

Checklist prospectus

Alternative Investment Fund (AIF)

This is the checklist for a prospectus of an Alternative Investment Fund. This checklist can support you in the preparation of a prospectus for offering units to professional and non-professional investors (hereafter: retail investors). This checklist is an update of the checklist that is published in March 2020 and outlines the latest revisions in applicable laws and regulations.



When offering units in an Alternative Investment Fund in the Netherlands, a prospectus is provided to the investor before the investor acquires the units. This checklist aims to support (the management company of) an Alternative Investment Fund in preparing a prospectus which complies with relevant laws and regulations.

Introduction

This checklist primarily helps you to determine whether your prospectus complies with the legal requirements for the prospectus of an Alternative Investment Fund (hereinafter: AIF). This checklist is relevant for (the management company of) an AIF who has a license as outlined in art. 2:65 Dutch Act on Financial Supervision (hereafter: Wft) to offer participation rights in the Netherlands (hereafter: AIFM license).

The original checklist is drafted in Dutch. This document is an English translation of the original. In the case of any discrepancies between the English and the Dutch text, the latter will prevail.

Three prospectus regimes

For an AIF three prospectus regimes could be distinguished:

- **AIFMD prospectus regime:** this prospectus regime applies to the prospectus of an AIF when the units are only distributed to professional investors (AIFMD prospectus). The requirements regarding the AIFMD prospectus are outlined in article 4:37l Wft and are further described in article 115j Decree on the Supervision of the Conduct of Financial Undertakings pursuant to the Wft (hereafter: BGfo) and article 23 sub 1 and 2 Alternative Investment Fund Directive (hereafter: AIFMD). Part 1 of this checklist outlines these requirements.
- **Retail prospectus regime:** this prospectus regime applies to the prospectus of an AIF when the units are (also) distributed to retail investors. In addition to the requirements as outlined under the AIFMD prospectus regime, the prospectus complies with the requirements as outlined in article 4:37p Wft. These requirements are further outlined in article 115v, 115x, 118 and Annex I BGfo. Part 3 outlines these additional requirements.
- **Prospectus regulation regime:** this prospectus regime applies to the prospectus of an AIF who qualifies as a closed-end AIF and when the units are offered to the public or admitted to trading on a regulated market. In addition to the requirements as outlined under the AIFMD prospectus regime, the prospectus complies with the requirements as outlined in the Prospectus Regulation (Regulation (EU) 2017/1129). The requirements as outlined in the Prospectus Regulation are not incorporated in this checklist. Therefore this checklist is not suitable to prepare the prospectus of these AIFs.

In addition to the aforementioned requirements, the prospectus of an AIF who participates in securities financing transactions should comply with the requirements as outlined in Part 2 of this checklist.

Content of this checklist

Part 1 describes the general requirements with respect to the prospectus of an AIF. Part 2 outlines the additional requirements for AIFs who participate in securities financing transactions. Part 3 outlines the additional requirements for the prospectus if units of the AIF are distributed to retail investors. In the appendix 'Articles of laws, referred to in the checklist', all relevant articles are included with respect to this checklist.

Scope of this checklist

This checklist does not include the requirements for the following specific investment institutions:

- European long-term investment funds
- European social entrepreneurship funds
- European venture capital funds; and
- Money market funds.

Therefore this checklist is not suitable to prepare the prospectus of one of the aforementioned investment funds.

Relevant laws and regulations

The most important laws and regulations that apply when preparing a prospectus for an AIF is included in the laws and regulations as outlined below:

- Dutch Act on Financial Supervision, Part 4 Supervision of conduct of Financial Undertakings;
- