

**Alternative Investment Fund Managers (AIFM) Directive:
Implementation in Europe and in Liechtenstein**

Anete Berzina
Arcas 16, Chur, Switzerland
+42 786 270 768
anete.berzina@uni.li
090053

Radovan Studnik
Fürst-Franz-Josef-Strasse 15, Vaduz
+420 776 691 632
radovan.studnik@uni.li
090436

Seminar paper

University of Liechtenstein
Graduate School
Programme: MSc in Banking and Financial Management
Course: Seminar in Finance
Module: International Corporate Finance

Assessor: Lars Kaiser, MSc

Period of preparation: 01/03/2012 – 21/06/2012

Date of submission: 21/06/2012

“Governments’ response to the financial crisis has been compared by one senior official to that of rowdy drinkers in a bar brawl: “You wait until a fight breaks out and then take a swing at the guy you have always wanted to hit. Whether or not he had anything to do with starting the fight is not the point.” In Europe that is a pretty accurate description of how policymakers are treating hedge funds and private equity funds.”

Financial Times, July 5, 2009

Abstract

Motivated by current trends in the European investment fund legislative we analyse the directive on Alternative Investment Fund Managers (AIFMs). It is a regulation proposed by the European Commission with an aim to create a comprehensive and effective regulatory and supervisory framework for alternative investment industry. AIFM Directive entered into force at the EU level in July 2011 and member states have time to transpose it into national law until July 2013. This paper gives brief insight in the new directive by examining its content and purpose. Further we investigate its possible impact in the EU and in Liechtenstein. Flowingly we analyse the necessity and felicitousness of the AIFMD. We have found that its implications remain controversial and there are still several unclear issues.

Key Words

AIFMD, European Union, Liechtenstein, Passport Regime, Compliance Costs

Table of Contents

1	Introduction.....	5
2	AIFMD at a Glance	7
2.1	Main Aims and Scope	7
2.2	Particular Provisions	8
3	Expected Impact of the AIFMD in the EU and in Liechtenstein	12
3.1	Impact on the AIFMs	13
3.2	Impact on Investors	14
3.3	Impact on Liechtenstein	15
4	Critical Analysis of the New Regulation	18
4.1	(In)felicitous Strictness.....	18
4.2	(Un)necessity	20
5	Conclusion	21
	References	22
	List of Abbreviations	26
	Affidavit	30

1 Introduction

The financial crisis has brought about a lot of uncertainty in the global financial system. It has highlighted how risks occurring in one sector can be transmitted rapidly around the financial system, thus causing serious repercussions for all financial market participants and for the instability of the underlying markets.

Although the AIFMD in recital 2¹ acknowledges that the AIFMs have a beneficial impact on the markets in which they operate, their activities may contribute to the spreading and amplifying of the risks through the financial system. Therefore, it deems that a stringent regulatory and supervisory framework is necessary. Due to the uncoordinated response on the national level, efficient management of those risks becomes difficult.²

The reputation of hedge funds has suffered as a result of the financial crisis. Nonetheless, Lyons (2012) shows that it has been recognised that they did not play a major role in the crisis' emergence and have not constituted a significant systemic risk. On the other hand, he further admits the contribution of the hedge funds to the volatility through forced deleveraging to meet liquidity restrictions.³

The events of recent years have indicated that some of the risks associated with AIFM have been underestimated and are not sufficiently addressed by current rules. The European Parliament (2012) presents that the European Commission has committed to bring forward a proposal for a comprehensive legislative instrument establishing regulatory and supervisory standards for AIFM, which is in recognition of weaknesses and inefficiencies in the existing regulatory framework.⁴

Seretakis (2012) emphasises the political issue and asserts that the “*AIFMD was adopted in the aftermath of the financial crisis against a backdrop of several years of a politically motivated policy debate regarding the regulation AIFM.*”⁵ Baffi, Lattuca, & Santella (2011) state that such an initiative echoes the Dodd-Frank Act in the USA, which provides for systemically relevant hedge funds and advisers to private funds.⁶

The AIFMD will be passed under the ‘Lamfalussy process’ for EU financial services legislation. The ‘Level 1’ accounts for the guiding principles and the ‘Level 2’ for implementing the measures through which a significant amount of details have yet to be determined.⁷ Allen & Overy LLP (2010)

¹ If there is stated a certain recital or Article without a legal act in this paper, in which they were to be contained, then they always refer to the AIFMD.

² AIFMD, 2011, recitals 2-3, p. 1.

³ Lyons, 2012, p. 6.

⁴ European Parliament, 2012, para. 6.

⁵ Seretakis, 2012, para. 2.

⁶ Baffi, Lattuca, & Santella, 2011, p. 5.

⁷ It should be noted that in places the AIFMD already has a level of detail, albeit without the usual level of consultation, that one might find in Level 2 legislation. (Allen & Overy LLP, 2010, p. 1.)

expect that in the case of the AIFMD, the Commission prefers regulations over directives in order to implement the ‘Level 2’ measures.⁸

Since 1985 the common rules for setting up and operating investment funds in the EU have been incorporated in a harmonised regulation – an UCITSD⁹ (currently the ‘UCITS IV Directive’¹⁰). The UCITSD regulates supervision, asset allocation and separation of management and safekeeping of assets to ensure investor protection. It also brings benefits to asset managers by offering a ‘passport’¹¹.

The UCITS label has become a globally recognized brand and the ideal vehicle for promoters wishing to distribute their funds throughout the EU and elsewhere in the world. In contrast, activities of AIFMs are regulated by a combination of national financial and company law regulations and general provisions of Community law.

The remainder of this paper is organised as follows. The second chapter reveals the aims and content of the AIFMD. The third chapter presents the EU and Liechtenstein fund market and estimation of the main impacts of the new regulation on investors and fund managers. The fourth chapter gives critical analysis of the regulation. The last chapter provides final conclusion that summarises the findings presented in this paper.

⁸ Allen & Overy LLP, 2010, p. 1.

⁹ Undertakings for Collective Investment in Transferable Securities Directive

¹⁰ The proposal of UCITS IV Directive was approved by the European Parliament on 13 January 2009 and also by the Council of the European Union as the Directive 2009/65/EC, to be implemented in 2011.

¹¹ Once a UCITS fund is authorized by a member state of the EU, such authorization is valid for all member states, allowing investment funds to be freely marketed through the EU.

2 AIFMD at a Glance

In this chapter we state what the European Commission intends by introducing the AIFMD and the way it has decided to pursue these goals. We provide an overview of the entities that will be affected by the new legislation and summarize the most important parts of the directive's content accounting for the main changes.

2.1 Main Aims and Scope

According to recital 2, the AIFMD “*aims at establishing common requirements governing the authorisation and supervision of AIFMs in order to provide a coherent approach to the related risks and their impact on investors and markets in the Union.*”¹² Hence, we may conclude in conjunction with Seretakis (2012) that the main goals of the directive are to increase the transparency of the alternative investment funds and to tackle the systemic risks that they pose.¹³

AIFs can be a large variety of funds. For the purpose of the AIFMD, “*‘AIFs’ means collective investment undertakings, including investment compartments thereof, which: raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and do not require authorisation pursuant to Article 5 of Directive 2009/65/EC.*”¹⁴ Therefore, they are ‘alternative’ to authorised UCITS funds. In the absence of a relevant exemption, the managers of all non-UCITS funds will require authorisation.

McDonnell (2012) amends that in consequence, AIFs will comprise: hedge funds, funds of hedge funds, private equity funds¹⁵, listed closed-end funds, real estate funds, infrastructure funds, commodity funds, long-only funds which are not UCITS funds, and non-UCITS retail funds.¹⁶

In contrast with the UCITS directive which regulates the product, the AIFMD does not regulate the AIFs but their managers (“*‘AIFMs’ means legal persons whose regular business is managing one or more AIFs*”¹⁷). As a result, the AIFs are able to continue to be regulated and supervised at the national level.

