

FMA Guideline 2019/16 on EEA AIF and EEA AIFM notification procedures

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These Guidelines provide an overview of the documents to be submitted under the notification procedures set out in the Liechtenstein Alternative Investment Fund Managers Act of 19 December 2012 (*Gesetz über die Verwalter alternativer Investmentfonds vom 19. Dezember 2012, AIFMG*; hereinafter referred to as the “AIFM Act”), implementing the provisions of Directive 2011/61/EU (hereinafter referred to as the “AIFM Directive”).

The following types of notification are described:

- A) Marketing of units or shares of a Liechtenstein AIF by a Liechtenstein AIFM in other EEA Member States (outgoing notification)
- B) Marketing of units or shares of an EEA AIF (non-Liechtenstein AIF) by an EEA AIFM in Liechtenstein (incoming notification)
- C) Management of an EEA AIF (non-Liechtenstein AIF) by a Liechtenstein AIFM (outgoing notification)
- D) Management of a Liechtenstein AIF by an EEA AIFM (non-Liechtenstein AIFM) (incoming notification)

A) Marketing of units or shares of a Liechtenstein AIF by a Liechtenstein AIFM in other EEA member states (outgoing notification)

1. Example

A Liechtenstein AIFM wishes to market a Liechtenstein AIF in an EEA Member State (e.g. Germany).

2. Legal basis

The circumstances requiring this type of notification are set out in Articles 113 to 116 of the AIFM Act (implementing Article 32 of the AIFM Directive).

3. Notification requirement and documents to be submitted

3.1 Notification requirement

The Liechtenstein AIFM shall submit a notification to the Financial Market Authority Liechtenstein (hereinafter referred to as the “FMA”) in respect of each Liechtenstein AIF that it intends to market. The notification must be submitted electronically either in English or another language recognised by the FMA (Article 113(1) of the AIFM Act). The FMA requires AIF Notification Letters to be submitted in English. Whether translations of any other documents must be submitted will depend on the host Member State involved. Please obtain information to this effect from the relevant host Member State.

Authorisation of the Liechtenstein AIFM by the FMA is a prerequisite for notification.

Documents to be submitted

In accordance with Article 113(1) and (2) of the AIFM Act, the following documents must be sent by e-mail to aifmg@fma-li.li:

- a signed AIFM Notification Letter for Liechtenstein AIFs in accordance with Article 113(1) of the AIFM Act, which must specify the category of investors and whether the AIF will be marketed exclusively to professional investors for MiFID purposes;
- an AIF Notification Letter – completed in English (Article 113(3) of the AIFM Act in conjunction with Article 95 of the Liechtenstein Alternative Investment Fund Managers Ordinance [*Verordnung über die Verwalter alternativer Investmentfonds, AIFMV*; hereinafter referred to as the “AIFM Ordinance”]), which is available on the FMA website;
- a programme of activity and operations including details of the AIF and its registered office – this document will have been submitted previously as an attachment to the AIFM programme of activity and operations for the purpose of authorising a Liechtenstein AIF – please submit the AIFM programme of activity and operations including the attachment on the specific AIF that the AIFM intends to market in another Member State;
- the constitutive documents of the AIF;
- a description of, or any information on, the AIF available to investors
- the registered office of the master AIF in the case of feeder AIFs;
- the marketing information for investors, as specified in Article 105(1) of the AIFM Act, unless this has previously been submitted in some other form;
- a description of arrangements established to prevent AIFs from being marketed to retail investors, which must also extend to any independent entities upon which the AIFM relies, in accordance with the legal and regulatory requirements of the country in which AIFs are marketed.

4. Procedures

The FMA will verify that the documents are complete (Article 114(1) of the AIFM Act).

Within ten working days following receipt of all documents, the FMA will send confirmation of receipt to the AIFM that submitted the notification (Art. 115(1) of the AIFM Act). This period may be extended in accordance with Article 115(2) of the AIFM Act.

The FMA will only verify that the AIFM meets the requirements laid down in the AIFM Directive and provide confirmation, in accordance with Article 115(3) of the AIFM Act, that the AIFM has been duly authorised.

The FMA will send the documents indicated above, plus confirmation that the AIFM is duly authorised, to the authorities in the country in which the AIFs are marketed within ten working days of receipt of all the requisite documents. This period may also be extended in accordance with Article 115(3) of the AIFM Act by sending a duly substantiated notification to this effect.

The FMA will notify the AIFM immediately upon submitting the documents. Once the FMA has issued such notification, in accordance with Article 115(4) of the AIFM Act, the AIFM may start marketing the AIF indicated to professional investors in the relevant country (Article 115(5) of the AIFM Act).

