

Self-Assessment for Fund Managers and Self-Managed Collective Investment Schemes applying for an AIFM licence

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| Name of Licence Holder (as indicated in CIS/ IS Licence) |
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| Date of Submission: |  |  |

*Issued: May 2013*

***Please return this form to:***

**The Director**

**Authorisation Unit**

**Malta Financial Services Authority**

**Notabile Road**

**Attard BKR 3000, Malta**

*Last updated: November 2013*

# Scope of the Self-Assessment

The transitional arrangements in terms of Article 61(1) and (2) of the AIFM [Directive](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF) (the ‘Directive’) provide Licence Holders already performing AIFM activities with one year, from 22 July 2013, to apply for authorisation and to comply with the relevant laws and regulations.

An AIFM’s obligation to seek authorisation (Chapter II and Chapters VI, VII of the Directive) is legally binding and needs to be complied with within a year of the entry into force of the Directive i.e. by 22 July 2014.

In respect of certain requirements contained in the Directive, a Licence Holder qualifying as an AIFM is nevertheless required to take all necessary measures on a best effort basis to comply with the provisions of the Directive as from the date of coming into force, irrespective of the transitional period. After the transitional period, all the obligations arising under the Directive are legally binding. It should be noted that compliance with, for example, reporting obligations does not depend on having obtained an authorisation by the MFSA and no specific transitional requirements apply. Accordingly, existing licence holders which qualify as AIFMs (including *de minimis* AIFMs) are to ensure compliance with certain requirements with effect from the date of the application of the Directive.

This questionnaire applies to entities licensed under the Investment Services Act, 1994 prior to 22 July 2013 which are applying with the MFSA to act as an AIFM.

This document applies to AIFMs which are external managers of Alternative Investment Funds (‘AIFs’) (defined as collective investment undertakings excluding UCITS) and to internally managed AIFs (where the governing body chooses not to appoint an external AIFM and the legal form of the AIF permits internal management). Accordingly, unless expressly stated otherwise, for the purpose of this document, the terms ‘AIFM’ and ‘Licence Holder(s)’ shall include both Fund Managers (which may also include UCITS Fund Managers who also manage AIFs) and self-managed AIFs.

This document applies to AIFMs that fall within the scope of the Directive and which do not qualify for an exemption in terms of Article 3 of the Directive, as well as to those AIFMs that choose to opt in under the Directive pursuant to Article 3(4) of the same.

It should be noted that where a Licence Holder is authorised pursuant to Directive 2009/65/EC as a UCITS Fund Manager and applies for authorisation as an AIFM under Directive 2011/61/EC, the Licence Holder shall not be required to provide information or documents which it had already provided when applying for authorisation under Directive 2009/65/EC, provided that such information or documents remain up-to-date. Accordingly, certain sections of this document do not apply to UCITS Fund Managers.

***Important Information***

*All questions should be answered clearly providing detailed information where appropriate. Any questions which are ‘Not Applicable’ should be clearly indicated as such. If there is insufficient space for a detailed answer, please securely attach continuation sheets at the back of this document. Please label continuation sheets, clearly indicating to which question in the form the additional information refers.*

*The completed form including the declaration requested at the end, should be addressed for the attention of the Director – Authorisation Unit, as shown on the cover sheet.*

*The Authority reserves the right to request additional supporting documents, declarations and/ or clarifications as required in order to ensure compliance with the Directive.*

*Completed forms are to be submitted to the Authority by the* ***31 March 2014****.*

*For general enquiries regarding the completion of this form, please contact an official of the Authorisation Unit at the MFSA on 21441155 or* [*au@mfsa.com.mt*](mailto:au@mfsa.com.mt)*.*

**Section 1: General – Current Authorisation**

***This section requires Licence Holders to provide details with regards to their current authorisation and the services to be provided as an authorised AIFM under the Directive.***

*This section needs to be completed by internally managed AIFs and Fund Managers (including UCITS Management Companies which manage AIFs).*

*In the case of an internally managed AIF, please mark your replies to Questions 1.3 – 1.7 as “N/A” [Note: In terms of Article 6(3) and in accordance with Annex 1 of the Directive, internally managed AIFs shall not engage in activities other than the internal management of that AIF].*

***Please attach the latest copy of the Terms of Reference of the AIFM (indicating where appropriate, any changes to the operational arrangements, as applicable) and also copies of the AIFM’s Profit and Loss projections and a Balance Sheet forecast, both covering the first twelve months following authorisation as an AIFM.***

***For Questions 1.3 – 1.4 (if applicable), please provide an updated copy of the Business Plan.***

* 1. Specify the level of assets under management for AIFs by the AIFM (based on the most recently available NAV figures for the AIFs)[[1]](#footnote-1).

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* 1. Specify whether the AIFM is required to be authorised in terms of the Directive because the assets under management exceed the relevant threshold or whether the AIFM qualifies for an exemption as set out in the Directive but is opting in, pursuant to Article 3(4) of the Directive.

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* 1. Specify whether the Licence Holder intends to continue providing all services as indicated in the current licence identifying any changes relating to investment services where applicable.

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* 1. In case of any new activities and/or activities currently undertaken by the Licence Holder that are not in line with the permitted activities applicable for AIFMs:-

1. Please outline the changes in terms of operational arrangements to be implemented by the Licence Holder, as applicable.