In regards to Article 3 (2), the directive provides for a lighter regime for two categories of AIFMs (also called ‘smaller AIFM’¹⁸), namely for AIFMs which manage funds with assets less than €100m if they are leveraged, or less than €500m if they are not leveraged and offer investors no redemption

¹² AIFMD, 2011, recital 2, p. 1.

¹³ Seretakis, 2012, para. 2.

¹⁴ AIFMD, 2011, Article 4 (1) (a), p. 16.

¹⁵ Private equity includes venture capital, development capital, mezzanine capital, leveraged buyouts and distressed investing.

¹⁶ McDonnell, 2012, para. 3.

¹⁷ AIFMD, 2011, Article 4 (1) (b), p. 16.

¹⁸ These AIFMs shall not benefit from any of the rights granted under this Directive (i.e. EU passport) unless they choose to opt in under this Directive. Where AIFMs opt in, this Directive shall become applicable in its entirety. (AIFMD, 2011, recital 17, p. 3.)

rights for the first 5 years.¹⁹ The second category applies mainly to private equity funds. Moreover, exemptions such as holding companies, securitisation special purpose entities, family office vehicles which do not raise external capital, supranational institutions, insurance contracts and joint ventures are explained in further detail in recitals 7, 8 and 9, Article 2 (3) and Article 3.

2.2 Particular Provisions

In this section we introduce the main parts of the directive's content. These are stated as the most relevant issues supported by the text of the directive itself or of law firm documents.

- **Capital Requirements**

Capital requirements are the subjects of Article 9 and depend on an AIFM's assets under management (AuM). On the basis of Article 9 (1-3), the minimum amount that managers will be obliged to hold is €125,000 and an additional 0.02% of any AuM (including leveraged assets) in excess of €250,000 with a total cap of €10m. An AIFM which is an internally managed AIF will be required to have an initial capital of at least €300,000.²⁰

Additional requirements for both internally managed AIFs and external AIFMs specifying the own funds with regard to risks arising from professional liability and the kinds of assets, which are allowed to be considered own funds, are stated in Article 9 (7) – (10).

- **Transparency Requirements**

Transparency issues are subject to Chapter IV of the AIFMD, which provides for a number of different disclosures to be made to investors and regulators. ESMA's final advice²¹ provides detailed guidelines on the content and format of the information which will have to be disclosed for each AIF.²² With respect to PwC (2011), this information is to be provided in the following three categories:²³

1. Annual report, including remuneration disclosure
2. Disclosures to investors, before they invest on a regular basis
3. Reporting to competent authorities.

Information which has to be included in the financial statements of all AIFs under management by a particular AIFM is explained in Article 22. McDonnell (2010) specifies that the disclosure include a planned investment strategy, use of leverage, procedures to change the investment strategy,

¹⁹ AIFMD, 2011, Article 3 (2), p. 15.

²⁰ AIFMD, 2011, Article 9 (1-3), p. 22.

²¹ 'ESMA's final advice' is a common notation for the ESMA's Final report – ESMA's technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive. As such it is used also in this paper.

²² ESMA, 2011, pp. 217-235.

²³ PriceWaterhouseCoopers, 2011, p. 10.

as well as rules applying to leverage, details on fees and expenses, valuation procedures and details on the depositary.²⁴

AIFM managing AIFs employing leverage on a ‘substantial basis’ will be subject to additional reporting and disclosure requirements under Article 24 (4) and recital 45. Box 111 in ESMA’s final advice provides guidelines for the assessment of whether leverage is employed on a ‘substantial basis’.²⁵

- **Depositaries**

With regards to e.g. bankruptcy of Lehman Brothers or Madoff’s fraud, AIFMD recital 32 separates asset keeping from management function by segregating investor assets from those of the manager.²⁶ “*AIFM must ensure that a depositary is appointed for each AIF they manage (other than non-EU AIF which are not marketed in the EU). Each AIF must have one single depositary, meaning that the specific functions of the depositary of an AIF (cash flows monitoring, safekeeping and supervisory duties) must be undertaken by one and the same entity.*”²⁷

Article 21 contains a fairly detailed set of rules determining amongst other things the categories of eligible depositaries, the functions and liabilities of depositaries and the appointment of sub-custodians. These rules are to be further refined by the EU Commission under its delegated powers.²⁸

For example, the depositary shall be liable to the AIF or to the investors of the AIF, for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point (a) of paragraph 8 in Article 21 has been delegated.²⁹

The depositary may not delegate any of the functions described in the AIFMD other than the safekeeping functions.³⁰

- **Valuation**

Valuation is the subject to Article 19. However, with respect to Article 19 (4), the AIFMs shall ensure that the valuation function is either performed by an external valuer³¹ or the AIFM itself.³²

²⁴ McDonnell, 2010, p. 5.

²⁵ ESMA, 2011, p. 238.

²⁶ AIFMD, 2011, recital 32, p. 6.

²⁷ Allen & Overy LLP, 2011a, p. 2.

²⁸ Allen & Overy LLP, 2011a, p. 2.

²⁹ In the case of such a loss of a financial instrument held in custody, the depositary shall return a financial instrument of identical type or the corresponding amount to the AIF or the AIFM acting on behalf of the AIF without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. (AIFMD, 2011, Article 21 (12), p. 31.)

³⁰ Arthur Cox, 2011, p. 11.

³¹ Being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM. (AIFMD, 2011, Article 19 (4), p. 26.)

³² AIFMD, 2011, Article 19 (4), p. 26.

With certain exceptions³³, “*the depositary appointed for an AIF shall not be appointed as external valuer of that AIF.*”³⁴ Article 19 (5) contains requirements on an external valuer and according to Article 19 (6) an “*external valuer shall not delegate the valuation function to a third party.*”³⁵

- **Leverage**

AIFMD defines leverage very widely and as follows: “*‘leverage’ means any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means.*”³⁶ Article 4 (3) says that ESMA is supposed to specify the methods and calculation of leverage, which are specified in chapter VI of ESMA’s final advice.³⁷

According to ESMA (2011) “*the leverage of an AIF should be expressed as a ratio between the exposure of an AIF and its net asset value.*”³⁸ It takes into consideration three methods for the purpose of calculating the leverage - Gross Method, Commitment Method or Advanced Method.³⁹

Rules for using leverage are contained in Article 25. “*The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that it complies with those limits at all times.*”⁴⁰ Under Article 15 (4) an AIFM has to set a maximum level of leverage that it may employ for each AIF.⁴¹ Nonetheless, home regulators, after having notified ESMA, the ESRB and the competent authorities of the relevant AIF, may impose limits on leverage.

- **Marketing (Third Country Provisions)**

Provisions regarding the third countries are still not perfectly clear. A passport regime for the EU AIFM from 2013 and for non-EU AIFM from 2015 (depiction of this time period provides Annex I) will be established. Charles River Associates (CRA) (2009) points out that member states can impose stricter requirements on AIF which are to be marketed to retail investors in their country.⁴²

Under Article 4 (1) (x) “*‘marketing’ means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the EU.*”⁴³ On the other hand, in accordance with recital 70, the AIFMD should not influence the situation when an EU-established professional investor

³³ Unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF. (AIFMD, 2011, Article 19 (4), p. 26.)

³⁴ AIFMD, 2011, Article 19 (4), p. 26.

³⁵ AIFMD, 2011, Article 19 (5), p. 27.

³⁶ AIFMD, 2011, Article 4 (3), p. 18.

³⁷ AIFMD, 2011, Article 4 (3), p. 18.

³⁸ ESMA, 2011, p. 192.

³⁹ More details on these methods are contained in ESMA’s final advice in Box 95, Box 96 and Box 97 respectively.

⁴⁰ AIFMD, 2011, Article 25 (3), p. 35.

⁴¹ AIFMD, 2011, Article 15 (4), p. 25.

