to the ATVP. When they are notified by their home State authority that such submission was made, they may begin marketing activity.	Notification must be accompanied by all the documentation required by ZUAIS.	Yes – the non-EEA AIFM must go through the set authorisation process.	Notification fee of up to EUR 353 and an annual supervision fee of up to EUR 940 per EEA and non- EEA AIF.	Yes – EEA and non-EEA AIFMs may exercise pre-marketing activities of AIFs to professional investors on the Slovenian market within the limited scope provided by the law.



Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>SPAIN</b>	Yes	The EEA AIFM requests their home State authority to submit a notification and to the CNMV. Once submitted, the AIFM may begin activity.	Notification must be approved by the CNMV if the AIFM intends to market to retail investors.	Yes – the non-EEA AIFM must go through the set authorisation process.	Registration fee of EUR 2,601.51 and an annual flat fee of EUR 3,121.81. Periodic marketing fees may apply. (Fee amounts subject to periodic updates)	Yes – the management companies of AIFs may exercise pre-marketing activities of AIFs to potential professional investors in order to test their interest in a qualifying fund which is not yet established, or in a qualifying fund which is established, but not yet notified for marketing. An AIFM needs to submit a pre-marketing notification form to the CNMV prior to engaging in pre-marketing activities in Spain.
<b>SWEDEN</b>	Yes	The EEA AIFM requests their home State authority to submit a notification and to the SFSA. Once submitted, the AIFM may begin activity.	Notification through home state authority is sufficient for marketing to professional investors. A license is required from the SFSA if the AIFM intends to market to retail investors.	Yes – the non-EEA AIFM must apply for a marketing licence with the SFSA.	Application fee for all licence applications. The application fees vary from approximately EUR 650 to 6.500 depending on relevant notification or licence required. (Fee amounts subject to periodic updates)	Yes – a foreign EEA-based AIFM, which has been authorised in its home state in accordance with the AIFMD may without further authorisation engage in pre-marketing in Sweden of an EEA-based AIF, under the conditions as set out in the AIFMD. No legislation has been introduced regarding pre-marketing by non-EEA based AIFMs.
<b>SWITZERLAND</b>	AIFs may be distributed in Switzerland. However, unlike with EEA UCITS, passporting of AIFs (i.e. a registration with FINMA) is usually not possible. Therefore, distribution is restricted to qualified investors and / or prudentially supervised financial intermediaries.	Besides further requirements described below, client advisers (i.e. the individuals deploying the marketing activities) may need to register with an advisers' register, an affiliation with an ombudsman's office may be required, and the fund may be required to appoint a Swiss representative and a Swiss paying agent.	In order to be registered with the advisers' register, to be affiliated with the ombudsman's office and / or to appoint the Swiss representative and paying agent, as the case may be, all documentation needs to be provided which is required for such purposes.	Yes, the pertinent requirements being basically the same as with EEA AIFs.	There are no specific governmental fees related to the distribution of AIFs. However, the advisers' register, the ombudsman's office and / or the Swiss representative and paying agent will charge fees.	Swiss law does not provide for specific pre-marketing rules, i.e. a list of specific activities which do not fall within the scope of the applicable marketing rules at all, or trigger lower requirements (such as a mere notification duty).

Jurisdiction	Can EEA Passport Rights be Exercised?	Process	Notification	Can non-EEA AIFMS Market in this Jurisdiction?	Fees	Is pre-marketing permissible?
<b>UNITED KINGDOM</b>	Only funds that are deemed to offer equivalent consumer protection to UK authorised funds under the Overseas Funds Regime ("OFR") can be marketed to UK retail investors. At present, the only category of funds that are currently deemed "equivalent" for the purposes of the OFR are EEA UCITS. EEA AIFs can be marketed to UK professional investors via the UK's National Private Placement Regime.					The UK does not have a separate regime for pre-marketing. Pre-marketing is subject to the same financial promotion rules as any other marketing of a fund in the UK.



# Austria

## 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 on a freedom of services and/or branch basis.

The AIFM may start marketing of units or shares of AIFs 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**") (Annex IV AIFMD) as well as the certificate of permission in accordance with Section 30 para 3 last sentence AIFMA pursuant to Section 31 AIFMA (Art 32 para 3 AIFMD) 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 materially equivalent to a fund type authorised in Austria for distribution to retail clients pursuant to Section 48 AIFMA, which sets out restrictions on the type of funds which can be offered to retail investors.

## 2. Pre-Marketing

An EEA licensed AIFM must inform the competent authority of its home state about pre-marketing activities to potential professional investors within two weeks after the start of the first pre-marketing activity, which itself will inform the corresponding

competent authorities. The information provided within the context of the pre-marketing activity should not enable such investors to acquire the pre-marketed AIF or amount to a subscription form or similar document. If investors, who have been contacted with the pre-marketing activity, subscribe for units within a period of 18 months from the commencement of pre-marketing, the relevant distribution notification procedure must be completed. Investors who have not been contacted in the context of pre-marketing are not allowed to subscribe for units within a period of 18 months.

## 3. Third country AIFMs

A Non EU AIFM may notify 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, as well as a confirmation by the competent authorities of the home State of the Non EU AIFM and of the AIF, that the AIF and the Non EU AIFM comply with all requirements of AIFMD, acts adopted on the basis of AIFMD and AIFMA.

## 4. 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.

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



# 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. Pre-marketing by EEA AIFMs

EEA AIFMs may commence pre-marketing of EEA AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Belgium, provided that the BFSMA receives a pre-marketing notification letter from the AIFM within two weeks of starting such pre-marketing activity.

The information provided to potential professional investors within the context of the pre-marketing activity should not enable such investors to commit to acquiring units or shares of the pre

marketed AIF or amount to a subscription form or similar document, whether in draft or final form.

For a period of 18 months after the start of the pre-marketing of the AIF, the AIFM may not rely on reverse solicitation in the jurisdiction where the pre-marketing has been notified.

Pre-marketing by non-EEA AIFMs or of non-EEA AIFs is not permitted.

## 3. 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.

## 4. 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 acting through a Belgian branch) 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 434 and EUR 4,329<sup>2</sup>.

<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.

## 5. Marketing to retail clients

Marketing to retail clients resident in Belgium of AIFs of any type or nature without local prospectus can only be made under the National Private Placement Regime, i.e.:

- offerings to fewer than 150 natural or legal persons, other than professional investors; and/or;
- offerings which need at least EUR 100,000 per investor and per security, other than collective investment funds with a variable number of participation rights; and/or
- offerings which need at least EUR 250,000 per investor and per category of a collective investment funds with a variable number of participation rights;

Any other offer of AIFs in Belgium would be regarded as a public offer and will require that a prospectus is approved in advance by the Belgian regulator.

A summary of the Belgian private placement regime can be found at the **CMS Brief Guide to Private Placement of Funds**.



# 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 in compliance with the requirements applicable to national investment funds (a sub type of AIFs for collective investments in transferable securities and other liquid financial assets), which involves the 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. Pre-marketing by EEA AIFMs

EEA AIFMs may commence pre marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Bulgaria, provided that the Bulgarian Financial Supervision Commission receives a pre marketing notification letter within two weeks of starting such pre marketing activity. EEA AIFMs need to send this pre marketing notification letter to their home State competent authority within two weeks of starting such pre marketing activity, which in turn is directly transmitted to the Bulgarian Financial Supervision Commission.

The information provided to potential professional investors within the context of the pre marketing activity should:

- not enable such investors to commit to acquiring units or shares of the pre marketed AIF;
- not amount to a subscription form or similar document, whether in draft or final form;
- not include an incorporation deed or articles of association, prospectus or an offer for AIF, which is not created in a final form of the said documents.

For a period of 18 months after the start of the pre-marketing of the AIF, the AIFM may not rely on reverse solicitation in the jurisdiction where the pre-marketing has been notified.

Pre-marketing by Non EEA AIFMs has not been provided for in the applicable legislation in Bulgaria.

## 4. Fees

The FSC tariff provides for (i) a one off license fee of EUR 4,000, and (ii) an annual supervision fee which varies depending on the type and the scope of the license/registration of the AIFM and the number of the managed fund.





# Channel Islands (Jersey and Guernsey)

## 1. EEA AIFMs

### 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). There are no specific restrictions upon the type of Jersey investor to whom a fund may be marketed, although the Jersey Financial Services Commission would generally take a more cautious approach (and therefore may ask additional questions) when requested to issue a COBO consent in relation to a fund which is targeting retail investors in Jersey.

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, 2020 (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.

There are no specific restrictions upon the type of Guernsey investor to whom a fund may be marketed, although the GFSC would generally take a more cautious approach (and therefore may ask additional questions) when requested to issue a licence to a promoter in relation to a fund which is targeting retail investors in Guernsey.

### **3. Pre-marketing by both EEA and Non-EEA AIFMs into Jersey and Guernsey**

#### **Jersey**

Both EEA AIFMs and Non EEA AIFMs may commence pre marketing AIFs which are not yet established (or established but have not obtained all regulatory consents required in the AIF's home jurisdiction) to potential investors in Jersey. However, any pre-marketing activities which are carried out while the AIFM is physically in Jersey should be kept to a minimum such that the activities fall outside the scope of the Financial Services (Jersey) Law 1998, as amended (unless the AIFM can rely upon the 'overseas persons' exemption detailed in the CMS Guide to Private Placement of Funds).

Any document provided to potential investors within the context of the pre marketing activity should not enable such investors to commit to acquiring units or shares of the pre marketed AIF,

and should contain appropriate wording clearly stating that the document does not constitute an offer to invest.

#### **Guernsey**

Both EEA AIFMs and Non EEA AIFMs may commence pre marketing AIFs which are not yet established (or established but have not obtained all regulatory consents required in the AIF's home jurisdiction) to potential investors in Guernsey. However, any pre-marketing activities which are carried out while the AIFM is physically in Guernsey should be kept to a minimum such that the activities fall outside the scope of the POI Law, as amended (unless the AIFM can rely upon the exemptions detailed in the CMS Guide to Private Placement of Funds).

Any document provided to potential investors within the context of the pre marketing activity should not enable such investors to commit to acquiring units or shares of the pre marketed AIF, and should contain appropriate wording clearly stating that the document does not constitute an offer to invest.

### **4. 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, 132/2020*).<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, 132/2020*).<sup>6</sup>

## 3. Pre-marketing

EEA AIFMs are authorised to conduct pre-marketing activities in Croatia, unless the information provided to professional investors:

- are sufficient for investors to commit to acquiring units of a certain AIF
- have features of forms for registration of units or similar documents, whether in draft or final form or
- have the features of a prospectus, rules, AIF’s articles of association or offer documents of an AIF that has not yet been established, in its final form.