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1. Please outline whether the AIFM will be appointing additional staff to undertake licensable activities and/ or to hold senior positions which require prior authorisation by the MFSA

Yes  or No

If Yes, please provide details of the relevant position to be held and enclose relevant Personal Questionnaire Form (Schedule F to the Investment Services Rules for Investment Services Providers).

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* 1. Specify from the tables below the range of services that will be provided by the AIFM as well as the nature of the clients to be serviced by the Applicant. [Article 6(2) and (4) of the Directive detail the range of activities that an AIFM is permitted to undertake].

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| |  |  |  | | --- | --- | --- | | ***Core Activity*** | ***Non-Core Activities*** |  | | | | | | | | | | |
|  | ***Investment Management*** | ***Reception and Transmission of Orders*** | ***Safekeeping & Administration in relation to shares or units of collective investment undertakings*** | ***Investment Advice*** | ***Management of UCITS Schemes \**** | ***Administration\*\**** | ***Individual Portfolio Management*** | ***Marketing*** | ***Activities related to the assets of the AIFs (as detailed in Annex 1 of the AIFMD)*** |
| 1. Transferable Securities |  |  |  |  |  |  |  |  |  |
| 2. Money Market Instruments |  |  |  |  |  |  |  |  |  |
| 3. Units in collective investment schemes |  |  |  |  |  |  |  |  |  |
| 4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash. |  |  |  |  |  |  |  |  |  |
| 5. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event). |  |  |  |  |  |  |  |  |  |
| 6. Options, futures, swaps, and any other derivative contracts relating to commodities, that can be physically settled provided that they are traded on a regulated market, within the meaning of the Financial Markets Act and, or a Multilateral Trading Facility within the meaning of Schedule 1 to the Act. |  |  |  |  |  |  |  |  |  |
| 7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled, are not for commercial purposes, are not included in para. 6 above, and, which have the characteristics of other derivative instruments, having regard to whether, inter alia, they are cleared and settled throughout recognized clearing houses or are subject to regular margin calls. |  |  |  |  |  |  |  |  |  |
| 8. Derivative instruments for the transfer of credit risk. |  |  |  |  |  |  |  |  |  |
| 9. Rights under a contract for differences or under any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price for property of any description or in an index or other factor designated for that purpose in the contract. |  |  |  |  |  |  |  |  |  |
| 10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Schedule, which have the characteristics of other derivative instruments, having regard to whether, inter alia, they are traded on a regulated market within the meaning of the Financial Markets Act or a Multilateral Trading Facility within the meaning of Schedule 1 to the Act, are cleared and settled through recognized clearing houses or are subject to regular margin calls. |  |  |  |  |  |  |  |  |  |
| 11. Certificates or other instruments which confer property rights in respect of any instrument falling within Schedule 2 to the Act. |  |  |  |  |  |  |  |  |  |
| 12. Foreign exchange acquired or held for investment purpose |  |  |  |  |  |  |  |  |  |

\* Where the AIFM intends to undertake the additional management of UCITS, authorisation under Directive 2009/65/EC is required.

\*\* Where the AIFM intends to provide Fund Administration services, a Recognition Certificate in terms of Article 9A of the Investment Services Act is required.

Where the AIFM intends to provide any MiFID activities (which are allowed to be performed by an AIFM in terms of Article 6 of the Directive), the Applicant must ensure compliance with the organisational and conduct of business obligations as set out in MiFID. The Business Plan must demonstrate how the AIFM will be conducting such service/s.

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| ***Please mark as ‘YES’ the appropriate boxes to show the nature of the clients to be serviced by the Applicant*** | | | | | | | | | |
|  | ***Investment Management*** | ***Reception and Transmission of Orders*** | ***Safekeeping & Administration in relation to shares or units of collective investment undertakings*** | ***Investment Advice*** | ***Management of UCITS Schemes*** | ***Administration*** | ***Individual Portfolio Management*** | ***Marketing*** | ***Activities related to the assets of the AIFs (as detailed in Annex 1 of the AIFMD)*** |
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| **Retail Client** |  |  |  |  |  |  |  |  |  |
| **Professional Clients (including collective investment schemes)** |  |  |  |  |  |  |  |  |  |
| **Professional Clients (excluding collective investment schemes)** |  |  |  |  |  |  |  |  |  |
| **Collective Investment Schemes** |  |  |  |  |  |  |  |  |  |
| **Eligible Counterparties** |  |  |  |  |  |  |  |  |  |

* 1. Please outline the AIFs managed/intended to be managed by the AIFM in the table below:-

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| **Name of AIF** | **Registration/ Licensing Date** | **Fund Domicile and Regulatory Status** |
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*Note: The Question requires details of already licensed AIFs which are managed or intended to be managed by the AIFM. Details of the AIFs which the AIFM intends to manage must be provided to the MFSA ideally one month before the date on which the AIFM intends to start managing the AIFs.*

* 1. a) Does the AIFM manage AIFs of the closed ended type prior to 22 July 2013 which do not make any additional investments after 22 July 2013?[[2]](#footnote-2)

Yes  or No

If Yes, please provide details.