⁴² Charles River Associates, 2009, p. 41.

⁴³ AIFMD, 2011, Article 4 (1) (x), p. 18.

invests in an AIF on its own initiative, irrespective of the AIFM's and/or the AIF's domicile (also known as 'reverse solicitation' or 'passive marketing').⁴⁴

More details on implications for EU and non-EU AIFs and their EU or non-EU managers are stated in Annex II.

- **Remuneration**

Provisions on remuneration are stated in Article 13 and described in more detail in Annex II of the AIFMD. These provisions are in line with the Capital Requirements Directive (CRD) III and apply to the remuneration of *“those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of AIFs they manage.”*⁴⁵

Tinworth & Harwood (2011) show, based on Annex II of the AIFMD, that AIFMs will be required, inter alia, to have set ratios between fixed and variable components of remuneration to ensure that 50%⁴⁶ of variable remuneration consisted of units or shares⁴⁷ of the AIF concerned and to defer at least 40% of variable remuneration for at least three to five years.⁴⁸ In addition, with reference to the AIFMD's Annex II (3), AIFMs that are 'significant' in size or in terms of the size of the funds they manage will be obliged to establish a remuneration committee to oversee remuneration policy.⁴⁹

According to Article 13 (2) ESMA is required to produce guidelines on sound remuneration policies which comply with Annex II of the AIFMD.⁵⁰

⁴⁴ AIFMD, 2011, recital 70, p. 10.

⁴⁵ AIFMD, 2011, Article 13 (1), p. 24.

This is the same as the list of staff who are caught under the FSA's Remuneration Code. (Allen & Overy LLP, 2011b, p. 2.)

⁴⁶ Unless the management of AIFs accounts for less than 50 % of the total portfolio managed by the AIFM, in which case the minimum of 50 % does not apply. (AIFMD, 2011, Annex II (1) (m), p. 70.)

⁴⁷ Or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments.

⁴⁸ Tinworth & Harwood, 2011, para. 1.

⁴⁹ AIFMD, 2011, Annex II (3), p. 71.

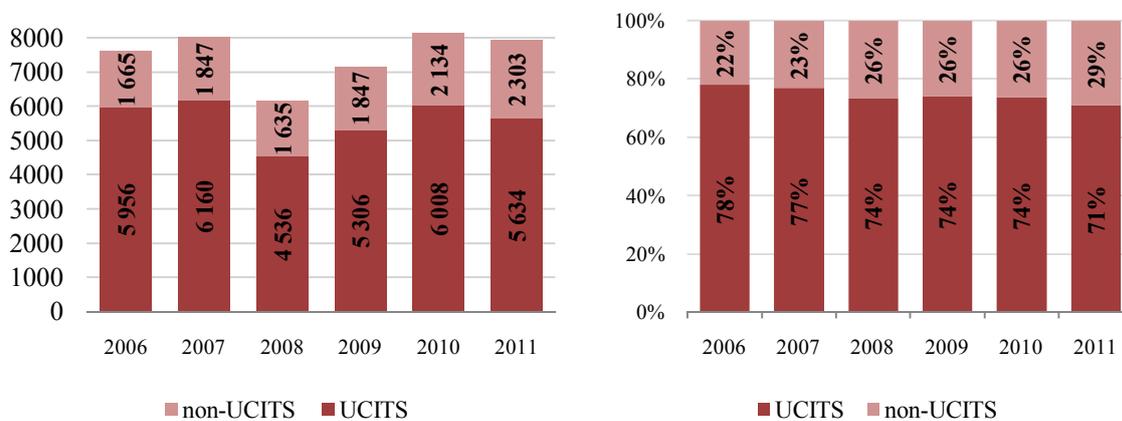
⁵⁰ AIFMD, 2011, Article 13 (2), p. 24.

3 Expected Impact of the AIFMD in the EU and in Liechtenstein

In the following sections we outline the main impacts of the AIFMD in the EU and in Liechtenstein with respect to the managers, investors and economies. In order to get more practical insight we conducted interviews with two industry experts – Ms Verena Schlömer who works in the Securities Division at the Financial Market Authority (FMA) in Vaduz, and Mr Luca Anzola who works as a Head of Research and Due Diligence at the Aletti Gestielle SGR SpA in Milano.

The two figures below present the funds' net asset value (NAV) which is under management of either UCITS or non-UCITS in the EU and in Liechtenstein.

Figure 1: Net Assets of EU Investments Funds (in EUR billions, %)

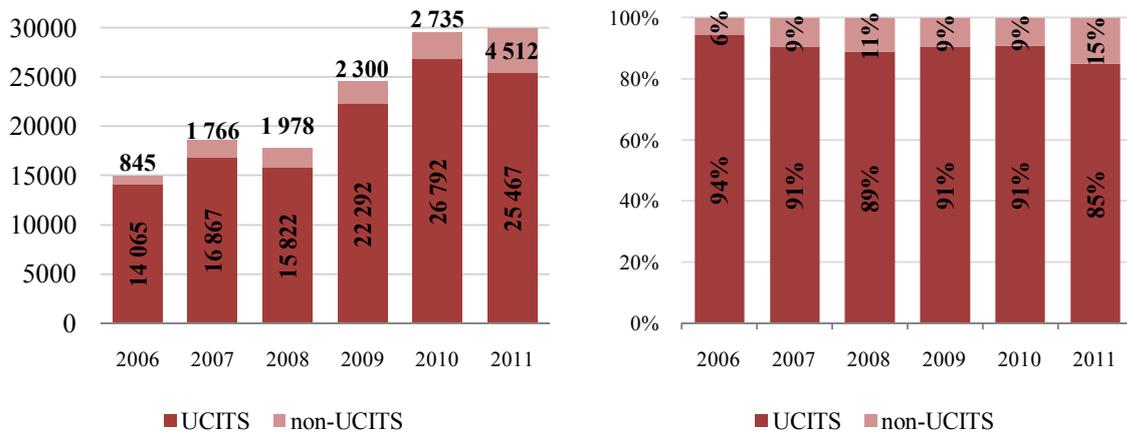


Source: Own depiction following EFAMA, 2011, p. 3 and EFAMA, 2012, pp. 6-8.

Together, investment funds hold more than €7.9 trillion AuM in the EU in 2011, which is more than a half of the EU GDP. The figure above shows that the UCITS sector is about three times larger than the AIF sector.

As we can observe on Figure 2, the picture is slightly different concerning Liechtenstein – at the end of 2011 the non-UCITS funds accounted for only 15% of the total assets in the investment funds amounting to €4.512bn which is close to the GDP of Liechtenstein.

Since Liechtenstein is an EEA-member but not an EU-member, it is not obliged to implement the AIFMD. Nevertheless, due to its financial sector, it has decided to do so. This means that its legislation regarding the AIFMD will be fully harmonized with the EU-legislation which will become unified with all member states. Thus, there will be unique changes in each member state's legislation, as well as unique economic impacts. Consequently, we go into more details on Liechtenstein because it is far beyond the scope of this paper to take every member state into consideration.

Figure 2: Net Assets of Liechtenstein Investments Funds (in EUR millions, %)

Source: Own depiction following EFAMA, 2011, p. 3 and EFAMA, 2012, pp. 6-8.

As discussed before the AIFs play an important role in the EU and Liechtenstein economies. It is difficult to measure what impacts the new regulation will make. Probably it will take several years from the AIFMD implementation. Even though it is clear that there will be an implication for the investors, fund managers and the economy. Therefore, we estimate this possible implication in the following sections.

Concerning the impact on the European economy, according to Anzola (2012), one may expect that the AIFMD could give a new boost to the asset management industry, improving bank's profitability and this can drive in the long term also the real economy.⁵¹

3.1 Impact on the AIFMs

AIFMs will have to comply with the newly-emerged laws, which will account for additional compliance costs or alternatively, costs associated with re-domiciling into the EU. As a trade-off for these costs and a stricter regulation the AIFMs will be allowed to apply for a 'passport'.

- **Increased Compliance Costs**

Implementation of AIFMD will cause additional costs for fund managers. CRA (2009) estimated that one-off compliance costs may reach up to €3.2bn on AIFMs and the ongoing compliance costs are estimated around €311m (there is a more detailed cost segmentation in Annex III).⁵² CRA (2009) further expects that the one-off costs will arise mainly due to rules on delegation and changes to legal structures. The cost of potential re-domiciling of funds from outside into the EU is also significant. On-going compliance costs arise from the need for valuers, depositaries, additional disclosure,

⁵¹ Anzola, 2012.

⁵² Charles River Associates, 2009, p. 112.

For more details on expected cost impacts on each AIF type see: Charles River Associates, 2009, pp. 114-115.

calculation, preparation and audit costs. It is expected that these costs will be passed onto the fund investors and therefore implying lower returns.⁵³

- **Passporting**

AIFMs will be able to market their AIFs in all EU member states after obtaining the ‘passport’ in one member state. It means that the ‘passport’ could be used to develop business in a cross-border basis. CRA (2009) emphasizes that there are potential benefits that the passporting would bring in terms of efficiency and market access.⁵⁴ According to interviews conducted by E&Y (2012) the passport could also result in a decrease of compliance costs (no need to set up management companies in multiple jurisdictions).⁵⁵

3.2 Impact on Investors

AIFs are marketed predominantly to professional investors⁵⁶. It is commonly assumed that these investors have the capacity to understand the risks that their investments entail. Nevertheless, the financial crisis has shown that even among them there is a lack of clear and comparable information on the risks associated with particular investments. Furthermore, the crisis gave proof about significant information asymmetry.

- **Increased Investor Protection and Enhanced Transparency**

Investor protection is one of the core objectives of the AIFMD and thus is to be increased. This will happen mainly because of strict demands on depositaries, capital requirements and leverage limitations. In regard to the Commission (2009), the enhanced transparency will help investors to get access to information to perform better due diligence, understand the investment risks and strategies, compare performance between various AIFs, as well as prevent market abuse and improve the reputation of the industry.⁵⁷

- **Less Product Choice**

There exist concerns that the investment opportunities would be reduced. A large number of AIFs and/or AIFMs are domiciled in third countries. Implementation of AIFMD could result in a withdrawal of a significant number of them from the EU. Hence, the EU investors may miss interesting investment opportunities in the USA or Asia. Such an opinion supports PwC (2009) and

⁵³ Charles River Associates, 2009, p. 112.

⁵⁴ Charles River Associates, 2009, p. 43

⁵⁵ Ernst & Young, 2012, p. 32.

⁵⁶ AIFMD defines a professional investor as follows: ‘professional investor’ means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC. (AIFMD, 2011, Article 4 (1) (ag), p. 18.)

⁵⁷ Commission of the European Communities, 2009, p. 20.

expects that since there would be less investment opportunities, it would affect investors' ability to diversify their investment portfolio and manage portfolio risk.⁵⁸

CRA (2009) tried to estimate the proportion of outside-the-EU-domiciled funds that would effectively be no longer available to European investors as a result of AIFMD if they decided not to re-domicile into the EU. The estimation is shown in the table below. Based on the information in this table CRA (2009) calculated the weighted average of the proportion of funds effectively no longer available across all AIFs, which resulted in 21% of all AIFs being potentially no longer available.⁵⁹

Table 1: Proportion of Funds Potentially no Longer Available

	Hedge Funds	Private Equity	Venture Capital	Real Estate	Investment Trusts
Proportion of funds potentially no longer available	40%	35%	19%	2%	N/A

Source: Charles River Associates, 2009, p. 61.

3.3 Impact on Liechtenstein

This section provides an overview of adjustments in Liechtenstein laws and expected economic implications following the AIFMD adoption.

- **Changes in Liechtenstein Legislation**

In regard to the FMA, current basis of Liechtenstein legislation for investment undertakings (IU) are constructed as follows:⁶⁰

- Act on Certain Undertakings for Collective Investment in Transferable Securities
- Ordinance on Certain Undertakings for Collective Investment in Transferable Securities
- FMA Guideline 2005/3: Code of Conduct for the Liechtenstein Fund Center
- FMA Guideline 2006/1: Risk Assessment and Notification Procedure
- Investment Undertakings Act (IUA)
- Investment Undertakings Ordinance (IUO)

According to Article 3 of the Investment Undertakings Act (IUA) the following IUs are distinguished in Liechtenstein:⁶¹

- UCITS (in accordance with Articles 40 and 41 of the IUA)
- IUs for other values (in accordance with Articles 42 and 43 of the IUA)
- IUs for other values with increased risk (in accordance with Article 44 of the IUA)

⁵⁸ PriceWaterhouseCoopers, 2009, p. 30.

⁵⁹ Charles River Associates, 2009, p. 61.

⁶⁰ FMA, para. 2.

⁶¹ IUA, 2005, Article 3, p. 4.

- IUs for real estate (in accordance with Articles 45 to 52 of the IUA)

Schlömer (2012) says that, for the sake of the AIFMD implementation, the IUA and the IUO will be replaced by an act on AIFM and an ordinance on AIFM, respectively. FMA Guidelines will be appropriately updated.⁶²

With regard to section 2.2, we give an overview on the implementation implications for the previously listed provisions.

Transparency requirements – by Articles 5-10 of the IUA each AIF shall provide a prospectus and simplified prospectus.⁶³ In addition, under Article 14 (1) of the IUA, the AIFMs have to publish a ‘business report’ annually and a ‘half-yearly report’ semi-annually.⁶⁴

The AIFMD demands much broader disclosure than is currently required by Liechtenstein law and the AIFMs will have to share more information with both the regulator and investors.

Depositaries – according to Article 64 (1) of the IUA an AIF shall require a depositary bank.⁶⁵ Its responsibilities are contained in Article 31 of the IUA. Contrarily to the AIFMD, under Article 31 (2) (a), it shall calculate a net asset value and may delegate one or more of its responsibilities to third parties as long as the delegation does not release the depositary bank from liability.⁶⁶ Hence, Liechtenstein-based AIFs will have to deal with much more strengthened depositary role.

Valuation – Liechtenstein will have to adopt necessary changes in external valuator requirements, which will affect the requirements on the depositaries, should they keep calculating the net asset value.

Capital requirements – in Liechtenstein they are currently higher for AIFs with low amount of AuM because, according to Article 66 (3) (b) of the IUA, the initial capital has to be at least 500,000 Swiss francs.⁶⁷ On the other hand, only AIFMs, whose AuM exceed 1bn Swiss francs, must additionally support their own funds by 0.02% of the AuM^{68,69}. Such AIFMs will face higher capital requirements under the AIFMD, whereas the total cap will be lowered from 15m Swiss francs⁷⁰ to €10m⁷¹.

⁶² Schlömer, 2012.

⁶³ IUA, 2005, Articles 5-10, pp. 5-9.

⁶⁴ IUA, 2005, Article 14 (1), p. 10.

⁶⁵ IUA, 2005, Article 64 (1), p. 32.

⁶⁶ IUA, 2005, Article 31 (2) (a), p. 18.

⁶⁷ IUA, 2005, Article 66 (3) (b), p. 33.

⁶⁸ The FMA may reduce the obligation to deposit additional own funds according to paragraph 5 to 0.01% of the assets under management, as long as the management company has an additional guarantee by a credit institution or insurance undertaking. (IUA, 2005, Article 66 (6), p. 34.)

⁶⁹ IUA, 2005, Article 66 (5), p. 33.

⁷⁰ IUA, 2005, Article 66 (9), p. 34.

⁷¹ AIFMD, 2011, Article 9 (3), p. 22.

Remuneration disclosure – will experience a significant change after the implementation of the AIFMD. There are no legislative requirements on the AIFM's remuneration in Liechtenstein. Thus, the AIFM will have to cope with a new sort of disclosure.

- **Expected Impact on Economy**

Lichtenstein is a well-known financial center and the financial service sector contributes about 30% to Liechtenstein's GDP.⁷² Thus, this industry is very important for the country. Liechtenstein based AIFMs will have to bear all the compliance costs and will realize benefits resulting from the AIFMD.

Liechtenstein itself sees the AIFMD implementation as an opportunity for its further development. Schlömer (2012) points out that Liechtenstein is proceeding with the AIFMD implementation as fast as possible and at this stage is in the first place in the EEA. Herewith it aims at increasing its attractiveness for AIFs and AIFMs and becoming a more important player in the AIF industry.

Iwersen, Alich, & Narat (2012) argue that Liechtenstein attempts to attract AIFMs who prefer to become compliant with the AIFMD soon. These managers are mostly domiciled in its neighboring country – Switzerland – which is considered a third country and where the legislation lags behind.⁷³ This fact confirms Stahl (2012) who states that 20 to 30 small and medium fund managers with 5 to 20 employees could relocate from Switzerland to Liechtenstein.⁷⁴

For the Lichtenstein economy this relocation would mean new job opportunities, educated and skilled foreign workforce and increased tax revenues.

⁷² Source: Government of the Principality of Liechtenstein following (Financial center)

⁷³ Iwersen, Alich, & Narat, 2012, para. 1-2.

⁷⁴ Stahl, 2012, para. 2.

4 Critical Analysis of the New Regulation

The AIFMD has tried to address all of the risks associated with the alternative investment fund industry and regulate all of the potentially risky elements. The AIFMD has been causing controversial debates since the start of its drafting. These are still unanswered questions supported by unclearness about the final shape of the new regulatory framework, which is to be refined by the ‘Level 2 measures’.

Apart from affecting the European laws, the AIFMD should influence foreign regulatory authorities as well. Agnew (2012) states that the third-country regulators would have to oversee their own AIFMs which decide to become compliant with AIFMD in order to access EU investors.⁷⁵ For instance, the U.S. Securities and Exchange Commission (SEC) in the USA or the Swiss Financial Market Supervisory Authority (FINMA) in Switzerland would have to do so. Naturally, the regulators are concerned about having to supervise their companies if they are following foreign laws. The two sections below are analysing how strict and necessary the AIFMD is.

4.1 (In)felicitous Strictness

Fund managers claim that costly bureaucracy implied by the new directive is too restrictive and as a result will negatively affect freedom of investor’s choice⁷⁶. For instance, the AIFMD allows the member states to impose leverage limits, which means that funds or strategies that use high degree of leverage will no longer be available to EU investors. In addition, according to Anzola (2012) the provisions regarding leverage could prevent many credit funds (using credit default swaps and derivatives for hedging purposes) from being compliant with the AIFMD.⁷⁷

New regulations also restrain specific trading strategies. On the subject of private equity funds, a survey carried out by E&Y (2012) shows that 48% of the participants believe that the anti-stripping rules will make it more difficult to offer an attractive investment opportunity.⁷⁸ The reasons include impact on deal structuring, exit strategies and restructuring operations that could be needed in the first 24 months following the acquisition. Nevertheless, most respondents said that those asset-stripping rules should not affect their business, since they are driven by long-term goals and incentives (e.g. the carried interest).⁷⁹

In the EU there is still a considerable amount of off-shore funds. With the implementation of the AIFMD the off-shore funds will no longer be allowed to be marketed to the EU-investors, unless their managers obtain the ‘passport’, which will be possible only from 2015. Therefore, in order to comply

⁷⁵ Agnew, 2012, para. 10.

⁷⁶ Mills, 2009, para. 9.

⁷⁷ Anzola, 2012.

⁷⁸ Asset stripping is subject to Article 30 of the AIFMD.

⁷⁹ Ernst & Young, 2012, p. 30.

with the EU regulations and obtain the ‘passport’, they should be re-domiciled on-shore.⁸⁰ Besides re-domiciling, they may consider to authorise themselves in the EEA states in which they want to market under a so-called private placement regime. However, such funds will have a competitive disadvantage till the introduction of the ‘passport’ for the third country AIFMs. The re-domiciling implies additional costs and therefore the amount of affected funds available in the EU in the future is questionable.

Concerns exist regarding funds not willing to relocate, as they will either stop existing or market their units in other markets. There is little incentive for EU AIFMs, which market their non-EU funds in the EU and will not comply with the AIFMD, to remain in the EU at all. This would mean a loss of tax revenues and jobs.

Open Europe (2009) reminds us not to forget that the AIFs are very important liquidity providers to markets, including start-up capital for entrepreneurs. A loss of these funds would have a negative impact on the EU fund market.⁸¹

Although professional investors are predominantly investing in AIFs, Dickinson (2012) states that there is a higher level of liability for depositories under the AIFMD and the UCITS IV Directive penetrating mainly to retail funds.⁸² PRiM (2012) expects that the AIFMD will become a precedent for the UCITS in the form of an UCITS V Directive and that the UCITS funds depositories will be brought to the same level of liability.⁸³

⁸⁰ Norton Rose LLP (2011) has the following suggestions for AIFMs which consider to re-domicile into the EU. If the European Union is a key source of capital for a non-EU AIF, then in some certain circumstances it may be sensible for the non-EU Manager to consider re-domiciling the managing entity either into another non-EU country or the European Union.

In the context of the AIFMD private placement regime, the non-EU Manager should consider re-domiciling if either:

- the necessary information exchange agreements referred to above are not entered into by the relevant entities or
- the non-EU country in which the non-EU AIF or the non-EU Manager is domiciled is listed by FATF as a “Non-cooperative Country and Territory”.

In the context of the passporting system, the non-EU Manager should consider re-domiciling if either:

- the tax information exchange agreement referred to above is not fully compliant with Article 26 of the OECD Model Tax Convention or
- there is no tax information exchange agreement in place with the non-EU country in which the non-EU AIF is domiciled.

Save in relation to the above circumstances, there would be no specific advantage or benefit in re-domiciling a non-EU managing entity.

(Norton Rose LLP, 2011, p. 6.)

⁸¹ Open Europe, 2009, p. 15.

⁸² Dickinson, 2012, para. 1.

⁸³ PRiM, 2012, p. 9.

4.2 (Un)necessity

One of the main criticisms of the AIFMD concerns that the directive works according to the principle ‘one size fits all’ – the directive does not take into account that management models for hedge funds are considerably different from those of private equity or real estate fund management. Instead, it imposes the same standards for all. For example, Mills (2009) states that traditionally there was no need to have a custodian or valuer for private equity funds, but now the AIFMD imposes these costly requirements for all AIFs.⁸⁴

Griggs (2012) questions the need for increased transparency requirements and argues that the professional investors are able to negotiate reporting that suits their own risk management and reporting needs⁸⁵. CRA (2009) based on its survey agrees and its interviewers stated that “*they did not believe that they currently [in 2009] suffered any harm because they believed that they already had sufficient information*“. Further, if they had needed any additional information the AIFMs would have provided it. Therefore, they do not see an additional value from the transparency requirements.⁸⁶

Moreover, due to rising general compliance costs and restrictions in the AIF industry, the EU could become less attractive to investors and entrepreneurs, reducing its competitiveness in the global marketplace. Griggs (2012) also criticizes less favourable market environment, while emphasizing the remaining high closure rates of AIFMs in the EU and new business openings at record rates in Hong Kong and Brazil.⁸⁷

Although Anzola (2012) admits that an additional level of fees may be difficult for traditional fund of funds. However, in respect to hedge funds, the problem could be solved through advisory services or tailor made products.⁸⁸

⁸⁴ Mills, 2009, para. 7.

⁸⁵ Griggs, 2012, para. 9.

⁸⁶ Charles River Associates, 2009, p. 43.

⁸⁷ Griggs, 2012, para. 5.

⁸⁸ Anzola, 2012.

5 Conclusion

The AIFMD will have a considerable impact on the alternative investment business within and outside of the EU. It provides for all managers of investment funds which are not authorised as UCITS. It will also bring new provisions on capital requirements, disclosure, valuation, depositaries leverage, marketing and remuneration. This directive aims to create a harmonized legal framework for AIFMs.

As a result of complying with the new directive, the AIFs will have to face additional compliance costs from which one-off costs related to re-domiciliation of funds and changes in legal structures. These costs may reach up to €3.2bn on AIFMs and the on-going compliance costs are estimated around €311m. As a trade-off for these costs and stricter regulations, the AIFMs will be allowed to apply for a 'passport' which will allow marketing of the funds in all the member states while increasing market efficiency.

The investors will probably have to bear increasing costs that will be passed over from fund managers and face less product choice. In return they will gain higher security and transparency of the alternative investment funds, as well as reduction of default risk due to liquidity constraints.

While the focus of the AIFMD is on the managers, it will have an impact on the EU AIFM and non-EU AIFM, the EU- and non-EU-domiciled funds, service providers such as depositaries, custodians, administrators and valuers to these funds, investors as well as the economy as whole.

Although Liechtenstein is not a member state of the EU, it is a member of the EEA and will implement measures in order to comply with AIFMD and benefit from passporting. Even though Liechtenstein is a small country whose managed funds in the EU pool seem insignificant, its asset and fund management play a significant role. Therefore, it is crucial for Liechtenstein to stay competitive and have access to the EU market. Hence, it is in the first place in the EEA in the AIFMD implementation and tries to attract AIFs especially from Switzerland. On the other hand, Switzerland may become an interesting domicile for those funds which do not want to comply with the AIFMD.

Whether the positive effects of the AIFMD will outweigh the negative impacts, can be observed after 2018, when the private placement regime will be over.

It is important to mention that the regulators should have a more industrial and technical approach. The regulators are still adopting a political point of view which may reduce the efficiency of regulations.

References

1. Agnew, H. (2012, March 27). *Financial News: Hedge Fund Managers Fear AIFM Directive U-Turn*. Retrieved from <http://online.wsj.com/article/BT-CO-20120327-712002.html>
2. Allen & Overy LLP. (2011a, February). *The Alternative Investment Fund Managers Directive – Depositories*. Retrieved from <http://www.allenoverly.com/AOWeb/binaries/60306.PDF>
3. Allen & Overy LLP. (2010, November). *The Alternative Investment Fund Managers Directive – Overview*. Retrieved from <http://www.allenoverly.com/AOWeb/binaries/60302.PDF>
4. Allen & Overy LLP. (2011b, July). *The Alternative Investment Fund Managers Directive - Remuneration*. Retrieved from <http://www.allenoverly.com/AOWeb/binaries/62665.PDF>
5. Anzola, L. (2012, June 21). Possible Effect of the AIFMD in Europe. (A. Berzina, & R. Studník, Interviewers)
6. Arthur Cox. (2011). *Update on Alternative Investment Fund Managers (AIFM) Directive*. Dublin: Arthur Cox.
7. Baffi, E., Lattuca, D., & Santella, P. (2011, March 23). *Extending the EU Financial Regulatory Framework to AIFM, Credit Derivatives, and Short Selling*. Retrieved from <http://ssrn.com/abstract=1792993>
8. BlackRock, Inc. (2011, May). *Alternative Investment Fund Managers Directive (“AIFMD”): An Overview and Analysis*. Retrieved from https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_IND&source=GLOBAL&contentId=1111137569
9. Charles River Associates. (2009, October). *Impact of the proposed AIFM Directive across Europe*. Retrieved from http://www.fvca.fi/files/52/Impact_of_AIFM_Directive_FSA_1009.pdf
10. Commission of the European Communities. (2009, April 30). *IMPACT ASSESSMENT*. Retrieved from http://ec.europa.eu/internal_market/investment/docs/alternative_investments/fund_managers_impact_assessment.pdf
11. Commission of the European Communities. (2009). *Impact Assessment*. Retrieved from http://ec.europa.eu/internal_market/investment/docs/alternative_investments/fund_managers_impact_assessment.pdf
12. Commission of the European Communities. (2011). *Proposal for a directive of the European Parliament and of the council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC*. Retrieved from

- http://ec.europa.eu/internal_market/investment/docs/alternative_investments/fund_managers_proposal_en.pdf
13. Dickinson, C. (2012, April 30). *Debate on hedge fund domicile continues as managers find alternative solutions*. Retrieved from <http://www.hedgefundsreview.com/hedge-funds-review/feature/2167024/debate-hedge-fund-domicile-continues-managers-alternative-solutions>
 14. Dickinson, C. (2012, March 14). *Hedge funds face tighter rules than retail due to differences between AIFM and Ucits directives*. Retrieved from <http://www.hedgefundsreview.com/hedge-funds-review/news/2159303/hedge-funds-tighter-rules-retail-differences-aifm-ucits-directives>
 15. Ernst & Young. (2012, March). *The perceived impact of the AIFM Directive on private equity in Europe*. Retrieved from [http://www.ey.com/Publication/vwLUAssets/The_perceived_impact_of_the_AIFM_Directive_on_private_equity_in_Europe/\\$FILE/AIFMD_European_inpact_survey.pdf](http://www.ey.com/Publication/vwLUAssets/The_perceived_impact_of_the_AIFM_Directive_on_private_equity_in_Europe/$FILE/AIFMD_European_inpact_survey.pdf)
 16. ESMA. (2011, November 16). *Final report: ESMA's technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive*. Retrieved from http://www.esma.europa.eu/system/files/2011_379.pdf
 17. European Fund and Management Association (EFAMA). (2011). *efama Fact Book 2011*. Brussels.
 18. European Fund and Management Association (EFAMA). (2012, May). *Quarterly Statistical Release N°49*. Retrieved from http://www.efama.org/index.php?option=com_docman&task=cat_view&gid=72&Itemid=-99
 19. European Parliament. (2012, June 18). *2009/0064(COD) - 30/04/2009 Legislative proposal*. Retrieved from <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1076171&t=e&l=en>
 20. Eversheds. (2011, November). *A guide to the AIFM Directive: Putting fund managers on the right path*. Retrieved from <http://www.eversheds.ie/includes/documents/Investment%20Funds%20-%20AIFM%20Directive.pdf>
 21. *Financial center*. (n.d.). Retrieved from <http://www.liechtenstein.li/index.php?id=24&L=1>
 22. Financial Services Authority. (2012, January). *Implementation of the Alternative Investment Fund Managers Directive*. Retrieved from <http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/discussion/dp12-01.pdf>

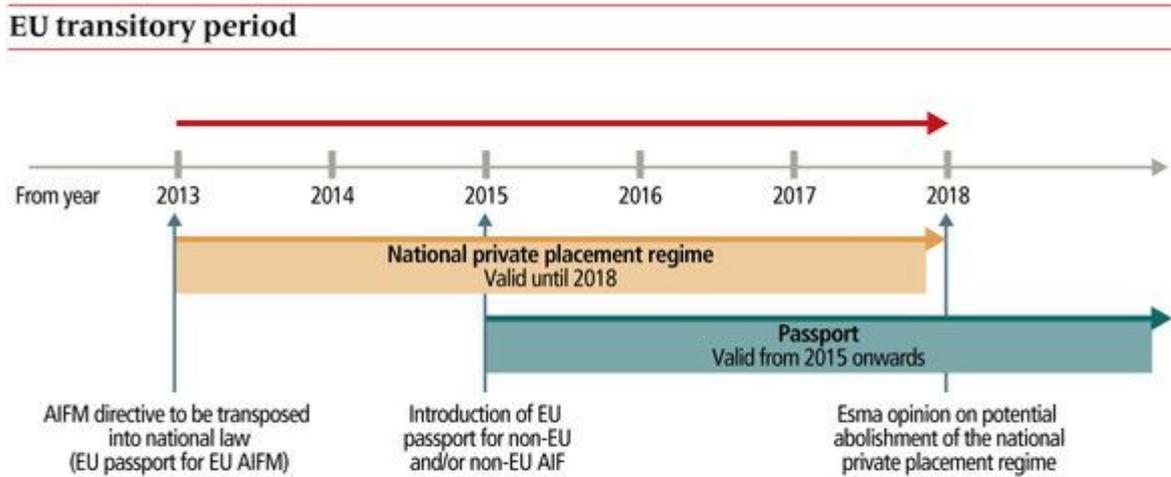
23. FMA. (n.d.). *Investment Undertakings*. Retrieved from http://www.fma-li.li/index.html?page_id=379&l=2
24. Griggs, N. (2012, Juna). *THE AIFMD STORY CONTINUES TO THRILL - NEIL GRIGGS*. Retrieved from <http://www.bdo.uk.com/talk-shop/aifmd-story-continues-thrill>
25. Iwersen, S., Alich, H., & Narat, I. (2012, April 11). *Liechtenstein bläst zum Angriff auf die Schweiz*. Retrieved from <http://www.handelsblatt.com/politik/international/jagd-auf-hedgefonds-liechtenstein-blaest-zum-angriff-auf-die-schweiz/6495164.html>
26. Lyons, W. T. (2012, March 2). *Are Newcits the Future of Hedge Funds or Does the AIFM Directive Provide a More Attractive Framework for Hedge Fund Managers and Investors?* Retrieved from <http://ssrn.com/abstract=2014882>
27. McDonnell, B. (2010, November). *Adoption of the Alternative Investment Fund Managers Directive: Impact on the Real Estate Sector*. Retrieved from http://www.olswang.com/pdfs/AIFM_jan.pdf
28. McDonnell, B. (2012, April 23). *Alternative Investment Fund Managers Directive - an update*. Retrieved from http://www.olswang.com/articles/2012/04/alternative-investment-fund-manager-directive-an-update/#_ftn1
29. Mills, P. (2009, October 10). *AIFM Directive: One size does not fit all*. Retrieved from <http://guernsey.isle-news.com/archives/aifm-directive-one-size-does-not-fit-all/2286/>
30. Mirsky R., L. L. (2010). *Managing Your AIFM*. Retrieved from <http://www.ucitshedgefunds.com/issue/201011/managing-your-aifm.php>
31. Norton Rose LLP. (2011, December). *AIFM Directive: The impact on non-EU fund managers*. Retrieved from <http://www.nortonrose.com/files/aifm-directive-the-impact-on-non-eu-fund-managers-of-non-eu-funds-60540.pdf>
32. Open Europe. (2009, September). *The EU's AIFM Directive: Likely impact and best way forward*. Retrieved from <http://www.openeurope.org.uk/Content/Documents/PDFs/aifmd.pdf>
33. PriceWaterhouseCoopers. (2011). *ESMA publishes final advice: AIFMD News Edition 10 Winter 2011*. Retrieved from https://www.pwc.ch/user_content/editor/files/publ_asset_mgmt/pwc_aifmd_news_edition_10_e.pdf
34. PriceWaterhouseCoopers. (2009). *The Draft EU Directive on Alternative Investment Fund Managers*. Retrieved from <http://www.jerseyfinance.je/events/event-archive/understanding-the-aifm-directive-and-its-potential-impact-on-jersey/>

35. PRiM. (2012, February 1). *PRiM Risk Newsletter No 28: Alternative Funds*. Retrieved June 1, 2012, from prim.lu:
http://www.prim.lu/docs/newsletters/PRiM%20Newsletter%20No%2028_print.pdf
36. Rebholz, H. (2012). *New provisions on investment funds in Liechtenstein*. Retrieved from <http://www.iflr1000.com/LegislationGuide/580/New-provisions-on-investment-funds-in-Liechtenstein.html>
37. Schlömer, V. (2012, June 15). AIFMD in Liechtenstein. (A. Berzina, & R. Studnik, Interviewers)
38. Seretakis, A. (2012). *The new EU Directive on the regulation of private equity*. Retrieved from http://www.cjel.net/online/18_3-seretakis/#_edn7
39. Stahl, P. (2012, May 25). *Fondsmanager zieht es nach Liechtenstein*. Retrieved from <http://www.vaterland.li/index.cfm?ressort=liechtenstein&source=lv&id=18230>
40. The Financial Times. (2009, July 5). *Government's response like that of a rowdy drinker in a bar brawl*. Retrieved from <http://www.ft.com/intl/cms/s/0/5bc508ba-698c-11de-bc9f-00144feabdc0.html#axzz1yQsATd2n>
41. Tinworth, J., & Harwood, S. (2011, November). *Remuneration Principles: Should AIFMD strictures apply to an AIFM?* Retrieved from <http://www.thehedgefundjournal.com/magazine/201110/technical/remuneration-principles.php>

List of Abbreviations

AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive (2011/61/EU)
AuM	Assets under Management
CRA	Charles Rivers Associates
CRD III	Capital Requirements Directive III
E&Y	Ernst & Young
EEA	European Economic Area
EFAMA	European Fund and Asset Management Association
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
FINMA	Swiss Financial Market Supervisory Authority
FSA	Financial Services Authority
GDP	Gross Domestic Product
MiFID	Markets in Financial Instruments Directive (2004/39/EC)
NAV	Net Asset Value
SEC	U.S. Securities and Exchange Commission
UCITS IV	Directive 2009/65/EC
UCITS	Undertaking for Collective Investment in Transferable Securities
UCITSD	Undertaking for Collective Investment in Transferable Securities Directive

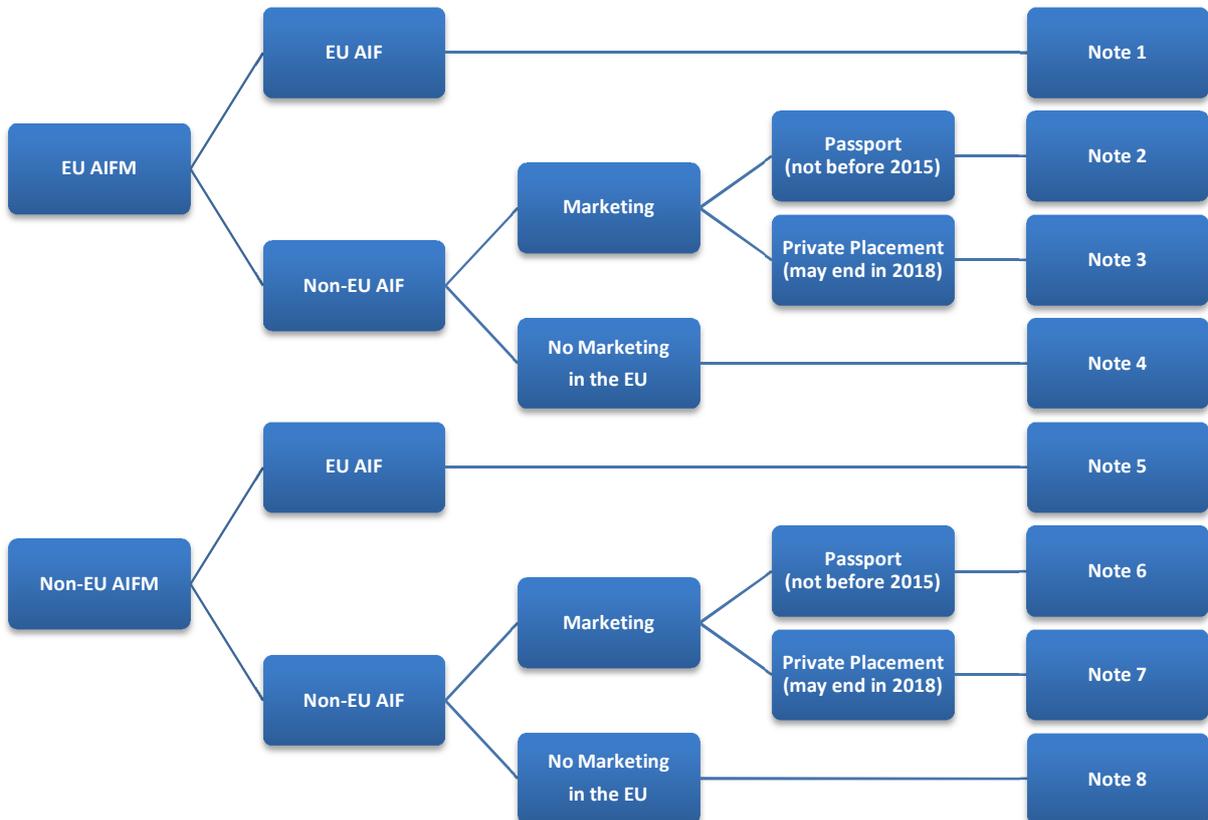
Annex I: Passport Regime Time Line



Source: Clearing the haze: impact of the AIFM directive, November, KPMG, Luxembourg.

Source: Dickinson, 2012.

Annex II: Implications for AIFMs and AIFs with Respect to their Domicile



Note	Scenario	AIFM Directive implications
1	EU AIFM managing EU AIF (Articles 31-33)	<ul style="list-style-type: none"> • Full AIFM Directive authorisation required by AIFM • AIF can be marketed to professional investors throughout EU
2	EU AIFM managing non-EU AIF which are not marketed within the EU (Article 34)	<ul style="list-style-type: none"> • AIFM Directive will apply to the AIFM with the exception of Articles 21 and 22 relating to appointment of a custodian and production of an annual report by each AIF • Co-operation arrangements must be in place (between AIFM's home Member State competent authority and supervisory authority in third country where the AIF is domiciled) to ensure efficient exchange of information to enable the AIFM's home Member State competent authority to carry out its duties under the AIFM Directive
3	From 2015: EU AIFM marketing non-EU AIF within the EU under a passport (Article 35)	<ul style="list-style-type: none"> • AIFM to comply with AIFM Directive in full • Co-operation arrangement must be in place between regulators (see Note 2 above) • AIF's domicile must not be on FATF blacklist • OECD compliant tax transparency agreement must be in place between AIFM's home EU Member State and AIF's domicile
4	EU AIFM marketing non-EU AIF within the EU without a passport (up to 2018) (Article 36)	<p>Private placement to professionals may be permitted by Member States provided the minimum conditions in Article 36 are met (but Member States may apply stricter rules):</p> <ul style="list-style-type: none"> • AIFM must comply with AIFM Directive in full (but less strict custody provisions apply) • Co-operation arrangement must be in place between regulators (limited to monitoring of system risk oversight) • AIF's domicile must not be on FATF blacklist
5	From 2015: Non-EU AIFM managing or marketing EU AIF (Articles 37 and 38)	<ul style="list-style-type: none"> • Non-EU AIFM must be authorised under AIFM Directive • Filing and notification procedure required in order to enable a non-EU AIFM to market an EU AIF within the EU
6	From 2015: Non-EU AIFM marketing non-EU AIF within the EU under passport (Article 39)	<ul style="list-style-type: none"> • Non-EU AIFM must be authorised under AIFM Directive • Co-operation arrangement must be in place between regulators (limited to monitoring of system risk oversight) • AIF's domicile must not be on FATF blacklist • OECD compliant tax transparency agreement must be in place between EU Member State of reference and AIF's domicile
7	Non-EU AIFM marketing non-EU AIF to professional investors within the EU without a passport (up to 2018) (Article 40)	<p>Private placement to professionals may be permitted by Member States provided the minimum conditions in Article 40 are met (Member States may apply stricter rules):</p> <ul style="list-style-type: none"> • AIFM must comply with requirements in relation to annual accounts (Article 22), initial and ongoing investor disclosure (Article 23) and regulator disclosure (Article 24) • Co-operation arrangement must be in place between regulators (limited to monitoring of system risk oversight) • AIF's domicile must not be on FATF blacklist
8	Non-EU AIFM managing non-EU AIF not marketed within the EU	The AIFM Directive does not apply
9	EU and non-EU AIFM marketing EU or non-EU AIF to retail investors	Each Member State may permit AIF managed in accordance with the AIFM Directive to be marketed to retail investors in their territory and may impose stricter rules before doing so. Any such rules must be applied consistently to all AIF proposing to market on a retail basis.

Source: Eversheds, 2011, pp. 4-5.

Annex III: Summary of Costs (Basis Points Unless Otherwise Noted)

	Hedge Funds	Private Equity	Venture Capital	Real Estate	Investment Trusts
One-off costs					
Disclosure to investors	0.3	0.0	0.0		
Delegation restructuring	8.25	8.25		8.25	
Relocating/ re-domiciling	39.9	19.7	19.7	0.9	
Legal structures	14.1	14.1	14.1	14.1	63.5
Total one-off costs (bp)	62.5	42.1	33.8	23.2	63.5
Total one-off costs (EUR millions)	1404	756	45	451	543
Ongoing costs					
Disclosure to investors	0.1	0.0	0.0		
Disclosure to portfolio companies	0.0	2.9	3.7	0.0	0.0
Delegation	0.2	0.2		0.2	
Valuator	0.9	4.3	9.2		
Capital		1.5	1.9		
Depositary		5	10		
Total ongoing costs (bp)	1.2	13.8	24.8	0.2	
Total ongoing costs (EUR millions)	27	248	33	3	

Source: Charles River Associates, 2009, pp. 112-113. Figures do not sum to total due to rounding.

Affidavit

Alternative Investment Fund Managers (AIFM) Directive: Implementation in Europe and in Liechtenstein

We hereby declare under penalty of perjury that the present paper has been prepared independently by us and without unpermitted aid. Anything that has been taken verbatim or paraphrased from other writings has been identified as such. This paper has hitherto been neither submitted to an examining body in the same or similar form, nor published.

Vaduz, 21/06/2012

Signature:

Anete Berzina

Radovan Studník

AIFM Directive Infographic. Tackling UCITS and AIFMD with StatPro Revolution. Learn how StatPro Revolution can help your funds meet the requirements of the UCITS and AIFMD regulations with our easy-to-understand guide. ALFI Risk Management Guidelines. Download the ALFI Risk Management Guidelines. FCA Handbook The Financial Conduct Authority Handbook contains provisions made by the FCA and all instruments that have been passed. Published in the Official Journal of the European Union in July 2011 the Alternative Investment Fund Managers Directive aims to create a comprehensive and effective regulatory and supervisory framework for alternative investment fund managers within the EU. What is an Alternative Investment Fund? Topic overview and current status. The Alternative Investment Fund Managers Directive (AIFMD) regulates the management, administration and marketing of alternative investment funds (AIFs) in the European Union. An AIF is a collective investment undertaking that is not subject to the UCITS regime. This includes hedge funds, private equity funds, retail investment funds, investment companies and real estate funds. Key issues covered by the AIFMD include authorisation and operating conditions for AIFMs, remuneration, conduct of business and valuation requirements, transparency, marketing and rule 5 Implementation of the Alternative Investment Fund Managers Directive PS13/5 Abbreviations used in this paper AIF AIFM alternative investment fund alternative investment fund manager AIFMD Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 14 PS13/5 Implementation of the Alternative Investment Fund Managers Directive 2. Implementation and scope 2.1 This chapter covers our analysis of the responses to the questions in chapter 3 of CP12/32 and chapter 2 of CP13/9 on implementing the Directive, and in particular its scope.