When a draft of prospectus or offer documents are made available to potential professional investors, those documents must not contain information which would enable the potential professional investor to make an investment decision, and it must be clearly stated in them that documents do not represent an offer or an invitation to subscribe to AIF shares and that the information provided in them cannot be considered reliable because the document is not complete and is subject to change.

<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.) or (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)  
[https://narodne-novine.nn.hr/clanci/sluzbeni/2020\\_11\\_132\\_2512.htm](https://narodne-novine.nn.hr/clanci/sluzbeni/2020_11_132_2512.htm)

<sup>6</sup> Croatian text available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/full/2021\\_12\\_144\\_2478.html](https://narodne-novine.nn.hr/clanci/sluzbeni/full/2021_12_144_2478.html)  
[https://narodne-novine.nn.hr/clanci/sluzbeni/2020\\_11\\_132\\_2512.htm](https://narodne-novine.nn.hr/clanci/sluzbeni/2020_11_132_2512.htm)

All units of an existing AIF in relation to which the AIFM carried out pre-marketing activities or of an AIF that was established as a result of pre-marketing activities, and which were subscribed or acquired by professional investors within 18 months after the AIFM started with pre-marketing activities, are considered the result of trading and are subject to the notification requirements.

On behalf of AIFMs pre-marketing activities may be conducted by:

- investment firm
- credit institution
- UCITS management company
- another AIFM
- tied agent

In the period of 36 months from the date of withdrawal of the marketing notification in the Republic of Croatia, AIFM is prohibited from conducting pre-marketing activities in relation to the shares of the AIF for which the notification

was withdrawn, as well as in relation to a comparable investment strategy or idea.

#### **4. Fees**

4.1 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>7</sup>

4.2 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>8</sup> The fee is payable per each AIF established in Croatia.

4.3 In addition, HANFA charges fees for supervision on a monthly basis, in the overall annual amount varying from EUR 2,650 – 3,980- per AIF. In the case of an umbrella AIF, HANFA charges an additional marketing supervision fee per AIF under the umbrella.

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<sup>7</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>8</sup> Full guidance (in Croatian) on fee charges can be found  
[https://narodne-novine.nn.hr/clanci/sluzbeni/full/2020\\_12\\_147\\_2881.html](https://narodne-novine.nn.hr/clanci/sluzbeni/full/2020_12_147_2881.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.

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.

A full scope EEA AIFM may also market a Cypriot AIF, or EEA AIF<sup>9</sup> to retail (alongside 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.

## 2. Pre-marketing by EEA AIFMs

An EEA AIFM can engage in pre-marketing of an AIF in Cyprus to the extent that the information provided to potential professional investors:

- does not enable such investors to commit to acquiring units or shares of a particular AIF; and
- does not amount to a subscription form or similar document, whether in draft or final form; and
- does not amount to constitutional documents, a prospectus or offering documents of a not-yet-established AIF in a final form.

Where a draft prospectus or offering documents are provided, these should not contain information sufficient to allow investors to take an investment decision and should clearly state that they do not constitute an offer or an invitation to subscribe to units or shares of an AIF and that the information presented therein should not be relied upon because it is incomplete and may be subject to change.

An EEA AIFM who engages in pre-marketing in Cyprus must ensure that investors do not acquire units or shares in an AIF through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that

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<sup>9</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.

AIF provided the applicable marketing procedures under the AIFMD are followed. Furthermore, for a period of 18 months after the start of the pre-marketing of the AIF, any subscription by Cyprus-based professional investors should be considered to be the result of marketing and therefore subject to the applicable marketing procedures under the AIFMD.

The EEA AIFM is not required to notify CySEC of the content or of the addressees of pre-marketing, or to fulfil any conditions or requirements other than those set out above, before it engages in pre-marketing. An EEA AIFM will, under its home state implementation of the Directive (EU) 2019/1160, be subject to an obligation to notify the competent. However, the AIFM Act empowers CySEC to request further information on pre-marketing actions taken or taking place in Cyprus from the home Member State of the AIFM.

Lastly, an EEA AIFM must ensure that any pre-marketing activities in Cyprus are adequately documented.

No equivalent rules apply in relation to pre-marketing conducted by Non-EEA AIFMs in Cyprus.

### **3. 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.

### **4. Mini AIFMs**

The Mini AIFM Law was recently enacted creating a regime for the regulation and licensing of sub threshold AIFMs based in Cyprus. However, Mini AIFMs do not benefit from the passporting regime.

### **5. 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.

### **6. EU Marketing Directive**

Recently, the Directive (EU) 2019/1160 with regard

to cross border distribution of collective investment

undertakings was transposed into local legislation by way of amendment of the AIFM Act. As relevant to the present purposes, the transposition:

- Introduces clear rules relating to EEA AIFMs engaging in pre marketing in Cyprus; and
- requires EEA AIFMs, intending to market units or shares of an AIF to retail investors in Cyprus, to make facilities available for the performance of certain tasks by retail investors.



# Czech Republic

## 1. EEA AIFM

Non Czech above-threshold AIFMs authorised in their EEA home State may exercise passport rights for marketing the investment into the AIF to professional investors upon receiving a confirmation of its home Member State Authority that it notified the Czech National Bank (the “CNB”). The CNB then registers the relevant AIF in a list of foreign AIF marketed in the Czech Republic. Once the AIF is registered by the CNB, it can be publicly marketed to the relevant (qualified) investors.

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 qualified 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.

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 (i) that 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) to ensure provision of information to investors, service for investors and public administration including operation of a contact point. However, these activities may be carried out electronically or by other means allowing remote access.

## 2. Non-EEA 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. Pre-marketing by EEA AIFMs

Above threshold EEA AIFMs may commence pre-marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in the Czech Republic, provided that the CNB receives a pre-marketing notification letter within two weeks of starting such pre-marketing activity. EEA AIFMs need to send this pre-marketing notification letter to their home State competent authority within two weeks of starting such pre-marketing activity, which in turn is directly transmitted to the CNB.

The information provided to potential professional investors within the context of the pre-marketing activity should not enable such investors to commit to acquiring units or shares of the pre marketed AIF or amount to a subscription form or similar document, whether in draft or final form.

For a period of 18 months after the start of the pre-marketing of the AIF, the AIFM may not rely on reverse solicitation in the jurisdiction where the pre-marketing has been notified.

## 4. Fees

From July 2024, there is no registration fee of a foreign AIF with the CNB or a renewal fee.

Further, there is a CZK 5,000 (approx. EUR 200) 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 50,000 - 100,000 (approx. EUR 2,000 - 4,000) (subject to further conditions).





# Denmark

## 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. 1553 of 19 December 2022 on Marketing to Retail Investors (as amended), together with a number of other documents and information, including the constitutional documents for the AIF, the Private Placement Memorandum, the Subscription Agreement, the PRIIPs KID, Annual Report and the name of the appointed depository. Please note that it is a requirement that the PRIIPs KID is available in Danish.

## 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. 1504 of 19 October 2020 on Marketing of Non EEA AIFs to Professional Investors. Denmark has chosen to 'gold plate' the AIFMD Article 42 regime by requiring (i) the

appointment of a depository to carry out the 'depo light' functions, (ii) the provision of a reciprocity statement by the AIF's home State competent authority or, by a qualified lawyer, and (iii) by requiring documentation from the relevant authorities in the home country of the AIF and AIFM that evidences that the AIF and AIFM are covered by a corporation agreement (MoU) between the Danish FSA and the relevant authorities in their respective home country.

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 and obtained from the FSA a marketing permission in accordance with Executive Order No. 1553 of 19 December 2022 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 and Non-EEA AIFMs a requirement to provide documentation from the relevant authorities in the home country of the AIF and AIFM that evidences that the Non-EEA AIF and Non-EEA AIFM are covered by a corporation agreement (MoU) between the Danish FSA and the relevant authorities in their respective home country. A depository would also need to be appointed.

### 3. Pre-marketing

The pre-marketing definition of the AIFMD has been closely implemented into the Danish AIFM Act section 3(1)(55).

Pursuant to the Danish AIFM Act 88 a (implementing the AIFMD Article 30a) an EEA AIFM may commence pre-marketing except where the information presented to potential professional investors:

- 3.1 is sufficient to allow investors to commit to acquiring units or shares of a particular AIF;
- 3.2 amounts to subscription forms or similar documents whether in a draft or a final form; or
- 3.3 amounts to constitutional documents, a prospectus or offering documents of a not-yet-established AIF in a final form.

Where a draft prospectus or offering documents are provided, they must not contain information sufficient to allow investors to take an investment decision and must clearly state that:

- 3.4 they do not constitute an offer or an invitation to subscribe to units or shares of an AIF; and
- 3.5 the information presented therein should not be relied upon because it is incomplete and may be subject to change.

EEA AIFMs must ensure that investors do not acquire units or shares in an AIF through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that AIF through the applicable marketing procedures pursuant to the AIFMD.

Any subscription by professional investors, within 18 months of the EEA AIFM having begun pre-marketing, is considered the result of marketing and is subject to the applicable marketing procedure pursuant to the AIFMD, if investors subscribe units or shares:

- 3.6 of an AIF referred to in the information provided in the context of pre-marketing, or
- 3.7 of an AIF established as a result of the pre-marketing,

Further, the Danish AIFM Act implements the notification procedure for pre-marketing pursuant to the AIFMD Article 30a.

Pursuant to the AIFMD Article 30a an EEA AIFM must send, within two weeks of it having begun pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter must specify the Member States in which and the periods during which the pre-marketing is taking

or has taken place, a brief description of the pre-marketing including information on the investment strategies presented and, where relevant, a list of the AIFs and compartments of AIFs which are or were the subject of pre-marketing.

The competent authorities of the home Member State of the EEA AIFM must promptly inform the competent authorities of the Member States in which the EEA AIFM is or was engaged in pre-marketing.

The Danish FSA has in its Q&A on, inter alia, AIFMs and UCITS stated that the pre-marketing regime is not available for non-EEA AIFMs. This means that no pre-marketing may be conducted by non-EEA AIFMs in Denmark.

### 4. Fees

There is no fee payable for the application or registration itself. However, there is an annual fee payable, where the basic amount will depend on what type of marketing license the AIFM has and whether the AIFM markets shares/units of Non-EEA AIFs or EEA AIFs. The basic amount is between DKK 4,100 to DKK 8,000 and is subject to annual adjustments.





# Estonia

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.