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| **Name of AIF** | **Registration/ Licensing Date** | **Fund Domicile and Regulatory Status** |
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b) Does the AIFM manage AIFs of the closed-ended type whose subscription period for investors has closed prior to the 22 July 2013?[[3]](#footnote-3)

Yes  or No

If Yes, please provide details.

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| **Name of AIF** | **Registration/ Licensing Date** | **Fund Domicile and Regulatory Status** |
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**Section 2: Information on AIFs**

***This section requires details for an internally managed AIF / each AIF managed by the AIFM in accordance with Article 7(3) and 23(1) of the Directive. The information requested needs to be provided for each AIF and attached as a separate annex to the Questionnaire. In case of submission of an Offering Document please indicate the page/s where the respective details are included in the second column provided. Otherwise relevant extracts should be provided.***

*Note: This Section requires the submission of details of already licensed AIFs which are managed by the AIFM. Details of the AIFs which the AIFM intends to manage must be provided to the MFSA ideally one month before the date on which the AIFM intends to start managing the AIFs.*

* 1. Provide the following information:-

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|  | |  |  |  | | --- | --- | --- | | Name of AIF: |  |  | | 1. Description of the investment strategy and objectives of the AIF and the types of the underlying funds (if AIF is a fund of funds) 2. Information on where the master AIF is established in the case of a feeder AIF and where the underlying funds are established if the AIF is a fund of funds |  |  | |  |  | |  |  | | 1. Description of the types of assets in which the AIF may invest |  |  | | 1. Techniques the fund may employ and associated risks |  |  | | 1. Any applicable investment restrictions |  |  | | 1. Circumstances in which the AIF may use leverage |  |  | | 1. Types and sources of leverage permitted and associated risks |  |  | | 1. Any restrictions on the use of leverage and any collateral and asset reuse arrangements |  |  | | 1. Maximum level of leverage which the AIFM is entitled to employ |  |  | | 1. A description of the procedures by which the AIF may change its investment strategy or investment policy, or both 2. Description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established |  |  | |  |  | | 1. The identity of the AIFM, the AIF’s depositary, the auditor and any other service providers and a description of their duties and the investors’ rights |  |  | | 1. A description of how the AIFM is complying with the own funds/ PII requirements |  |  | | 1. A description of any delegated management function by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations |  |  | | 1. A description of the AIF’s valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets |  |  | | 1. A description of the AIF’s liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors |  |  | | 1. A description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors 2. A description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM |  |  | |  |  | | 1. Procedure and conditions for the issue and sale of units of shares 2. The latest Net Asset Value of the AIF or the latest market price of the unit or share of the AIF 3. Where available, the historical performance of the AIF 4. The identity of the prime broker and a description of any material   arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed, the provision in the contract with the depository on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist |  |  | |  | | |  |  | |  |  | |

* 1. For each AIF managed by the AIFM, please supply copies of the AIF rules or instruments of incorporation.

The rules or instruments of incorporation of the AIFs which the AIFM intends to manage must be provided to the MFSA ideally one month before the date on which the AIFM intends to start managing the AIFs.

* 1. Please provide (in a separate continuation sheet) brief details of the investment strategies pursued by the AIFs managed by the AIFM, providing an outline of the experience that each individual (involved in the investment management with the AIFM) has in relation to the AIFs.

**Section 3: Regulatory Capital and Own Funds**

***This section deals with the AIFM’s regulatory capital requirements and own funds in accordance with Article 9 of the Directive and Section 3 of Chapter II of the Commission Delegated Regulation.***

*This section needs to be completed by internally managed AIFs and Fund Managers (including UCITS Management Companies which also manage AIFs).*

* 1. In the case of internally managed AIFs, specify how the AIF satisfies the minimum initial capital requirement of Euro 300,000 also with reference to Article 9(8) of the Directive.

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Where the portfolio value exceeds Euro 250 million, show how the additional own fund requirements as specified in Article 9 of the Directive are satisfied and specify the types of assets in which the own funds are invested in accordance with Article 9(8) of the Directive.

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* 1. (a) In the case of an external manager, show how the additional own funds requirements as specified in Article 9 of the Directive are satisfied where the portfolio value exceeds Euro 250 million, specifying the types of assets in which the own funds are invested in accordance with Article 9(8) of the Directive.

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(b) If the AIFM partly satisfies its additional own funds requirements by way of guarantee, provide details relative to the guarantee, including information on the credit institution/insurer underwriting the guarantee and details on its registered office in accordance with Article 9(6) of the Directive.

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**Section 4: Additional Regulatory Capital and Own Funds** / **Professional Indemnity Insurance covering Professional Liability Risks**

***This section deals with the professional liability risks in accordance with Article 9 of the Directive and Section 3 of Chapter II of the Commission Delegated Regulation.***

*This section needs to be completed by internally managed AIFs and Fund Managers (including UCITS Management Companies which also manage AIFs). In accordance with Article 9(10), with the exception of paragraphs 7 and 8 and of the Delegated Regulation adopted pursuant to paragraph 9, Article 9 of the Directive shall not apply to AIFMs which are also UCITS Management Companies.*

* 1. Specify how the AIFM covers potential liability risks caused through the negligent performance of activities for which an AIFM has legal responsibility:

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| Increased own funds  *Or* Professional Indemnity Insurance |

* 1. (a) In case of additional own funds, specify the level of increased own funds including the % that this comprises of the value of the portfolios of AIFs managed – the minimum provision should at least be equal to 0.01% of the value of the portfolios of AIFs managed.