5. Confirmation and fees

In accordance with Article 155 of the AIFM Act in conjunction with Article 30(1) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz, FMAG*; hereinafter referred to as the “FMA Act”) and Appendix 1(C)(1)(f)(mm), first indent of the FMA Act the following fees are payable in respect of processing notifications under Article 113 of the AIFM Act:

- Single funds: CHF 500 per single fund
- Umbrella funds: CHF 500 for each sub-fund

On issuing confirmation that the documents have been submitted (Article 115(4) of the AIFM Act), the FMA will send an invoice and a payment slip, which may be used to pay the fee (without bank charges).

6. Marketing to retail investors

As provided in Article 118 of the AIFM Act, AIFs will be marketed to retail investors in accordance with the law of the host country. Accordingly, Liechtenstein AIFMs marketing EEA AIFs on a cross-border basis to retail investors in another EEA Member State shall comply with applicable legislation in the country concerned. As part of the notification procedure, they shall therefore provide any additional notification documents required in such country and/or submit such documents directly to the supervisory authority in the country concerned where required (see also FMA Communication 2015/3).

7. Updating documents and notifying changes

AIFMs shall give the FMA notice of any material changes affecting the documents submitted in accordance with Article 113(2) of the AIFM Act not less than one month prior to implementing a planned change or immediately after an unplanned change has occurred (Article 116(1) of the AIFM Act). Notices must be sent by e-mail to fonds@fma-li.li.

Article 23 of the AIFM Ordinance provides that changes are not deemed to be material if they solely involve editorial amendments to the information notified. However, all other changes are deemed to be material and must be duly notified in writing.

The FMA shall immediately give notice of any changes that are consistent with the requirements of the AIFM Directive to all authorities for the countries in which the AIFs are marketed (Article 116(3) of the AIFM Act).

B) Marketing of units or shares of an EEA AIF (non-Liechtenstein AIF) by an EEA AIFM in Liechtenstein (incoming notification)

1. Example

An EEA AIFM (e.g. from Austria) wishes to market an EEA AIF (non-Liechtenstein AIF) which it manages to professional investors in Liechtenstein.

2. Legal basis

The circumstances requiring this type of notification are set out in Article 117 of the AIFM Act (implementing Article 32 of the AIFM Directive).

3. Notification requirement and documents to be submitted

3.1 Notification requirement

The EEA AIFM shall submit a notification to the authorities in its home country for each EEA AIF it intends to market in Liechtenstein. The FMA accepts documents in German or English.

Documents submitted by the authorities in the home country concerned may be submitted by e-mail to the following address: passport.aif@fma-li.li.

Authorisation of the EEA AIFM by the authorities in the AIFM's home country is a prerequisite for notification.

3.2 Documents to be submitted

EEA AIFMs shall submit the documents required under Article 32 of the AIFM Directive to the authorities in their home country.

4. Procedures

The FMA will receive the relevant notification from the authorities in the home country of the EEA AIFM. Once the notification has been received, the EEA AIF may be marketed to professional investors in Liechtenstein in accordance with Article 117(3) in conjunction with Article 115(4) of the AIFM Act. The FMA will add the EEA AIF to the list of EEA AIFs approved for marketing in Liechtenstein.

5. Fees and charges

A one-off administration fee will be charged for processing notifications under Article 117(1) of the AIFM Act. An annual base fee will also be payable for all non-Liechtenstein AIFs approved for marketing in Liechtenstein.

5.1 Administration fee applying to notifications

In accordance with Article 155 of the AIFM Act in conjunction with Article 30(1) of the FMA Act and Appendix 1(C)(1)(f)(mm), second indent of the FMA Act the following fees are payable in respect of processing notifications under Article 117(1) of the AIFM Act:

- Single funds: CHF 500 per single fund
- Umbrella funds: CHF 500 for each sub-fund

5.2 Annual supervisory fee

The FMA will charge non-Liechtenstein AIFs with no sub-funds and each sub-fund under umbrella structures, which are subject to FMA oversight, an annual base fee of CHF 1,250 (Article 155 of the AIFM Act in conjunction with Article 30(1) of the FMA Act and Appendix 2 II.(D)(a) and (b) of the FMA Act).

The annual base fee will be billed during the year in which it falls due and is payable (without bank charges) using the payment slip enclosed with the invoice.