In order to market an EEA AIF in Estonia, 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 within 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. An AIFM must submit to the EFSA in either

Estonian or English language (i) statement of the home State authority that the operation of the AIF and the AIFMD complies with the requirements established in the home State, and the public offer thereof is permitted and (ii) public offer prospectus. A public offer of a fund may be commenced after receipt of consent of the EFSA which will be given within six months after receipt of respective application but at the latest two months after receipt of all the required data and documents. 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 within 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. Pre-marketing in EEA member states

An EEA AIF can be pre-marketed in Estonia by an EEA AIFM to professional investors and an AIFM must ensure the documentation of pre-marketing. In the course of pre-marketing it is prohibited to submit to professional investors: 1) information and documents which are so detailed that decisions on the acquisition of units or shares can be made on the basis of them; 2) documents or drafts which allow the subscription of units or shares and 3) the articles of association, partnership agreement, fund rules or prospectus of the fund, which has not yet been established or

founded, in the final form thereof. If any such drafts or documents are submitted then it must be clearly indicated that it does not constitute as an offer or an invitation to subscribe for the units or shares and that the provided information is not conclusive.

An AIFM must ensure that a professional investor does not acquire the units or shares in the course of pre-marketing. If within 18 months of the pre-marketing of an AIF a professional investor subscribes for the units or shares that are referred to in the information provided in the pre-marketing then the procedure for notifying of the commencement of the offer of an AIF provided for in the IFA will be applied.

An AIFM must submit to the EFSA via its home state competent authority a notice of pre-marketing in a form reproducible in writing within two weeks after the commencement of pre-marketing. The notice must include: 1) the period of pre-marketing; 2) an overview of the investment strategy and 3) a list of pre-marketed AIFs or their sub-funds.

#### **4. 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. 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.



# 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**”).

According to the AFMA, EEA AIFMs may market EEA AIFs under their management in Finland on a cross-border basis in accordance with the notification procedure set forth in Chapter 19, section 5 of the AFMA (based on Article 32 of the AIFMD). An EEA AIFM may also manage an AIF in Finland on a cross-border basis in accordance with the notification procedure set out in Chapter 19, section 2 of the AFMA (based on Article 33 of the AIFMD) or through a Finnish branch in accordance with the process set out in Article 33 of the AIFMD.

If an EEA AIFM intends to market AIFs under its management also to non professional clients in Finland, it must meet certain further requirements in its marketing, including preparing and making available a key information document (in accordance with EU Regulation 1286/2014) for the AIFs in question. The detailed requirements for marketing to non-professional clients are specified in Chapter 13 of the AFMA, in separate Decrees issued by the Ministry of Finance, as well as in Regulation (EU) 2019/1156. The requirements set out in Chapter 13 of the AFMA includes the requirements set out in Article 43a of the AIFMD as well as certain national requirements that are not directly based on the AIFMD.

EEA AIFMs intending to market AIFs in Finland 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.

## 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 AFMA, the FIN FSA must be periodically provided with certain information on the Non-EEA 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. Pre-marketing by both EEA and Non-EEA AIFMs

As a result of the implementation of the pre-marketing rules set out in Directive (EU) 2019/1160 (“CBDF Directive”) into the AFMA, the AFMA now includes separate rules for (i) so called “*pre-marketing*” activities (requiring the submission of a separate pre-marketing notification to the relevant authority), and (ii) actual “*marketing*” of funds. The definition of “pre-marketing” set out in the AFMA is largely in line with the definition set out in the CBDF Directive.

Both EEA AIFMs and Non-EEA AIFMs may commence pre marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures) to potential investors in Finland, provided that the FIN-FSA receives a pre marketing notification letter within two weeks of starting such pre marketing activity. That letter shall specify (1) the periods during which the pre-marketing is taking or has taken place, (2) a brief description of the pre-marketing including information on the investment strategies presented and (3), where

relevant, a list of the AIFs and compartments of AIFs which are or were the subject of pre-marketing. EEA AIFMs need to send this pre marketing notification letter to their home State competent authority within two weeks of starting such pre marketing activity, which in turn is directly transmitted to the FIN-FSA. Non EEA AIFMs need to submit such letter directly to the FIN-FSA within the same time period.

In accordance with Article 30a of the AIFMD, the information provided to potential investors within the context of the pre-marketing activity should not be sufficient to allow investors to commit to acquiring units or shares of the pre-marketed AIF or amount to a subscription form or similar document, whether in draft or final form. Furthermore, with respect to not-yet-established AIFs, the information presented to potential investors may not amount to constitutional documents, a prospectus or offering documents in a final form.

It shall be noted that any subscription by investors within 18 months of “pre-marketing” having begun in Finland to units or shares of an AIF referred to in the information provided in the context of pre-marketing (or of an AIF established as a result of the pre-marketing) shall be considered to be a result of “marketing”, and the relevant notification procedure must be completed. Effectively this means that, for a period of 18 months after the start of the pre-marketing of the AIF, the AIFM is not able to rely on reverse solicitation in the jurisdiction where the pre-marketing has been notified.

#### **4. Termination of marketing**

The implementation of the CBDF Directive introduced a new “de-notification process” for termination of marketing, which process shall be complied with in case the AIFM intends to terminate marketing of an AIF that has been authorised for marketing in Finland. Such de-notification process is based on Article 2(4) of the CBDF Directive (i.e. new Article 32a of the AIFMD), and it applies to AIFs marketed by EEA AIFMs as well as to AIFs marketed by Non-EEA AIFMs.

#### **5. 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 in force from time to

time are available on the webpage<sup>10</sup> of the FIN FSA.

Furthermore, periodic charges are levied on EEA AIFMs who manage AIFs in Finland either through a branch or without a branch.

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<sup>10</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. Marketing to non-professional clients

In practice, except for AIFs approved as ELTIFs, no foreign AIFs can be marketed to non-professional clients.

## 4. Pre marketing by both EEA and Non EEA AIFMs

Both EEA AIFMs and, theoretically, Non EEA AIFMs may commence pre marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in France, provided that the AMF receives a pre marketing notification letter within two weeks of starting such pre marketing activity.

EEA AIFMs need to send this pre marketing notification letter to their home State competent authority within two weeks of starting such pre marketing activity, which in turn is directly transmitted to the AMF.

Non EEA AIFMs need to submit such letter directly to the AMF within the same period. However, in practice, the marketing of a non-EEA AIF requires an authorisation from the AMF, and it is very unlikely that AMF will grant such an authorisation to non-EEA AIFM or to an AIFM that is not fully licensed under the AIFMD. Thus, it is unlikely that pre-marketing may occur.

The information provided to potential professional investors within the context of the pre marketing activity should not enable such investors to commit to acquiring units or shares of the pre marketed AIF or amount to a subscription form or similar document, whether in draft or final form.

## 5. 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. The fees charged for various notifications are listed are available on the Redevance guide of the AMF.<sup>11</sup>

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<sup>11</sup> [https://www.amf-france.org/sites/institutionnel/files/private/2023-03/2023%20Guide%20des%20contributions%20vf\\_0.pdf](https://www.amf-france.org/sites/institutionnel/files/private/2023-03/2023%20Guide%20des%20contributions%20vf_0.pdf)





# Germany

## 1. EEA AIFMs

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

### 1.1 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 HMSA as to every EU AIF which it intends to distribute in Germany. The HMSA 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 HMSA is complete, (ii) the HMSA has issued a statement that the relevant EU AIFM is authorised to manage the relevant AIFs, and (iii) the documents have been submitted in German or 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 HMSA have informed the EU AIFM that its notification has been transmitted to BaFin. Marketing is subject to further requirements vis à vis investors, in particular regarding the form of information disclosure.

### 1.2 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. A separate marketing

permission is required in order to obtain such 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. Pre Marketing

EU AIFMs requests their respective HMSA to submit a pre-marketing notification to BaFin. BaFin can request additional information from the HMSA.

Non-EU AIFMs must inform BaFin about pre marketing activities to Semi Professional and Professional Investors in Germany within two weeks after the start of the first pre marketing activity by using the notification letter published on the website of BaFin.

If investors subscribe for units within a period of 18 months from the commencement of pre marketing, the relevant distribution notification procedure must be completed. The same requirements apply to EU AIFM pre-marketing EU AIFs and Non-EU AIFM pre-marketing Non-EU AIFs.

Pre-marketing vis-à-vis retail investors is not permitted.

#### **4. Fees**

##### **4.1 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 466 per single EU AIF or sub fund, and (ii) a Non EU AIFM of EUR 1,641 per single EU AIF or sub fund. In addition, BaFin charges EUR 113 per EU AIF or sub fund per annum for the review of documents to be submitted annually.

##### **4.2 Marketing to retail investors**

BaFin charges a fee of EUR 1,641 per EU AIF or sub fund notified to it. That fee is identical for EU AIFMs and Non EU AIFMs.

*Note: Apart from the described marketing rules 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

EEA AIFMs are regulated by Law 4209/2013 (the “**Law**”) which implemented the AIFMD in Greece. Competent national authority to carry out the implementation of the AIFMD in Greece and to assume supervisory duties with regard to AIFM activity is the Hellenic Capital Market Commission (“**HCMC**”). As per the provisions of the AIFMD, the Law introduces the principle of one AIFM per AIF.

In particular, the Law covers the following AIFMs irrespective of the form of the AIFs managed:

- 1.1 All Alternative Investment Funds Management Sociétés Anonymes (“**AIFMSAs**”) i.e. Greek AIFMs managing one or more AIFs;
- 1.2 EU or Non-EU AIFMs which manage one or more Greek AIFs; and
- 1.3 EU or Non-EU AIFMs which market one or more AIFs in Greece.

Furthermore, the Law 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.

On 15.04.2022 Directive (EU) 2019/1160 was transposed into Greek law (via amendments to the Law) and introduced new rules relating to the cross-border marketing and distribution of collective investment undertakings within the EU (uniformity of marketing communications rules for UCITS and AIFs).

Regarding marketing of units or shares of AIFs by AIFMs to retail investors, the Law (article 41) provides that this is permitted only to AIFMSAs or other AIFMs operating in Greece (via passporting) as long as the following conditions are fulfilled:

- 1.4 the AIFMSAs or other AIFMs operating in Greece distribute units or shares of AIFs directly or via a credit institution, an investment firm or an investment intermediation firm;
- 1.5 the AIF has an operating license and is supervised by the HCMC or the competent authority of its home jurisdiction;
- 1.6 the distribution of units or shares of the AIF to retail investors is permitted by the regulatory regime of its home jurisdiction, as well as by the constitutional documents or/and the AIF regulation;
- 1.7 the retail investor undertakes to invest at least EUR 100,000 per fund; and
- 1.8 the AIFMSAs or other AIFMs operating in Greece receives information from the potential investor in respect of his knowledge, experience and risk tolerance regarding the investment in the AIF, in order to assess whether the AIF is suitable for such an investor. If, on the basis of such information, it is considered that the AIF is not suitable for the particular investor, a warning in this respect must be provided to him. If the investor does not provide sufficient information, a warning must be provided to him that an assessment of whether the AIF is suitable for him cannot

be made. The aforementioned warnings can be provided in a standardized form.

## **2. Third country AIFMs**

Non EU AIFMs are not allowed under the Law (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. Pre-marketing of EU AIFMs**

The definition of the term “pre-marketing” is, according to article 4 of the Law “the provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing in accordance with article 31 or 32, in that member state where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or that compartment’.

EU AIFMs can initiate pre-marketing as long as the information provided by them to professional investors:

- is not adequate for the latter to subscribe to the units or shares of an AIF;
- does not amount to subscription forms or similar documents (whether in draft or final form) and
- does not amount to constitutional documents, any prospectus or offering documents of a not-yet-established AIF in a final form.

Additionally, EU AIFMs should ensure that investors do not acquire units or shares in an AIF through pre-marketing and that investors contacted as part of pre-marketing can only acquire units or shares in that AIF through marketing permitted in accordance to articles 31 or 32 of the Law.

Any subscription by professional investors, within 18 months of the EU AIFM having begun pre-marketing, to units or shares of an AIF referred to in the information provided in the context of pre-marketing, or of an AIF established as a result of the pre-marketing, should be considered to be the result of marketing and should be subject to the applicable notification procedures referred to in articles 31 and 32 of the Law.

Within two weeks of having begun pre-marketing in Greece the AIFMSA (or other AIFM operating in Greece) must send an informal letter, in paper form or by electronic means, to the HCMC (or, in the case of other AIFM, the competent authorities of its home member state), specifying inter alia in which member states it is or has engaged in pre-marketing, the periods during which the pre-marketing is taking or has taken place and including, where relevant, a list of its AIFs and compartments of AIFs which are or were the subject of pre-marketing.

The HCMC informs promptly the competent authorities of the home member state of the EU AIFM, in which the EU AIFM is or has engaged in pre-marketing thereof. The competent authorities of the member states where the pre-marketing took/takes place, may request by the HCMC to provide further information in relation to the pre-marketing taking place in its territory (the HCMC, can also make the same request to the competent authority of the home member state of the EU AIFM).

A third party may engage in pre-marketing, on behalf of an AIFMSA or other authorized EU AIFM, only if:

In Greece, it is authorized as an investment *societe anonyme* (as per article 4 of law 4514/2018) or a credit institution (according to law 4261/2014) or a mutual fund management *societe anonyme* (as per article 3 of law 4099/2012) or an AIFMSA (according to the Law; or

In another EU member state, it is authorized as an enterprise for the provision of investment services (in accordance with Directive 2014/65/EU) or a credit institution (in accordance with Directive 2013/36/EU) or an UCITS management company (in accordance with Directive 2009/65/EC) or an AIFM (in accordance with Directive 2011/61/EU).

The aforementioned also apply to any third party acting as a tied agent (as per para. 29 of article 4 of law 4514/2018 or in accordance with Directive 2014/65/EU).

## **4. Fees**

- An AIFM planning to market an AIF in Greece must file a prior notification to the HCMC. The notification fees are EUR 1,000, plus a 2.4%

digital transaction duty per sub-fund/compartment or AIF.

- A Greek AIFM planning to market any AIFs abroad must file a prior notification to the HCMC. The notification fees are EUR 150, plus a 2.4% digital transaction duty per AIF and per country of intended marketing.
- AIFMs also pay an annual contribution fee of EUR 1,000, plus a 2.4% digital transaction duty per sub-fund/compartment or AIF to the HCMC. The fee is payable in July of each year.



# Hungary

## 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. Pre-marketing by EU AIFMs

EU AIFMs may commence pre-marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing

procedures, to potential professional investors in Hungary, provided that the MNB receives a pre-marketing notification letter within two weeks of starting such pre-marketing activity. EU AIFMs need to send this pre-marketing notification letter to their home State competent authority within two weeks of starting such pre-marketing activity, which in turn is directly transmitted to the MNB. Pre-marketing may include only the direct or indirect provision or communication of information on investment strategies or investment concepts.

The information provided to potential professional investors within the context of the pre-marketing activity should not enable such investors to commit to acquiring units or shares of the pre marketed AIF or amount to a subscription form or similar document, whether in draft or final form.

For a period of 18 months after the start of the pre-marketing of the AIF, the AIFM may not rely on reverse solicitation in the jurisdiction where the pre-marketing has been notified.”

## 3. 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, with the exception of venture capital fund managers that in total do not exceed a threshold of EUR 100 million or EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF; and AIFMs managing AIFs whose only investors are the AIFM or related parties to the AIFM provided that none of those investors is an AIF.

#### 4. 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 supervisory fees on the regulated activities they conduct in Hungary.

*Please note that on 2 August 2021 EU Directive 2019/1160 was transposed into national law in Hungary without additional gold plating.*

# 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>12</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>.

Regarding marketing of an AIF to retail investors, a full scope EEA AIFM authorised in an EEA State other than Ireland may do so by applying to the CBI directly. Amongst various other items the application must demonstrate that the AIF is equivalent in all material respects to an AIF

authorised by the CBI under its "retail investor AIF" (RIAIF) regime.

## 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. Pre marketing by EEA AIFMs

EEA AIFMs may commence pre marketing AIFs which are not yet established, to potential investors in Ireland subject to the requirements of regulation 31A of the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) as amended.

The information provided to investors within the context of the pre marketing activity should not enable such investors to commit to acquiring shares of the pre marketed AIF or amount to a subscription form, constitutional document or offering document, whether in draft or final form.

The EEA AIFM must ensure the pre-marketing is adequately documented and for a period of 18 months after the start of the pre-marketing of the AIF, the EEA AIFM may not rely on reverse solicitation in Ireland.

Pre-marketing by a third party on behalf of the EEA AIFM is only permitted where that third party satisfies certain prescribed regulatory criteria.

## 4. Fees

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

<sup>12</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.





# Italy

## 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 for EEA AIFMs to carry out their asset management activities, prior notification to the Bank of Italy is required. The AIFM home State competent authority must inform the Bank of Italy, who will promptly forward such communication to Consob, the Italian Securities Market Supervisory Authority.

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.

The marketing of AIFs to professional investors (and to the investors identified under the Ministry Regulation enacted under Article 39 of the CFA) shall be preceded by the prior notification to Consob, whilst the marketing of AIFs to retail clients in Italy requires the prior authorization by Consob under art. 44 of the CFA.

## 2. Third country AIFMs

Pursuant to Article 41 quarter of the CFA, 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 market Italian and UE and non UE AIFs in Italy to

professional investors following completion of the notification process under Article 41-ter and 43 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.

It must be noted that the above Italian law provisions regulating the marketing of non EEA AIFMs in Italy shall become effective only after the enactment of the delegated act under art. 67, para. 6 of the EU Directive 2011/61/EU.

## 3. Pre-marketing

According to Article 42-bis of the CFA (as amended by Legislative Decree no.191/2021, implementing the pre-marketing EU Directive 2019/1160), EEA AIFMs can carry out pre-marketing activities of reserved AIFs vis-à-vis professional investors in Italy provided that CONSOB receives a prior notification by the competent home state Authority of the relevant EEA AIFM, to whom Consob can request further information on the pre-marketing activities that are envisaged or that have already been performed.

## 4. 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 2024 financial year by, inter alios, AIFMs, are determined by the Consob Resolution no. 22915of 6 December 2023 as follows:

- 4.1 in case of marketing of units or shares of not reserved AIFs following the completion, in the previous year, of the marketing authorisation procedure under Article 44 of

the CFA: an amount of EUR 2,140.00 for each fund or sub fund, if any;

- 4.2 in case of marketing of units or shares of AIFs to professional investors following the completion of the marketing procedure under Article 43 of the CFA: an amount of EUR 1,085.00 for each fund or for each sub fund, if any;
- 4.3 in case of AIFMs enrolled as of 2 January 2024 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:
  - 4.3.1 for volumes up to EUR 1,000.000.00: EUR 4,820.00;
  - 4.3.2 for volumes up to EUR 10,000.000.00: EUR 14,455.00;
  - 4.3.3 for volumes up to EUR 100,000.000.00: EUR 24,090.00;
  - 4.3.4 for volumes up to EUR 1,000,000,000.00: EUR 33,730.00;
  - 4.3.5 for volumes up to EUR 3,000,000,000.00: EUR 43,365.00;
  - 4.3.6 for volumes exceeding EUR 3,000,000,000.00: EUR 50,590.00.

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 of 2013 (“**LAIFM**”), authorised EEA AIFMs are entitled to market units or shares of EEA and Non EEA AIFs to professional and assessed retail investors directly or through a branch as soon as the EEA AIFM has received a confirmation by the EEA HMSA that the relevant passport notification has been sent to the Bank of Latvia (“**BoLV**”). This notification is accompanied by copies of those documents required for authorisation under Annex IV of AIFMD, and an attestation on authorisation by their HMSA.

The BoLV possesses the authority to request additional identifying information or any missing data regarding the EEA AIFM from the HMSA. It's important to note that this request is not akin to a formal "registration" or filing requirement but is rather intended to verify the legal compliance measures implemented by the EEA AIFM.

## 2. Third country AIFMs

Latvia has opted not to exercise the discretion granted under Article 42 of the AIFMD. Consequently, the marketing of Non-EEA AIFs managed by Non-EEA AIFMs prohibited in Latvia.

If a Non-EEA AIFM wishes to market an EEA AIF in Latvia, it must first obtain authorization, i.e., a license from the Bank of Latvia or another competent authority within the EEA. Registering or notifying the regulator alone does not suffice for Non-EEA AIFMs to market an EEA AIF to Latvian investors.

In order to obtain authorisation, the AIFM must have a representative in Latvia who has the required skills and competencies, as well as the funds to provide the respective services. Furthermore, the Non-EEA AIFM must submit the specified documents as listed in the LAIFM.

## 3. Pre-marketing by EEA AIFMs

Directive 2019/1160 which facilitates the cross-border distribution of AIFs and introduces

harmonized "pre-marketing" rules within the EU, has been incorporated into the legal framework as of November 2 2021.

In Latvia, EEA AIFMs are permitted to commence pre-marketing activities of EEA AIFs targeted at potential professional investors without the necessity of prior notification to the BoLV. This pre-marketing in Latvia is conducted under the same conditions as marketing activities in their home State. The BoLV, however, possesses the authority to request a statement from the HMSA of the respective EEA AIFM regarding information pertaining to pre-marketing activities which are / have occurred in Latvia. In simpler terms, EEA AIFMs only need to notify (i) their HMSA and (ii) the BoLV - if requested to do so.

The information shared with potential professional investors within the context of the pre-marketing activity should not enable such investors to commit to acquiring units or shares of the pre-marketed AIF. This information should also not resemble a subscription form or any similar document, whether it's in draft or final form. Additionally, the EEA AIFMs are prohibited from disclosing documents of incorporation, prospectus, or offering documents of a newly formed fund.

As the national transposition of Directive 2019/1160 does not encompass non-EEA AIFMs, the general reverse solicitation considerations apply in relation thereto.

## 4. Fees

EEA AIFMs are not subject to any application fees when operating under the passporting regime. However, 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 Non-EEA AIFs).

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.

Regarding authorization with the Bank of Latvia (BoLV), AIFMs are subject to certain fees:

- 4.1 A fee of EUR 1,422 for fund registration.
- 4.2 A fee of EUR 426 for making amendments to the documents submitted during the registration process.

An AIFM authorised with the BoL must pay an annual supervision fee in the amount of 0.016% from the average quarterly asset value of funds operated but no less than EUR 3,557. A registered AIFM shall pay a fixed supervision fee of EUR 900 per year.



# Liechtenstein

## 1. EEA AIFMs

Pursuant to the Liechtenstein Law on of Alternative Investment Fund Manager (AIFMG L), AIFMs authorised in their EEA home member state may establish and manage AIFs in Liechtenstein 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 AIFMG L. The HMSA shall forward a cross border notification or a branch establishment notification to the Liechtenstein Financial Market Authority ("**FMA**") of the EEA AIFM. In both cases the EEA AIFM may commence management of an AIF once FMA has received proper information from the HMSA.

Authorised EEA AIFMs may market EEA AIFs in Liechtenstein to professional investors (as defined under *Annex II of Directive 2004 / 39 / EC (MiFID)*). In order to commence marketing in Liechtenstein, a notification must be forwarded to the FMA from the respective EEA HMSA. After FMA 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 Liechtenstein subject to authorisation by FMA, which is conditional on certain requirements (e.g. cooperation agreement between FMA and HMSA of the respective AIF, the respective Non EEA member state should not be included on the FATF list of non cooperative countries etc.)

Marketing and placement of AIFs to retail investors in Liechtenstein is possible. The requirements are laid down in Article 151 AIFMG L. In order to commence marketing in Liechtenstein, the HMSA shall forward a notification to the FMA. After the FMA has acknowledged receipt, the marketing to retail investors may be commenced.

## 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 Liechtenstein of Non EEA AIFs managed by Non EEA AIFMs are subject to cooperation agreements between the FMA and the HMSA of the AIF. Additionally, the third country should not be listed as non cooperative country by FATF and the third country has signed an agreement with the EEA reference state and each EEA state of marketing that fully complies with Art. 26 of the OECD Model Tax Agreement for the avoidance of double taxation of income and assets and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

## 3. Pre marketing

EEA AIFMs may commence pre marketing AIFs which are not yet established to potential professional investors in Liechtenstein, provided that the FMA receives a pre marketing notification letter within two weeks of starting such pre marketing activity. EEA AIFMs need to send this pre marketing notification letter to the respective EEA HMSA within two weeks of starting such pre marketing activity, which in turn is directly transmitted to the FMA.

The information provided to potential professional investors within the context of the pre marketing activity should not enable such investors to commit to the acquisition of units or shares of the pre marketed AIF or amount to a subscription form or similar document, whether in draft or final form.


#### 4. Fees

The fee is depending on whether the AIF is marketed to professional investors only or to retail investors.

In the case the AIF is marketed to professional investors only, the notification fee is CHF 500 for a single fund or for each sub fund of an umbrella fund.

In the case the AIF is marketed also to retail investors, the notification fee is CHF 750 for single funds and CHF 1'125 for umbrella funds including one sub fund and additional CHF 375 for each additional sub fund.

The FMA also invoices an annual supervisory fee of CHF 1'250 for single funds and for each sub fund of an umbrella fund.



# Lithuania

## 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.

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.

## 2. Pre-marketing

Pre marketing of AIFs which are not yet established or established, but not yet compliant with the applicable marketing procedures, to professional investors is allowed.

AIFMs must inform BoL about pre marketing activities to professional investors in Lithuania within two weeks after the start of the first pre marketing activity. If investors subscribe for units within a period of 18 months from the commencement of pre marketing, the relevant marketing notification procedure must be completed.

The information provided to potential professional investors within the context of the pre marketing activity should not enable such investors to commit to acquiring units or shares of the pre marketed AIF or amount to a subscription form or similar document, whether in draft or final form.

### 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 826 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.

*Please note that Directive (EU) 2011/61 has been implemented in Lithuania and Directive (EU) 2019/1160 is currently under consideration.*



# 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 EEA 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 of its units or shares. 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. Non EEA AIFMs

Non EEA 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 EEA 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 of non listed companies and issuers (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 and
- the third country where the Non EEA AIFM or the Non EEA AIF is established is not listed as a non cooperative country and territory by the FATF.

## 3. Pre marketing by both EEA and Non EEA AIFMs

Both EEA AIFMs and Non EEA AIFMs may commence pre marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Luxembourg, provided that the CSSF receives a pre marketing notification letter within two weeks of starting such pre marketing activity. EEA AIFMs need to send this pre marketing notification letter to their home State competent authority within two weeks of



starting such pre marketing activity, which in turn is directly transmitted to the CSSF. Non EEA AIFMs need to submit such letter directly to the CSSF within the same time period.

The information provided to potential professional investors within the context of the pre marketing activity should not enable such investors to commit to acquiring units or shares of the pre marketed AIF or amount to a subscription form or similar document, whether in draft or final form.

For a period of 18 months after the start of the pre-marketing of the AIF, the AIFM may not rely on reverse solicitation in the jurisdiction where the pre-marketing has been notified.

#### **4. Fees**

The CSSF will charge a lump sum fee for the marketing of foreign AIFs in Luxembourg of EUR 3,000 for a stand alone foreign AIF and of EUR 5,500 for a foreign AIF with compartments. The same fee will thereafter be charged on an annual basis. The CSSF does not charge an application fee for an AIFM passport notification. No fees apply for the purpose of pre marketing AIFs.



# Malta

## 1. EU / EEA AIFMs

### 1.1 Pre Marketing

The Maltese Investment Services (Marketing of Alternative Investment Funds) Regulations (the “**Marketing of AIFs Regulations**”) which transpose the AIFMD, as amended by the CBDF Directive, allow an EEA AIFM to engage in pre marketing of an EEA AIF in Malta to Professional Investors. Pre marketing in Malta arises when an EEA AIFM or a third party on its behalf (subject to certain conditions being met) provides information / communications on investment strategies or ideas to potential Professional Investors domiciled or with a registered office in Malta to test their interest in an EU AIF or compartment which is not yet established or which is established but not yet notified for marketing in accordance with the marketing passport procedures described below in Malta and which does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment.

For information / communication on an EEA AIF to qualify as pre marketing it cannot be presented to potential investors in a way which: (i) is sufficient to allow investors to commit to acquiring units or shares of a particular EEA AIF; (ii) amounts to subscription forms or similar documents (whether in draft or final form); or (iii) amounts to constitutional documents, a prospectus or offering documents of a not yet established AIF in final form.

The EEA AIFM is not required to submit any prior notification to the Malta Financial Services Authority (the “**MFSA**”) before it engages in pre marketing activity in Malta, provided that it fulfils the conditions set out in the Marketing of AIFs Regulations, including the submission of an informal letter to its home State authority within two weeks of the date of commencement of pre marketing in Malta specifying: (a) the member states in which and the periods during which pre marketing is taking or has taken place; (b) a brief description of the pre marketing including

information on the investment strategies presented; and (c) where relevant, a list of AIFs and compartments of AIFs which are or were the subject of pre marketing. The MFSA may request the home State authority of the EEA AIFM to provide further information on the pre marketing that is taking or has taken place on its territory.

Investors contacted as part of pre marketing may only acquire units or shares in that EEA AIF through marketing permitted under a marketing passport described below. Any subscription by Professional Investors, within 18 months of the EEA AIFM commencement of pre marketing activities, to units or shares of an EEA AIF referred to in the information provided in the context of pre marketing or of an EEA AIF established as a result of the pre marketing, shall also be considered to be the result of marketing and shall be subject to the marketing passport notification procedures described below.

### 1.2 Marketing with a Passport

An EEA AIFM wishing to market an EEA AIF in Malta may do so only to Professional Investors and in accordance with the Marketing of AIFs Regulations. The EEA AIFM must first present a notification to its home State regulatory authority, in a language customary in the sphere of international finance, containing the information set out in Annex IV of the AIFMD. The home State authority of the EEA AIFM must transmit the full notification file to the MFSA within twenty working days of receipt of the complete notification file. The MFSA must also receive a statement to the effect that the EEA AIFM is authorised to manage the EEA AIF. Upon transmission of the notification file to the MFSA and upon receipt of a confirmation from the home State authority of such transmission, the EEA AIFM may begin marketing the EEA AIF in Malta. Certain additional requirements apply when marketing a European feeder fund.

Marketing communications addressed to investors or potential investors for AIFs marketed under the

above mentioned marketing passport must comply with the provisions of the Cross Border Distribution of Funds Regulation (the “**CBD**”) and the ESMA Guidelines on Marketing Communications dated 2 August 2021 which came into force on 2 February 2022.

Currently, no EU passport exists for marketing of EEA AIFs to retail investors. The Marketing of AIFs Regulations set forth the conditions pursuant to which EEA AIFs can be marketed to retail investors in Malta, which include the requirement of prior authorisation by the MFSA.

## **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.

A summary of the Maltese private placement regime can be found at the CMS Expert Guide to private placement of funds rules and law.

In Malta, pre-marketing rules were not extended to non-EEA AIFMs and/or non-EEA AIFs.

## **3. Fees**

The Investment Services Act (Fees) Regulations set fixed fees in relation to marketing of units or shares of an EEA AIF by an EEA or Non EEA AIFM. Marketing by an EEA AIFM or a non EEA AIFM of an EEA AIF in Malta is subject to a notification fee of EUR 2,500 per AIF and an annual supervisory fee of EUR 3,000 per AIF. Where the EEA AIF has multiple sub funds, a notification fee of EUR 450 per sub fund and an annual supervisory fee of EUR 500 per sub fund is applicable. When an EEA AIFM markets an EEA AIF in Malta, no annual supervisory fees are payable from the 16th sub fund upwards.



# Mauritius

## 1. Regulatory Framework

Mauritius does not form part of the EEA and is thus not subject to the AIFMD and its respective rules. The main legislations governing AIFs are the Securities Act 2005 (“**Securities Act**”), the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 (“**Regulations**”) and the Financial Services Act 2007. Depending on how the AIFs have been structured, the AIFs will additionally be governed by:

- 1.1 the Companies Act 2001, where the AIF is structured as a company;
- 1.2 the Protected Cell Companies Act 1999, where the AIF is structured as a protected cell company;
- 1.3 the Limited Partnership Act 2001, where the AIF is structured as a limited partnership;
- 1.4 the Trusts Act 2001, where the AIF is structured as a trust; and
- 1.5 the Variable Capital Companies Act 2022, where the AIF is structured under the Companies Act 2001 as a company, is licensed as a VCC fund and carries out its activities through sub-funds and SPVs.

The regulatory body of AIFs is the Mauritius Financial Services Commission (“**FSC**”).

## 2. AIFs

AIFs are generally authorised as funds and may further be sub-classified as expert funds (which must be a collective investment scheme also referred to as open-end fund) or professional collective investment schemes (which may either be a collective investment scheme or a closed-end fund) and are available only to sophisticated and expert investors.

## 3. Pre-marketing

Pre-marketing is not specifically regulated under Mauritius law.

The regulatory framework in Mauritius does not provide specific rules on the pre-marketing of fund interests. As a general principle, any fund document provided to investors must clearly disclose the nature and status of the document, especially if in draft form and the regulatory status of the person marketing such document, that of the fund and the fund manager. Investors should be warned about reliance on such documents and should only make an investment decision on the final version of the constitutive documents.

## 4. Marketing

Marketing of fund interest (whether by a local or non-Mauritian fund) to retail investors in Mauritius mandatorily require the holding of an investment intermediary licence (investment dealer licence or an investment adviser licence).

Retail investors under the Securities Act refers to such category of investors other than sophisticated investors.

Sophisticated investors under the Securities Act includes:

- the government of Mauritius;
- a statutory authority or an agency established by an enactment for a public purpose;
- a company whose shares are wholly owned by the government of Mauritius, a statutory authority or an agency established by an enactment for a public purpose;
- the government of a foreign country, or an agency of that government;
- a bank (licensed by the Bank of Mauritius);
- a collective investment scheme;
- a fund manager (licensed by the FSC);
- a pension fund or its management company;
- a closed-end fund;
- an insurer (licensed by the FSC);

- an investment adviser (licensed by the FSC);
- an investment dealer (licensed by the FSC);
- an investor that warrants, at the time of entering into a securities transaction, that:
  - its ordinary business or professional activity includes the entering into securities transactions, whether as principal or agent;
  - for a natural person, the individual net worth or joint net worth with a spouse exceeds USD1 million or its equivalent in another currency; or
  - it is an institution with a minimum amount of assets under discretionary management of USD5 million or its equivalent in another currency; and
- a person declared by the FSC to be a sophisticated investor.

Securities of foreign funds may hence be marketed to sophisticated investors (as defined above) or expert investors (being sophisticated investors or an investor making an initial investment of not less than USD 100,00 for his own account) without resorting to the mandatory application for an investment dealer licence or investment adviser licence.

The FSC has also published a guideline on *Advertising and Marketing of Financial Products* regulating the advertising and promotion methods which licensed entities must use to market financial products. These guidelines regulate the conduct of the marketing and the content of advertisements and marketing materials which require a certain amount of disclosure and disclaimers on the product and the persons marketing same.

Additionally, in 2013, the FSC signed a Memorandum of Understanding with the European Securities and Markets Authority ("**ESMA MOU**") pursuant to which funds licenced in Mauritius may market in Europe subject to meeting any requirements that may be imposed by the regulator of each EU Member State where the funds are being marketed.

## 5. Fees

Save for public offerings, there are no fees payable to the FSC for marketing.



# 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.

## 4. Cross border distribution

EEA AIFMs engaging in pre marketing activities in the Netherlands need submit a pre marketing notification form to their competent regulator prior to engaging in pre marketing activities. In the Netherlands the AFM is the competent authority for pre marketing notifications.





# Norway

## 1. EEA AIFMs

The main concepts of the AIFMD were implemented into Norwegian law when the Norwegian AIFM Act came into force in July 2014.

AIFMs authorised in their EEA home State may exercise passport rights for management and marketing in Norway in relation to most types of AIFs, 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 in Norway. The home State competent authority will send the management passport notification to the Financial Supervisory Authority of Norway (“**FSAN**”) on behalf of the EEA AIFM.

An EEA AIFM wishing to market a Norwegian AIF or EEA AIF<sup>13</sup> to professional investors in Norway may do so if its home State competent authority has submitted a passport notification to the FSAN to market the AIFM, and may commence its distribution activities in Norway from the date of notification by the home State competent authority to the FSAN.

It is possible for an EEA AIFM to market a Norwegian AIF or EEA AIF to non professional investors in Norway. Such marketing requires a separate approval of the FSAN. The EEA AIFM must submit an application to FSAN documenting that the AIF may be marketed to non professional investors in its home State and that applicable Norwegian requirements for such marketing will be complied with, i.e. the preparation of a PRIIPs key information document and the conduct of a

suitability test. AIFMs marketing AIFs to non professional investors in Norway must be a member of an independent, external complaints board.

## 2. Pre marketing by EEA AIFMs

Licensed EEA AIFMs may commence pre marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Norway, provided that the Norwegian Financial Supervisory Authority (NSF) receives a pre marketing notification letter within two weeks of starting such pre marketing activity. EuVECA funds can also be pre-marketed by so-called “sub-threshold” managers without a full license.

The information provided to potential professional investors within the context of the pre-marketing activity should not enable such investors to commit to acquiring units or shares of the pre marketed AIF or amount to a subscription form or similar document, whether in draft or final form.

Pre-marketing can be done both towards professional investors and non-professional investors, provided that the investment strategy or fund is meant to be marketed towards professional investors. Marketing can only be done towards non-professional investors after a separate application.

For a period of 18 months after the start of the pre-marketing of the AIF, the AIFM may not rely on reverse solicitation in the jurisdiction where the pre-marketing has been notified and applicable local legislation on marketing shall apply.

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<sup>13</sup> Subject to the Norwegian AIF or EEA AIF not being a feeder AIFM to a master AIF managed by a Non-EEA AIFM or the master AIF being a Non-EEA AIF.



### 3. Third country AIFMs

A Non EEA AIFM may market a Non EEA AIF or an EEA AIF in Norway to professional investors by use of the Norwegian private placement regime. Reference is made to the 'CMS Guide to Private Placement of Funds'.

### 4. Fees

- Norway charges one-off fees for AIFMD passport notifications, marketing applications and annual fees for having registered an AIF in Norway. Fees for notifications and marketing applications are set by regulation between NOK 5,000 and NOK 30,000, and annual fees are set at up to NOK 10,000 per fund. For 2024, the fee levels were as follows: Registration passporting under AIFMD (and UCITS): NOK 5,000
- Application for marketing of AIFs to retail investors: NOK 25,000
- Annual fees: NOK 7,000 per manager

Fees for 2025 has not been set as of publication.

EEA AIFMs passporting into Norway on a branch basis are required to pay periodic fees on the regulated activities conducted in Norway, calculated by the FSAN in accordance with certain mechanisms decided by the Ministry of Finance based on the branch's relative share of the FSAN's activities.



# 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 Polish 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 Polish limited liability company, a Polish joint stock company or a European company; or a limited partnership or limited joint stock partnership (where the only general partner is a limited liability company, a joint stock company or a 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. EU and EEA AIFs (provided that the EEA AIFs, as a rule, can be marketed only if their AIFMs act in compliance with AIFMD) are also recognised under the Polish law and the rules on marketing of their shares in Poland reflect AIFMD provisions accompanied with local terms regulating the conditions of marketing.

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 marketed in Poland among professional and, under certain circumstances, retail investors. Marketing to retail investors is possible only with regards to the UE/EEA AIFs which obtained the authorisation referred to in Article 5(1) of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds. 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 AIF internal regulations and a letter of confirmation stating that the EEA AIFM is authorized to manage EEA AIFs.

In case marketing of the EEA AIFs shares constitutes public offering under Regulation 2017/1129, the offering document publication obligation may apply.

## 2. Pre-marketing by EEA AIFMs

EEA AIFMs may commence directly or through a licensed intermediary pre-marketing of AIFs which are not yet established or established but not yet notified for marketing in accordance with the procedure described above, to potential professional investors in Poland, provided that the PFSA receives a pre-marketing notification within 2 weeks from the starting date of pre-marketing activities.

The information provided to potential professional investors as part of the pre-marketing activity cannot: (i) constitute a sufficient basis to enable potential investors to commit to the acquisition of participation rights of the EEA AIF, (ii) take the form of a subscription form for participation rights of the EEA AIF or similar documents, including their drafts, or (iii) present the final form of the articles of association or other incorporation document or prospectus, or other offer document of the EEA AIF that has not yet been established.

In cases when the approached potential investor acquires the participation rights of the EEA AIF within 18 months of the commencement of pre-marketing activities, the above-mentioned notification procedure for marketing is triggered.

### **3. Third country AIFMs**

Currently, Polish regulations do not allow non-EEA third country AIFMs to market its shares in the territory of Poland.

### **4. Fees**

The registry fee is EUR 300.00 for each EU AIF in case EU AIFs are marketed solely within professional investors and EUR 1,200.00 in other cases (with another EUR 1,200.00 for each consecutive sub-fund or EUR 300.00 in case of sub-funds marketed solely within professional investors, starting with a second one).

EU AIFs are obliged to cover annual supervisory fee (i.e. EUR 300 annually for each UE AIF distributed in Poland to professional clients or EUR 1,000.00 in other cases). Additionally, if UE AIF has sub-funds distributed in Poland, the fee would be raised by EUR 200.00 for each sub-fund (excluding the first one) marketed within professional clients and by EUR 500.00 in other cases.

# Portugal



The Asset Management Regulation (“**AMR**”) (approved by the Decree-Law 27/2023, of 28 April) and the CMVM Regulation No. 7/2023, 29 December (“**AMR Regulation**”) implement the AIFMD.

## 1. EEA AIFMs

AIFMs duly authorised by their national regulators are entitled to manage and/or market their AIFs in Portugal either by establishing a branch or under the freedom to provide services. For either case the Portuguese Securities Market Commission (hereafter “**CMVM**”) shall receive in advance a communication from the home Member State competent authority of the AIFM.

### 1.1 Establishing a branch

The notification referred to in the paragraph above should include:

- 1.1.1 Address of the future Portuguese branch;
- 1.1.2 Business plan, which shall mention: (i) the activities to be exercised; (ii) corporate structure of the branch; (iii) identification of the AIFs to be managed in Portugal;
- 1.1.3 Identity and contact details of the branch management officer;
- 1.1.4 Certificate issued by the Member State competent authority attesting that the AIFM is authorized.

### 1.2 Freedom to provide services

The notification referred to in the paragraph above should include:

- 1.2.1 Business plan, which shall mention: (i) activities to be exercised; and (ii) the identification of the AIFs to be managed in Portugal; and

- 1.2.2 Certificate issued by the Member State competent authority attesting that the AIFM is authorized.

## 2. Third country AIFMs

An AIFM established in a third country is subject to prior authorization from CMVM to develop the following activities in Portugal:

- 2.1 manage Portuguese AIFs without marketing them;
- 2.2 marketing EEA AIFs and third country AIFs, exclusively with professional investors, provided that Portugal is the member state where most of those AIFs are marketed;
- 2.3 manage one or more EEA AIF, provided that most of the AIFs are incorporated in Portugal or the majority of the assets are managed in Portugal;
- 2.4 marketing a single EEA AIF or a single third country AIF, provided that Portugal is the member state of such AIF or the only member state where such marketing is envisaged;
- 2.5 marketing a single EEA AIF or a single third country AIF in several member states, provided that Portugal is the member state of the AIF or one the member states whereby the AIF will be marketed;
- 2.6 marketing of several EEA AIFs, provided that Portugal is the member state of the AIF or the member state where the majority of such marketing is envisaged to take place.

The authorization application shall be accompanied by the information and documentation set forth in the Asset Management Regulation.

### **3. Pre marketing of EEA AIFs in Portugal**

EEA AIFMs may commence pre-marketing AIFs to potential professional investors in Portugal, provided that CMVM receives a pre-marketing notification letter within two weeks of starting such pre marketing activity.

The information provided to potential professional investors within the context of the pre-marketing activity should not enable such investors to commit to acquiring units or shares of the pre-marketed AIF or amount to a subscription form or similar document, whether in draft or final form.

### **4. Marketing of AIFs in Portugal**

- 4.1 AIFs either from an EEA country or from a third country can be marketed in Portugal as follows:
- 4.2 EEA AIFs can be marketed by Portuguese AIFMs or third country AIFMs authorized in Portugal;
- 4.3 EEA AIFs can be marketed by an EEA AIFM or by a third country AIFM authorized in a member state provided that some information is previously made available to CMVM;
- 4.4 Third country AIF can be marketed by a Portuguese AIFM provided some cooperation mechanisms between the relevant competent authorities are applied;
- 4.5 Third Country AIFs can be marketed by an EEA AIF provided some information is previously made available to CMVM.

As general rule, the marketing of EEA AIFs or third country AIFs shall be exclusively marketed to professional investors. However, the Asset Management Regulation allows the marketing to non-professional investors provided that the EEA AIFM has the necessary means in Portugal to (i) process the subscription, payment, repurchase and redemption of units and (ii) provide certain information to investor, such as annual report, key information document and any other information that could be deemed relevant.

Information to be previously provided to CMVM includes, without limitation, (i) identification of the AIFs, (ii) constitutional documents of the AIFs, (iii) identification of the custodian entity, (iv) description of the AIF, (v) information legally required to be made available to investors. Information to investor shall make available to Portuguese investors, in Portuguese or other language used in the financial field.

### **5. 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 125 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 enacted Law no. 243/2019 regarding alternative investment funds, as well as Law no. 237/2022 and Government Emergency Ordinance no.71/2024 which amend and supplement Law 74/2015.

## 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 freedom of services and / or branch basis. EEA AIFMs shall be entitled to market EEA AIFs provided that a notification is submitted to the RFSA by the competent authority in their home State, together with a statement that EEA AIFM in question is authorized to manage EEA AIF based on a particular investment strategy. Subsequently, EEA AIFM may begin the activity once it is registered in the registry kept by the RFSA.

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 investment limits, reporting requirements, 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, which have been authorised in another EEA state of reference, are entitled to the same passporting rights as EEA AIFMs.

The non EEA AIFM for which Romania is the state of reference must have been granted

authorisation by the RFSA and must appoint a legal representative in Romania.

Marketing in Romania of Non EEA AIFs managed by Non EEA AIFMs are subject to cooperation agreements between the RFSA and the competent authorities in the home state.

## 3. Fees

There are no fees applicable when passporting under the freedom to provide services. Certain fees ranging from approximately EUR 1,000 to EUR 4,000 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.

## 4. Pre-marketing

EEA AIFMs may commence pre-marketing AIFs which are not yet established or established but not yet compliant with the applicable marketing procedures, to potential professional investors in Romania, provided that the EEA AIFM sent a pre-marketing notification letter to their home State competent authority within two weeks of starting such pre-marketing activity, which in turn is directly transmitted to the RFSA.

The information provided to potential professional investors within the context of the pre-marketing activity should not enable such investors to commit to acquiring units or shares of the pre-marketed AIF or amount to a subscription form or similar document, whether in draft or final form.

Any subscription by professional investors, within 18 months of the AIFM having begun pre-marketing, to units or shares of a AIF referred to in the information provided in the context of pre-marketing, or of a AIF established as a result of the pre-marketing, shall be considered to be the result of marketing and shall be subject to the

applicable notification procedures referred to in Point 1 above “EEA AIFMs

*Note: Whilst the CBDF Regulation is directly applicable in Romania and fund managers must ensure compliance with the requirements provided within this Regulation, the provisions of the CBDF Directive have been transposed into Romanian legislation by Law 237/2022 without additional gold plating provisions.*





# Singapore

In Singapore, the rules governing the offers of funds or collective investment schemes (“**CIS**”) are set out in the Securities and Futures Act 2001 of Singapore (“**SFA**”) and its subsidiary regulations and guidelines, and the regulatory authority over the investment funds market is the Monetary Authority of Singapore (“**MAS**”). Broadly speaking, the offer of units in a CIS and the marketing or distribution of such units will attract regulatory requirements from both a product and activity perspective under the SFA.

## Offers of interests in Collective Investment Schemes

### Public Offers

In general, any offer of a CIS to the public (retail investors) in Singapore needs to be authorised (if the CIS is constituted in Singapore) or recognised (if the CIS is constituted outside Singapore) by the MAS. A substantial proportion of retail CISes traditionally take the form of unit trusts.

- **Authorisation:** Criteria for authorisation includes that the MAS is satisfied that: (i) the manager holds a capital markets services licence and is fit and proper, and (ii) there is a trustee approved under the SFA.
- **Recognition:** The MAS may recognise a CIS if, amongst other things: (i) such foreign CIS is regulated and supervised in a manner comparable to authorised Singapore CISes, (ii) the manager is licensed or regulated in its principal place of business and is fit and proper, and (iii) there is an appointed Singapore representative. The MAS has recognised foreign funds constituted as Undertakings for Collective Investments in Transferable Securities (UCITS) in Luxembourg, the United Kingdom, Ireland, France and Germany, as well as funds that have been assessed as suitable to be qualifying CIS under the ASEAN CIS framework.

Such offers of an authorised or recognised CIS in Singapore must be made in or accompanied by a prospectus registered by the MAS, which should comply with disclosure requirements prescribed by the MAS, together with accompanying product highlights sheets. The CIS should also comply with the Code on Collective Investment Schemes issued by the MAS.

### Exempted Offers

An offer of interests in a CIS may be made without the need to comply with the above offering requirements if any of the following exemptions set out in the SFA are applicable:

#### 1. Small offers

This exemption applies to personal offers of units in a CIS where the total amount raised in respect of such offers within any period of 12 months does not exceed S\$5 million or such other amount as the MAS may prescribe. A personal offer is one that may only be accepted by the person to whom it is made, and is made to a person who is likely to be interested in that offer, having regard to (i) any previous contact, (ii) any previous professional or other connection, or (iii) any previous indication of interest in offers of that kind.

#### 2. Private placement

This exemption applies to offers of units in a CIS where the offers are made to no more than 50 persons (or such other number of persons as the MAS may prescribe) within a period of 12 months. The 50 persons’ limit is based on the number of persons such offer is made to, and not the number of acceptances.

#### 3. Offers to institutional investors

This exemption applies to offers of units in a CIS which are made solely to institutional investors, as defined in the SFA. Institutional investors include the Singapore Government, prescribed statutory boards, sovereign wealth funds, pension funds, central banks, central governments, prescribed multilateral agencies or international organisations

and certain regulated financial institutions in Singapore (e.g. licensed banks).

#### **4. Offers to accredited investors and certain other persons**

This exemption applies to offers of units in a CIS which are made solely to:

- 4.1 Accredited investors or certain relevant persons who are related to the offeror; or
- 4.2 A person who acquires the units as principal at a consideration of not less than S\$200,000 for each transaction.

Accredited investors include (i) individuals whose net personal assets exceed S\$2 million or whose net financial assets (e.g. bank deposits and prescribed investment products) exceed S\$1 million or whose income in the preceding 12 months is not less than S\$300,000 and (ii) corporations with net assets exceeding S\$10 million. Apart from meeting these requirements, such investor must also opt-in to be treated as an accredited investor in accordance with the relevant regulations.

CISes made available under this exemption are “restricted schemes”, which must be notified to the MAS and be entered into the MAS’ list of restricted schemes prior to any offers being made. Key requirements for a restricted scheme to be entered into MAS’ list are that (i) the manager is licensed or regulated in the jurisdiction of its principal place of business and be fit and proper, and (ii) the offer is accompanied by an information memorandum that contains salient information prescribed under the relevant regulations. A copy of the information memorandum must be submitted to the MAS.

Reliance on the abovementioned exemptions is subject to compliance with conditions including prohibitions against advertising and the incurrence of selling or promotional expenses other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by prescribed persons.

#### **Marketing interests in Collective Investment Schemes**

Entities who carry on business in marketing CIS will be required to hold a capital markets services licence in dealing in capital markets products that are CIS under the SFA, unless exempted for example, where such person carries on business in dealing in capital markets products that are units in a CIS for a customer who is an institutional investor.

As the SFA has extra-territorial effect, an overseas intermediary that operates from wholly outside Singapore should nonetheless consider if such activity would nonetheless have a substantial and foreseeable effect in Singapore, which would extend the jurisdiction of the SFA to such activity.



# 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 (or investors investing at least EUR 50,000) 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/EEA 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.

The Directive (EU) 2019/1160 with regard to cross border distribution of collective investment undertakings was transposed into the Act on Collective Investment as well as some provisions related to the Sustainable Finance Disclosure Regulation (2019/2088).

## 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.

Non EEA AIFMs with Slovakia as the reference state must apply for approval from the National Bank of 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. Pre-marketing by EEA AIFMs

EEA AIFMs may commence pre-marketing AIFs which are not yet established or established but not notified to the NBS, to potential professional investors in Slovakia, provided that the NBS receives a pre-marketing notification letter within two weeks of starting such pre-marketing activity in writing or in an electronic form.

There are certain dos and don'ts in respect to the information provided to potential professional investors within the context of the pre-marketing. In particular, they should not enable such investors to commit to acquiring units or shares of the pre marketed AIF, represent any subscription form or similar document, whether in draft or final form, or represent any corporate documents, prospectus or marketing materials in final form. The draft prospectus or marketing materials may not contain information enabling the investors to adopt investment decision and must clearly state that they do not represent an offer or call for purchase or subscription of AIF and the information contained therein cannot be relied upon, as they are not complete and can change.

For a period of 18 months after the start of the pre-marketing of the AIF, any subscription of AIF is considered as distribution and subject to the respective notification obligations with the NBS (eventually through the home regulator as applicable).

#### 4. Fees

Applications for permission by the National Bank of Slovakia are subject to a fee, however the National Bank of Slovakia does not charge a notification fee for outward or inward AIFMD passport notifications. There is also a possible annual fee for an (EEA/non-EEA) AIFM dependant on the volume of assets of funds created and managed in Slovakia. More details about the fees are available on the National Bank of Slovakia's website.



# Slovenia

## 1. EEA AIFMs

### 1.1 Distribution to Professional Investors

EU AIFMs may perform management and marketing activities in Slovenia on a freedom of services and / or branch basis.

EU AIFMs may exercise passport rights for marketing of EU AIFs and non 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 Slovenian Securities Market Agency (*Agencija za trg vrednostnih papirjev*, "ATVP").

In case the submitted documentation changes, such changes should be notified and the new documents provided to ATVP.

### 1.2 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**") and the Guidance Notice on marketing of units of AIFs to the non professional investors in the Republic of Slovenia issued by the ATVP are adhered to.

Distribution of non EU AIFs to non professional investors is not permitted.

## 2. Third country AIFMs

A non EU AIFM may provide services including marketing only if it obtains prior authorisation by the competent authority of the member state of reference and the passporting was conducted in Slovenia. ATVP will grant the approval if certain structural and documentary requirements are met.

In case a non EU AIFM has already obtained an approval in the member state of reference, notification process has to be performed in front of ATVP before starting marketing activities in Slovenia.

Non EU AIFMs must appoint a legal representative in Slovenia. Such legal representative shall represent the non EU AIFM, act as a point of contact and be responsible for any official correspondence between the non EU AIFM, competent authorities and investors. The legal representative is also responsible for compliance of the management and marketing activities of the non EU AIFM with ZUAIS.

## 3. Pre-marketing by EEA and non-EEA AIFMs

EEA and non-EEA AIFMs may exercise pre-marketing activities of AIFs to professional investors on the Slovenian market within the limited scope provided by the law.

Pre-marketing activities shall not provide information that would i) enable potential investors to commit themselves to purchase units of an individual AIF, ii) be equivalent to the information contained in the documents required for the subscription for units of the AIF, whether in final or draft form, or iii) be equivalent to the information contained in the prospectus, instruments of incorporation or offer document of an AIF not yet established.

Where a draft prospectus or offer document is available, it must not contain sufficient information to enable potential investors to make an investment decision on the basis of that information alone. Such draft shall also contain certain disclaimers.

The AIFM shall assure that investors do not acquire units of AIFs on the basis of pre-marketing activities. Any subscription by investors within 18 months after the AIFM has started pre-marketing the units of the AIF shall be deemed to be a marketing effect.

#### 4. Fees

ATVP charges a fee of up to EUR 353 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 up to EUR 940 per each EU AIF and non-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 as well as for supervising compliance with the rules regarding marketing of units or shares of a non-EU managed by a non-EU AIFM.





# Spain

The AIFMD was transposed mainly 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 (“**LECROSI**”) 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 freedom to provide services and/or freedom of establishment 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 securities market regulator (the “**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.

According to the Royal Decree 1082/2012 of July 2012, approving the regulations implementing Law 35/2003 of 4 November 2003 on collective investment undertakings (“**RIIC**”) and the **LECROSI**, the marketing of a particular kind of Spanish AIFs (i.e. instituciones de inversión colectiva de inversión libre (“**IICIL**”) and entidades de capital riesgo (“**ECR**”)) is permitted ) to retail

investors, subject to the compliance with the following conditions:

- 1.1 A personalised recommendation is issued by an entity authorised to provide investment advice;
- 1.2 The minimum initial investment is made for a minimum of 10,000 euros (compared to the minimum of 100,000 euros previously required); and
- 1.3 The initial investment does not exceed the 10% of the investor's total assets, provided that the total assets of the investor are not higher than 500,000 euros.

For such purposes, the Law 35/2003 of 4 November 2003 on collective investment undertakings (“**LIIC**”) and the **LECROSI** defines “marketing” of fund interests as the advertising activity carried out on behalf of the collective investment institution or any other entity acting on its behalf or on behalf of any of its traders to solicit clients, so these clients contribute with funds, assets or rights. Hence, marketing activity entails making offers at the initiative of the fund managers or on their behalf.

- **Regulation (EU) 2019/1156** on facilitating cross-border distribution of collective investment undertakings, which is directly applicable in Spain, and
- **Directive (EU) 2019/1160** with regards to cross-border distribution of collective investment undertaking, transposed into Spanish law by means of the Royal Decree-Law 24/2021 without introducing any material amendment,

introduced new rules relating to the cross-border marketing and distribution of collective investment undertakings within the EU, which include, among others, a “pre-marketing” definition. In accordance with that, “pre-marketing” in Spain means the provision of information or communication, direct or indirect, on investment strategies or investment



ideas by a management company, or on its behalf, to potential professional investors domiciled or with a registered office in Spain and in the rest of the European Union in order to test their interest in a qualifying fund which is not yet established, or in a qualifying fund which is established, but not yet notified for marketing in Spain or in the member State in which the professional investors are domiciled or have their registered office and which in each case does not amount to an offer or placement to the potential professional investor to invest in the units or shares of that qualifying fund.

Consequently, the management companies of AIFs need to submit a pre-marketing notification form to the CNMV prior to engaging in pre-marketing activities in Spain, and any subscription of an investor within 18 months of the fund interests shall be considered marketing to which the registration procedure applies.

## **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 2,601.51 and from registration onwards an annual flat fee of EUR 3,121.81.

\* Fee amounts subject to updates under each annual General State Budget.



# 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 cross border 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 marketing passport notification to the Swedish Financial Supervisory Authority (“**SFSA**”) on behalf of the EEA AIFM.

The Swedish legislator has implemented Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertaking, including, e.g., rules on pre-marketing.

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.

A foreign EEA-based AIFM, which has been authorised in its home state in accordance with the AIFMD may without further authorisation engage in pre-marketing in Sweden of an EEA-based AIF, under the conditions as set out in the AIFMD.

A foreign AIFM that has submitted a notification to the competent authority that it intends to cease marketing shares or units of an alternative investment fund may not, from the date of the notification, engage in pre-marketing in Sweden for a period of 36 months from the date of the notification. This prohibition applies to units and

shares, as well as to similar investment strategies or investment ideas. No legislation has been introduced regarding pre-marketing by non-EEA based AIFMs.

## 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

The SFSA 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

- 1.1 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
- 1.2 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.

Swiss law does not provide for specific pre-marketing rules, i.e. a list of specific activities which do not fall within the scope of the applicable marketing rules at all, or trigger lower requirements (such as a mere notification duty). However, marketing activities must generally relate to a specific financial instrument, respectively a specific CIS, to qualify as (i) offer under the CISA, triggering the duties on the product level, or (ii) financial service under the FinSA, triggering the duties on the distributor level (both as further described below). Activities such as testing the appetite for a certain investment strategy, or providing general information not concerning a specific financial instrument (e.g. sector outlooks) should thus not trigger such duties.

## 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:

- 2.1 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.
- 2.2 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.
- 2.3 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:

- 3.1 such CIS is domiciled in a jurisdiction which provides for the following:
  - 3.1.1 Adequate supervision of the CIS, the asset manager and the custodian;
  - 3.1.2 A regulatory framework which requires sufficient organisation of

the CIS, the asset manager and the custodian;

- 3.1.3 Adequate investor protection, comparable to the framework applicable to Swiss CIS in Switzerland; and
- 3.1.4 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;

- 3.2 the CIS appoints a representative and a paying agent in Switzerland; and
- 3.3 the designation of the CIS is not misleading or deceptive.

Currently, approx. 8580 CIS are passported, and out of those, approx. 25 were non UCITS, which evidences 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, but there have been various transitional periods. However, the last relevant transitional period ended on 31 December 2021, and the new rules must thus now be adhered to in full when marketing CIS in Switzerland (to the extent applicable).

#### 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. Furthermore, also the advisers' register and the ombudsman's office will charge fees.



# United Kingdom

## 1. EEA AIFMs

Following the UK's departure from the EU, in the absence of agreement otherwise between the UK and the EU, all non-UK funds, including EEA AIFs, are classed as third country AIFs in the UK.

Under the Overseas Funds Regime ("OFR"), the UK Treasury has the ability to determine whether a third country jurisdiction and funds established in that jurisdiction are equivalent to a UK authorised fund (these are funds which have been approved by the FCA for marketing to retail investors in the UK). This will allow them to benefit from a simplified process to enable marketing to UK retail investors. At present, only EEA UCITS are recognised as "equivalent."

EEA AIFs are required (unless they are individually recognised under s. 272 of the Financial Services and Markets Act 2000), to comply with the UK's National Private Placement Regime and the UK's financial promotion rules (as applicable) in the same way as AIFMs based in non-EEA (third country) jurisdictions wishing to market third country AIFs are required to do.

A summary of the UK private placement regime can be found at [Private placement rules and law in the UK | CMS Expert Guides](#).

## 2. Financial Services and Markets Act 2000 ("FSMA") Third country AIFMs

The National Private Placement Regime is available to any fund established outside the UK which, for legislative purposes (including EEA UCITS) are regarded as being third country AIFs. Unless they successfully apply for recognition under the OFR, AIFMs based in third country jurisdictions wishing to market EEA and/or Non-EEA AIFs in the UK will be required to comply with the UK's National Private Placement Regime, as well as the UK's financial promotion rules as applicable. Currently, only EEA UCITS can apply to be recognised under the OFR.

## 3. Pre-marketing

The UK does not have a separate regime for pre-marketing. Pre-marketing is subject to the same financial promotion rules as any other marketing of a fund in the UK.

## 4. Fees

N/A.

# Definitions

<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>AIFMG-L</b>	Alternative Investment Fund Law (Liechtenstein)
<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>BoLV</b>	Bank of Latvia
<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>Cross-Border Distribution of Funds Regulation</b>	Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings
<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>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>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>HMSA</b>	Home Member State Authority
<b>Investments Fund Act</b>	Act XVI of 2014 on Collective Investment Forms and their Managers (Hungary)
<b>ISA</b>	Investment Services Act, Chapter 370 of the Laws of Malta (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>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>UCITS</b>	Undertakings for Collective Investment in Transferable Securities

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