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1. Specify the types of assets in which the own funds are invested. Article 9(8) requires the own funds of an AIFM, including additional own funds, to be invested in liquid assets or assets readily convertible to cash in the short term and not speculative positions.

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* 1. In case of a Professional Indemnity Insurance, provide a copy of the most recent renewal cover. This must be in accordance with Article 15 of Section 3 of Chapter II of the Commission Delegated Regulation.

**Section 5: Remuneration Policies**

***This section deals with remuneration policies in accordance with Article 13 of the Directive which requires AIFMs to “have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions, and any employees 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 the AIFs they manage”.***

*Any such policies and practices must be determined in accordance with the principles set out in Annex II of the Directive as well as those included in the ESMA Guidelines (2013/201) on sound remuneration policies.*

*Further to the questions included in this section, AIFMs should also provide a declaration outlining that they have in place a Remuneration Policy which is in line with the requirements stipulated in Annex II of the Directive.*

*This section should be completed by internally managed AIFs and Fund Managers (including UCITS Management companies which also manage AIFs).*

* 1. The AIFM is required to have a formal remuneration policy in place which is in line with the principles set out in Annex II of the Directive and the Guidelines on sound remuneration policies issued by ESMA. A declaration should be provided to this effect by the AIFM.

At this stage, please provide the following general details:-

***Identified Staff***

1. An outline of the ‘Identified Staff’ within the AIFM whose professional activities materially impact the risk profile of the AIFM or the AIF it manages and a description as to how ‘Identified Staff’ were assessed and selected.

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***Remuneration Committee***

1. Indicate whether the AIFM has a remuneration committee
2. In the affirmative, outline the composition of the remuneration committee or otherwise indicate who will sit on the remuneration committee, once this is established

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1. Provide a description as to how the remuneration committee is established, which must be in such a way that enables it to exercise independent judgement on remuneration policies and practices as well as on the incentives created for managing risk.

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1. If the AIFM does not have a remuneration committee, provide an indication as to the person by whom the tasks of remuneration are performed and a demonstration, in terms of the ‘Proportionality Principle’, as to the reason why the AIFM does not need to establish a remuneration committee. The reason must be grounded in terms of the AIFM’s size internal organisation and the nature, scope and complexity of its activities.

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***Structure of Remuneration***

1. Explain how the AIFM’s rules on the structure of pay are consistent with sound and effective risk management and in line with the interests of the AIFM, AIFs and investors.

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1. Explain i) how the remuneration policy ensures a balance between fixed and variable components of total remuneration; ii) the measurement of performance of the AIF as well as its structure; and iii) how variable remuneration is adjusted for risk, where appropriate.

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***Remuneration of Control functions***

1. Describe briefly the approach to be taken with regard to the remuneration of control functions as referred to in the ESMA Guidelines and an outline of the manner in which conflicts of interest are avoided.

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1. Describe the conditions that are in place in order to ensure that the employees engaged in the control functions are compensated independently of the business areas that they oversee and commensurately with their role in the firm.

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***Transparency and Disclosure Requirements***

1. Indicate the remuneration disclosure arrangements that the AIFM has in place.

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***Disapplication of certain Rules***

*The remuneration provisions in the Directive and the ESMA Guidelines on sound Remuneration Policies are subject to a proportionality principle such that AIFMs shall comply with the principles in a way and to the extent that is appropriate to their size and the size of the AIF they manage, their internal organisation and the nature, scope and complexity of their activities. The Guidelines provide that taking a proportionate approach to compliance may in certain circumstances lead to certain of the Rules being disapplied. However, the Guidelines clarify that Rules where numerical criteria apply may only be disapplied in their entirety and not partially.*

1. Please specify whether the AIFM intends to disapply any of the required Rules of the remuneration policy structure and indicate which Rules are intended to be disapplied, including details regarding how the proportionality assessment for each of the Rules was carried out.

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**Section 6: Conflicts of Interest**

***This section deals with conflicts of interest in accordance with Articles 12 and 14 of the Directive and Chapter III Section 2 of the Commission Delegated Regulation.***

*This section needs to be completed only by internally managed AIFs.*

*Further to the questions included in this section, AIFMs should also provide a declaration outlining that they have in place a conflict of interest policy which is in line with the requirements stipulated in Article 14 of the Directive and Article 31 of the Commission Delegated Regulation.*

* 1. Indicate what arrangements are in place to identify, prevent, manage and monitor conflicts of interest. In this regard, kindly also outline the organisational and administrative arrangements for managing and monitoring conflicts and for the segregation of operational tasks and responsibilities that may generate conflicts of interest.

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* 1. In circumstances where arrangements may not prove to be sufficient to prevent the risk of damage to investors, please describe where the AIFM will be disclosing possible sources of conflicts of interests before undertaking business on behalf of investors.

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* 1. Indicate what arrangements are in place to identify, prevent, manage and monitor potential conflict of interest situations in relation to the activities of the delegates, sub-delegates, external valuer or counterparty.