5.3 Payment instructions

The administration fee for notifications (section 5.1) is to be transferred in advance to the following account of the FMA:

Beneficiary: Finanzmarktaufsicht (FMA)

Bank: Liechtensteinische Landesbank AG, 9490 Vaduz

BIC: LILALI2XXXX

Clearing No.: 8800

IBAN: LI89 0880 0000 0219 7559 2

The names of the AIF and AIFM to which the notification relates is to be provided as a reference for the fee.

Proof of payment is to be enclosed with the notification.

6. Marketing to retail investors

AIFMs who are based in another EEA Member State and market EEA AIFs on a cross-border basis to retail investors in Liechtenstein shall comply with the requirements set forth in Chapter II of the AIFM Act (Article 119 of the AIFM Act). The fund must therefore apply for authorisation to market the AIF to retail investors in Liechtenstein. Where there is no private placement within the meaning of Articles 83 and 84 of the AIFM Ordinance, the provisions of Articles 129 to 132 of the AIFM Act also apply.

An authorisation fee is payable in respect of authorisations to market AIFs to retail investors (as specified in Article 155 of the AIFM Act in conjunction with Article 30(1) of the FMA Act and Appendix 1(C)(1)(c)(aa) of the FMA Act for AIFs with no sub-funds and Appendix 1(C)(1)(c)(bb) for AIFs with sub-funds):

- Single funds: CHF 500 per single fund
- Umbrella funds: CHF 500 for each sub-fund

The notification fee previously paid will be offset against the authorisation fee. Accordingly, only the difference between the authorisation fee and notification fee is chargeable, provided that the FMA receives the application for authorisation to market the AIF to retail investors within one month of receipt of the notification from the authorities in the home country of the EEA AIFM.

7. Updating documents and notifying changes

EEA AIFMs marketing EEA AIFs in Liechtenstein are required to provide all information and documents and any updates and amendments thereto to investors in Liechtenstein. The documents to be submitted are the same documents as the EEA AIFM would provide to investors in the relevant home country.

C) Management of an EEA AIF (non-Liechtenstein AIF) by a Liechtenstein AIFM (outgoing notification)

1. Example

A Liechtenstein AIFM wishes a) to manage an EEA AIF (e.g. a Luxembourg AIF) directly or b) manage an EEA AIF (e.g. a Luxembourg AIF) indirectly through a branch office.

2. Legal basis

The circumstances requiring this type of notification are set out in Articles 120 to 123 of the AIFM Act (implementing Article 33 of the AIFM Directive).

3. Notification requirement and documents to be submitted

3.1 Notification requirement

The AIFM shall notify the FMA of its intention to manage an AIF based in another Member State on a cross-border basis. The notification must be sent electronically in English.

The FMA requires AIFM Notification Letters to be submitted in English. Whether translations of any other documents must be submitted will depend on the host Member State involved. Please obtain information to this effect from the relevant host Member State.

Authorisation of the Liechtenstein AIFM by the FMA is a prerequisite for notification.

All documents must be sent by e-mail to the following address: aifmg@fma-li.li.

3.2 Documents to be submitted

a) For the purpose of managing AIFs on a cross-border basis through the supply of cross-border services:

The following documents must be submitted electronically in accordance with Article 120(2) of the AIFM Act:

- an AIFM Notification Letter – completed in English (Article 120(4) of the AIFM Act in conjunction with Article 97 of the AIFM Ordinance), which is available on the FMA website;
- a programme of activity and operations setting out the proposed activities and services and the details of the AIF to be managed in the host Member State.

b) For the purpose of establishing a branch office in the host Member State:

The following documents must be submitted electronically in accordance with Article 120(3) of the AIFM Act:

- an AIFM Notification Letter – completed in English (Article 120(4) of the AIFM Act in conjunction with Article 97 of the AIFM Ordinance), which is available on the FMA website;
- a programme of activity and operations setting out the proposed activities and services and details of the AIF to be managed in the host Member State;
- the organisational structure of the branch office;

- an address in the host Member State where documents may be accessed;
- the name and contact details of the persons responsible for the management of the branch office.

4. Procedures

The FMA will verify that the documents are complete (Article 121(1) of the AIFM Act).

The FMA will also verify whether the AIFM is authorised to engage in the activities described in Liechtenstein (Article 121(2)(a) of the AIFM Act).

Within ten working days following receipt of all documents, the FMA will send the documents indicated above and confirmation that the AIFM is authorised to operate in Liechtenstein to the authorities in the country in which the AIFs are marketed (Article 122(1) of the AIFM Act). This period may be extended in accordance with Article 122(2) of the AIFM Act by sending a duly substantiated notification to this effect.

The FMA will notify the AIFM immediately upon submitting the documents (Article 122(4) of the AIFM Act). Once the notification has been received, the AIFM may start operating in the host Member State (Article 122(5) of the AIFM Act).

5. Fees

In accordance with Article 155 of the AIFM Act in conjunction with Article 30(1) of the FMA Act and Appendix 1(C)(1)(f)(nn), first indent of the FMA Act the following fees are payable in respect of processing notifications under Article 120 of the AIFM Act:

- Single funds: CHF 500 per single fund
- Umbrella funds: CHF 500 for each sub-fund

On issuing confirmation that the documents have been submitted, the FMA will send an invoice and a payment slip, which may be used to pay the fee (without bank charges).

6. Updating documents and notifying changes

AIFMs shall give the FMA notice of any material changes affecting the documents submitted in accordance with Article 120(2) and (3) of the AIFM Act not less than one month prior to implementing a planned change or immediately after an unplanned change has occurred (Article 123 of the AIFM Act). Notices must be sent by e-mail to fonds@fma-li.li.

The FMA shall immediately give notice of any changes that are consistent with the requirements of the AIFM Directive to all authorities for the countries in which the AIFs are marketed (Article 123(3) of the AIFM Act).

D) Management of a Liechtenstein AIF by an EEA AIFM (non-Liechtenstein AIFM) (incoming notification)

1. Example

An EEA AIFM (e.g. from Luxembourg) wishes a) to manage a Liechtenstein AIF based in Liechtenstein directly or b) manage a Liechtenstein AIF indirectly through a branch office.

2. Legal basis

The circumstances requiring this type of notification are set out in Article 124 of the AIFM Act (implementing Article 33 of the AIFM Directive).

3. Notification requirement and documents to be submitted

3.1 Notification requirement

The EEA AIFM shall notify the authorities in its home country of its intention to manage a Liechtenstein-based AIF on a cross-border basis. The notification must be sent electronically in English. The FMA accepts documents in German or English.

Documents submitted by the authorities in the home country concerned may be submitted by e-mail to the following address: passport.aif@fma-li.li.

Authorisation of the EEA AIFM by the authorities in the AIFM's home country is a prerequisite for notification.

3.2 Documents to be submitted

EEA AIFMs shall submit the documents required under Article 33 of the AIFM Directive to the authorities in their home country.

4. Procedures

The FMA will receive the relevant notification from the authorities in the home country of the EEA AIFM. Once the notification has been received, the EEA AIFM may start operating in Liechtenstein.

The FMA will add the approved AIFM to the list of EEA AIFMs authorised to manage EEA AIFs in Liechtenstein.

5. Fees and charges

A one-off administration fee will be charged for processing notifications under Article 124(1) of the AIFM Act. An annual supervisory fee will also be payable on an ongoing basis in respect of Liechtenstein AIFs.

5.1 Administration fee applying to notifications

In accordance with Article 155 of the AIFM Act in conjunction with Article 30(1) of the FMA Act and Appendix 1(C)(1)(f)(nn), second indent of the FMA Act the following fees are payable in respect of processing notifications under Article 124(1) of the AIFM Act:

- Single funds: CHF 500 per single fund
- Umbrella funds: CHF 500 for each sub-fund

5.2 Annual supervisory fee

The supervisory fee applying to Liechtenstein AIFs is payable in accordance with the requirements laid down for domestic AIFs in Article 155 of the AIFM Act in conjunction with Article 30(1) of the FMA Act and Appendix 2 II.(B) of the FMA Act.

The annual supervisory fee will be billed during the year in which it falls due and is payable (without bank charges) using the payment slip enclosed with the invoice.

5.3 Payment instructions

The administration fee for notifications (section 5.1.) is to be transferred in advance to the following account of the FMA:

Beneficiary: Finanzmarktaufsicht (FMA)
Bank: Liechtensteinische Landesbank AG, 9490 Vaduz
BIC: LILALI2XXXX
Clearing No.: 8800
IBAN: LI89 0880 0000 0219 7559 2

The names of the AIF and AIFM to which the notification relates is to be provided as a reference for the fee.

Proof of payment is to be enclosed with the notification.

6. Updating documents and notifying changes

EEA AIFMs managing EEA AIFs in Liechtenstein shall notify the authorities in the home country of the AIFM immediately of any changes to the information provided in accordance with Article 33(2) and/or (3) of the AIFM Directive. Such changes must be notified by e-mail to fonds@fma-li.li one month prior to implementing a planned change or immediately after an unplanned change has occurred. The authorities in the home country of the EEA AIFM will send the amended documents to the FMA.