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**Section 7: Risk and Liquidity Management**

***This section deals with the risk and liquidity management policies and procedures of the AIFM in accordance with Articles 15 –16 of the Directive (and Chapter III of the Commission Delegated Regulation).***

*This section needs to be completed by internally managed AIFs and Fund Managers (excluding UCITS Management Companies which also manage AIFs).*

*The Risk Management Policy document outlined in Q.7.4 needs to be submitted by internally managed AIFs and Fund Managers (excluding UCITS Management Companies).*

***Permanent Risk Management Function***

* 1. Describe the independent permanent risk management function of the AIFM to be established to oversee the implementation of the risk management policy and systems of the AIFs under management, by providing the following:-

1. Details of the individual/s or entities responsible for this function;

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1. The duties of the risk management function;

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1. Any other functions exercised by the risk management function; and

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1. The safeguards put in place to ensure that conflicts of interests will not prejudice the independence of the risk management function.

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* 1. Where the AIFM will not have a functional and hierarchical separation of the functions of risk management, demonstrate that specific safeguards against conflicts of interest will allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of Article 15 of the Directive and is consistently effective.[[4]](#footnote-4)

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***Delegation***

* 1. In case where the AIFM will delegate any risk management activities to third parties:

* specify which activity will be delegated;

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* specify to whom such activity will be delegated, including details of the authorisation and registration status of the delegate;

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* specify who within the AIFM will be responsible for the risk monitoring process of the delegated activity, including details of the measures taken to effectively enable such monitoring, as well the frequency of internal reporting to be undertaken in terms of the delegated activity.

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***Risk Management Policy***

* 1. Article 40(1) of the Commission Delegated Regulation outlines that an AIFM shall establish, implement and maintain an adequate and documented risk management policy which identifies all the relevant risks to which the AIFs it manages are or may be exposed. Please provide a copy of the Risk Management Policy and indicate in the second column hereunder the page/s where the respective details are included in the document. The AIFM shall address at least the following elements in the risk management policy:-

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|  | Page/s |
| 1. **General organisation structure relating to the risk management function, including**: |  |
| * details on the role of the risk management function |  |
| * identity of the individual/s and entities involved in the risk management function, including the allocation of roles and responsibilities[[5]](#footnote-5) |  |
| * details on the reporting lines (e.g. hierarchy structure of the risk management function, board of directors, investment committee etc.) |  |
| * details of the interaction between the individuals carrying out the risk management function with other parties |  |
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| 1. **Description of the delegated functions (if applicable), including:** |  |
| * details of the functions being delegated to the third party |  |
| * details of the monitoring and control arrangements to be carried out by the AIFM[[6]](#footnote-6) |  |
| * the identity of the individual within the AIFM responsible for monitoring the delegated function |  |
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| 1. **Conflicts of Interest**   The risk management policy shall include a description of the safeguards against conflicts of interest, in particular: |  |
| * the nature of the potential conflicts of interest |  |
| * the remedial measures put in place |  |
| * the reasons why these measures should be reasonably expected to result in independent performance of the risk management function |  |
| * how the AIFM expects to ensure that the safeguards are consistently effective |  |
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| 1. **Reporting Requirements** |  |
| * details of the procedures, frequency and contents of the reporting obligations of the permanent risk management function to the board of directors |  |
| * details of the procedures, frequency and contents of the reporting obligations of the permanent risk management to the individual/s responsible for the risk management function and/or the individual monitoring the delegated risk management function |  |
| * details to ensure compliance with the procedures and contents in the Prospectus and Annual Report in relation to the calculation of the global exposure |  |
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| 1. **Risk Measurement and Management** |  |
| * the techniques, tools and arrangements that enable the AIFM to comply with Article 45 of the Commission Delegated Regulation; |  |
| * the techniques, tools and arrangements that enable liquidity risk of the AIF to be assessed and monitored under normal and exceptional liquidity conditions including through the use of regularly conducted stress tests in accordance with Article 48 of the Commission Delegated Regulation; |  |
| * the risk limits set in accordance with Article 44 of the Commission Delegated Regulation and how these are aligned with the risk profile of the AIF disclosed to investors in accordance with Article 23(4)(c) of the Directive |  |
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| 1. **Liquidity Risk Management** |  |
| * details of the liquidity management systems and procedures for the AIF in line with the requirements laid down in Article 16 of the Directive and Article 46 of the Commission Delegated Regulation, taking into account the investment strategy, liquidity profile and the redemption policy of the AIF. |  |
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| 1. **Operational/ Professional Liability Risks** |  |
| * details of the internal operational risk management policies and procedures in place to identify, measure, manage and monitor appropriately operational risks including professional liability risks to which the AIFM is or could be reasonably exposed. |  |
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**Section 8: Investment in Securitisation Positions**

***This section deals with investment in securitisation positions by the AIFs in accordance with Article 17 of the AIFM Directive and Chapter III section 5 of the Commission Delegated Regulation.***

*Article 17 of the Directive outlines, inter alia, that AIFs may only invest in securitisation instruments issued after 1 January 2011 if, as a general rule, the originator, sponsor or original lender retains a net economic interest of not less than 5% in the respective position. If the net economic interest of the issuer falls below the 5% threshold, the AIF is required to hedge or sell the position, taking the best interests of the investors into account.*

*The Commission Delegated Regulation allows a transitional period up to 31 December 2014 with regard to existing positions of an AIF issued prior to 1 January 2011.*

*This section should be completed by internally managed AIFs and Fund Managers (including UCITS Management companies which also manage AIFs).*

* 1. Indicate whether the AIFM has any current investment in securitisation positions. *(In case of no such investments, please proceed to Section 9).*

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* 1. Where the AIFM has assumed exposure to a material value of credit risk of securitisation:

1. outline what monitoring procedures are in place (commensurate with the risk profile of the relevant AIF in relation to the credit risk of a securitisation position) in order to enable the AIFM to monitor, on an on-going basis and in a timely manner, performance information on the exposures underlying such securitisation positions;

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1. outline what arrangements are in place to identify, measure , manage, control and report the risks that arise because of mismatches between the assets and liabilities of the relevant AIF, concentration risk or investment risk arising from these instruments;

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1. indicate the percentage of material net economic interest retained by the originator, sponsor or original lender on an on-going basis as specifically disclosed to the AIFM.[[7]](#footnote-7)

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* 1. Specify the frequency of stress testing of the securitisation positions in terms of Article 53(2) of the Commission Delegated Regulation.

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**Section 9: Valuation**

***This section deals with the valuation policies and procedures for the AIF in accordance with Article 19 of the Directive and Chapter III Section 7 of the Commission Delegated Regulation.***

*This section should be completed by internally managed AIFs and Fund Managers (including UCITS Management companies which also manage AIFs).*

* 1. The AIFM is to have in place appropriate and consistent procedures for each AIF for proper and independent valuation of assets. The valuation policies and procedures for each type of asset that the AIF may invest in should be in line with Article 19 of the Directive and Articles 67 – 74 of the Commission Delegated Regulation. The AIFM should provide a declaration to this effect whilst also confirming that the valuation policies:

1. ensure a fair, appropriate and transparent valuation methodology for each type of asset, in accordance with applicable national law, with the AIF rules and with the instruments of incorporation;
2. provide for inputs, models and selection criteria for pricing and for market data sources;
3. provide that prices be obtained from independent sources;
4. address the competence and independence of personnel carrying out the valuation process; and
5. identify the obligations, roles and responsibilities of all parties involved in the valuation process.

The AIFM should also confirm that it has verified that the method and frequency applied to the calculation and publication of the NAV for the AIFs is in accordance with Articles 72 and 74 of the Commission Delegated Regulation.

* 1. Outline by whom the valuation function of the AIFM in respect of the AIFs is undertaken:

AIFM itself  *Or* External Valuer/s

* 1. a) If the valuation will be undertaken by the AIFM itself, indicate by whom the valuation is undertaken, demonstrating how the valuation task is functionally independent from the portfolio management and remuneration policy.

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b) Please also describe other measures ensuring that conflicts of interest are mitigated and that undue influence upon the employees undertaking the valuation task is prevented.

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* 1. Where external valuers are/ will be appointed by the AIFM and accordingly, the valuation task of the AIFs is not undertaken by the AIFM itself:-

1. Please confirm the identity of the external valuer.

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1. Demonstrate how such valuers are independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM.[[8]](#footnote-8)

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1. In the case where the depositary has been appointed as an external valuer, has the AIFM established that: i) it has functionally and hierarchically separated the performance of its depositary functions from its tasks as an external valuer; and ii) the potential conflicts of interests are properly identified, managed monitored and disclosed to the investors of the AIF? Please elaborate accordingly.

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* 1. Where external valuers are appointed, please demonstrate (by providing relevant details) that:-

a) the external valuer is subject to mandatory professional registration recognised by law or regulatory provisions or rules of professional conduct;

b) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function;

c) the appointment of the external valuer complies with the requirements of Article 20(1) and (2) as well the Commission Delegated Regulation adopted pursuant to Article 20(7).

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**Section 10: Delegation of AIFM Functions**

***This section deals with the delegation of functions by AIFMs in accordance with Article 20 of the Directive and Chapter III Section 8 of the Commission Delegated Regulation.***

*This section should be completed by internal managed AIFs and also by Fund Managers (excluding UCITS Management companies which also manage AIFs).*

*Where details of the delegation arrangements have already been provided in reply to the ‘Questionnaire on the Operational Arrangements of Fund Managers and Self-Managed Schemes’ (issued by the MFSA in February 2013), a cross reference to the relevant parts of the Questionnaire could be included. Supplementary information may be included as considered appropriate.*

*Internally-managed AIFs are required to submit the relevant portfolio/ risk management delegation agreements (if applicable).*

* 1. Outline the existing portfolio and risk management delegation arrangements, indicating the functions being retained by the AIFM and those being delegated. *[If the AIFM does not currently delegate/ intend to delegate any of the portfolio and risk management functions, please proceed to Section 11]*.

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* 1. Outline to whom any functions are/ will be delegated, including details (for each delegate) of the authorisation/ regulatory and registration status of the delegate (distinguishing between portfolio management and risk management) and outlining whether delegation is conferred on an entity belonging to the same corporate group as the AIFM.[[9]](#footnote-9)

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* 1. Outline what due diligence was conducted before the delegation.

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* 1. Where the AIFM has delegated functions to third parties, is the AIFM able to demonstrate that i) each delegate is qualified and capable of undertaking the functions in question ii) each delegate was selected with all due care iii) that the AIFM is in a position to monitor effectively at any time the delegated activity and to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors. Please elaborate.

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* 1. Have the risk management or portfolio management functions been delegated to a party whose interests may conflict with those of the AIFM or the investors of the AIF?

Yes  *or* No

1. If yes, outline any potential conflicts of interest and explain what arrangements are in place for such delegate to satisfy the provisions outlined in Article 20(2)(b) of the Directive.

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1. If no, explain how the existing delegation arrangements are considered not to give rise to potential conflicts of interest.

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***Sub-Delegation***

* 1. Outline any sub-delegation arrangements, providing details where the sub-delegate is authorised or registered and the functions being sub-delegated.

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* 1. Have the risk management or portfolio management functions been sub-delegated to a party whose interests may conflict with those of the AIFM or the investors of the AIF?

Yes  *or* No

1. If yes, outline any potential conflicts of interest and explain what arrangements are in place for such delegate to satisfy the provisions outlined in Article 20(5)(b) of the Directive.

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1. If no, explain how the existing delegation arrangements are considered not to give rise to potential conflicts of interest.

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***Monitoring/ control arrangements for delegated functions***

* 1. Indicate who is responsible within the AIFM for supervising the delegated functions to ensure that these are undertaken in compliance with applicable law and regulatory requirements.

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* 1. Provide a general overview of the methods and procedures for monitoring and reviewing on an on-going basis the services provided by the delegates.

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* 1. Provide details of the frequency of reporting in relation to the services provided by the delegates both in terms of reporting from the delegate to the AIFM and also internally to senior management / Board of Directors/ supervisory function.

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***Rationale for Delegation***

* 1. Provide a detailed description, explanation and evidence of the objective reasons for the delegation arrangements.

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* 1. Provide details justifying the extent of delegation of the Licence Holder with reference to the following criteria:

1. the types of assets the fund is invested in, and the importance of the assets managed under delegation for the risk and return profile of the fund;

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1. the importance of the assets under delegation for the achievement of the investment goals of the fund;

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1. the geographical and sectoral spread of the fund's investments;

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1. the risk profile of the fund and the type of investment strategies pursued by the fund;

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1. the type of tasks delegated in relation to those retained;

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1. the configuration of delegates and their sub-delegates, their geographical sphere of operation and their corporate structure including whether the delegation is conferred on an entity belonging to the same corporate group as the Licence Holder.

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**Section 11: Depositary**

***This section deals with the appointment of a depositary for the AIF in accordance with Article 21 of the Directive and Chapter IV Section I of the Commission Delegated Regulation.***

*This section should be completed by internally managed AIFs and Fund Managers (including UCITS Management companies which also manage AIFs).*

*Please refer to Section 5 of Part BIII of the Investment Services Rules for Investment Services Providers for the type of Depositary to be appointed.*

*If no depositary is required to be appointed as at the transposition date of the Directive (or otherwise is to be appointed at a later date, in line with the third country provisions applicable under the Directive in view that the AIF is non-EU and depending on whether it is marketed in the EU), the table still needs to be completed and columns 3 – 7 marked as not applicable.*

*In addition to the replies provided in this Section, the AIFM should also provide a declaration outlining that depository contractual arrangements are in place for each AIF listed (and for which the AIFM intends to market in the EEA states). The AIFM needs to confirm that the contents of each depositary agreement of AIFs reflects the requirements of Article 21 of the Directive and Chapter IV of the Commission Delegated Regulation. This declaration should also confirm that the Authority may contact the indicated depositaries in order to discuss the depositary arrangements that are in place in respect of the AIFs as required.*

*Licence Holders are strongly urged to consult a Legal Advisor to ensure that the agreements in place and the liability provisions contained therein are in line with the above-mentioned provisions of the Directive and the Commission Delegated Regulation.*

* 1. Please complete the table below:

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| --- | --- | --- | --- | --- | --- | --- |
| **AIF Name** | **EU/  Non EU AIF[[10]](#footnote-10)** | **Is the AIF marketed on the basis of the private placement exemption or on the basis of the pan-European passport?** | **Name of Depositary** | **Domicile of Depositary** | **Nature of licence** | **Type of Depositary services that the Depositary will provide[[11]](#footnote-11)** |
|  | Choose an item. |  |  |  |  |  |
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* 1. Has the AIFM appointed/ intends to appoint a prime broker on behalf of its AIFs?

Yes  or No

If Yes, i) have the terms on which the AIFM uses the services of a Prime Broker been set out in a written contract and ii) does the contract provide for any possibility of transfer and reuse of AIF assets and provide that the custodian be informed of the contract?

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**Section 12: Transparency and Disclosure Requirements**

***This section deals with the Licence Holder’s operational arrangements in terms of resources in view of the applicable transparency and disclosure requirements in terms of Article 22 and 23 of the Directive and Section I of Chapter V of the Commission Delegated Regulation.***

*This section needs to be completed by internally managed AIFs and Fund Managers (including UCITS Management Companies which also manage AIFs).*

*AIFMs should also provide a declaration outlining that the prospectus/ offering document of the EU and non-EU AIFs under management are in line with transparency and disclosure requirements in accordance with Article 22 and 23 of the Directive.*

* 1. Detail the operational arrangements in terms of resources that are put in place by the AIFM to comply with the additional reporting and disclosure requirements for the AIFM.

[Note: The additional reporting and disclosure requirements include:

i) those that are required to be submitted to the MFSA (including  the disclosure reporting requirements in respect of AIFs that employ leverage);

ii) those that are required to be disclosed to investors; and

iii) the additional disclosure requirements that are required to be included in the AIFM Annual Report].

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***Checklist***

Please ensure that the following documentation is attached, as applicable:

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|  | Enclosed |
| 1. Terms of Reference as per Section 1 |  |
| 1. Business Plan (if applicable only) as per Section 1 |  |
| 1. Financial Projections and Balance Sheet extract for the first year of operations as AIFM as per Section 1 |  |
| 1. Information on AIFs as per Section 2 |  |
| 1. Information on experience of staff in relation to the investment strategies of AIFs |  |
| 1. Professional Indemnity Insurance Cover as per Q.4.3 |  |
| 1. Declaration from the Board on the remuneration policy as per Section 5 |  |
| 1. Declaration from the Board on conflicts of interest as per Section 6 |  |
| 1. Risk Management policy document outlined in Q.7.4 |  |
| 1. Details of any derogation request on the Risk Management function as per Q.7.2 (as applicable) |  |
| 1. Declaration from the Board on the valuation as per Section 9 |  |
| 1. Portfolio/ Risk Management delegation agreements as per Section 10 |  |
| 1. Declaration from the Board on the depositary functions as per Section 11 |  |
| 1. Declaration from the Board with respect to the transparency and disclosure requirements as per Section 12. |  |

***Declaration***

I certify that to the best of my knowledge and belief, the information supplied in this form is complete and accurate in all material respects.

Name (in block capitals):

Position Title:

Date:

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This declaration should be signed by an official of the Licence Holder who has sufficient standing or by an individual who has been authorised to sign on behalf of the Licence Holder.

1. Note: Please refer to Article 3(2) of the Directive and Article 2 *‘Calculation of total value of assets under management’* of the Commission Delegated Regulation. [↑](#footnote-ref-1)
2. Licence Holders in so far as they manage AIFs of the closed-ended type prior to 22 July 2013 which do not make any additional investments after 22 July 2013 may continue to manage such AIFs without submitting an application for an AIFM authorisation. However, such Licence Holders shall still be subject to the requirements as set out in Part BIII of the Investment Services Rules for Investment Services Providers. [↑](#footnote-ref-2)
3. Licence Holders in so far as they manage AIFs of the closed-ended type whose subscription period for investors has closed prior to the 22 July 2013 and are constituted for a period of time which expires at the latest 3 years after 22 July 2013, may continue to manage such AIFs without needing to comply with the requirements as set out in Part BIII of the Investment Services Rules for Investment Services Providers with the exception of : i) SLCs 7.01 to 7.03 of Part BIII and SLCs 2.01 to 2.07 of Appendix 13 of the Rules and ii) where relevant SLCs 9.01 to 9.21 of Part BIII and SLCs 2.08 to 2.10 of Appendix 13 of the Rules. [↑](#footnote-ref-3)
4. AIFMs are required to submit details of the basis of which a derogation is requested from the requirement for the establishment of a permanent risk management function which is hierarchically and functionally independent from the operating units. [↑](#footnote-ref-4)
5. AIFMs are required to submit a Personal Questionnaire Form in respect of the individuals undertaking the risk management function. [↑](#footnote-ref-5)
6. AIFMs are required to submit a CV of the individual/s monitoring the delegated risk management, including the CV of the individual/s carrying out the risk management function within the delegated party. [↑](#footnote-ref-6)
7. Certain exemptions apply pursuant to Article 51(2) of the Commission Delegated Regulation. [↑](#footnote-ref-7)
8. In accordance with Article 19(7), AIFMs shall notify the appointment of the external valuer to the competent authorities of their home Member State, which may require that another valuer be appointed instead where the conditions laid down in paragraph 5 of Article 19 are not met. [↑](#footnote-ref-8)
9. [Note:- Where the AIFM has delegated or intends to delegate any risk management or portfolio management activities to entities which are not authorised or registered for the purposes of asset management (in line with Article 20 (1)(C) of Directive and Article 78 of the Commission Delegated Regulation], the arrangements are subject to the approval of the MFSA. Relevant details would need to be provided]. [↑](#footnote-ref-9)
10. For AIFMs managing EEA AIFs, the depositary should be established in the home Member State of the AIF – depending on whether the home jurisdiction of the AIF will make use of the four year transitional period in accordance with Article 61(5) of the Directive.

    For Non-EEA AIFs, the depositary should be established in the third country where the AIF is established or in the home Member State of the AIFM managing the AIF or in the Member State of reference of the AIFM. [↑](#footnote-ref-10)
11. i.e. ‘Full-Scope Depositary’ or ‘Depositary light’. The latter involves the appointment of one or more entity by the AIFM to carry out the duties referred to in Articles 21(7), (8) and (9) as per Article 36 of the Directive. [↑](#footnote-ref-11)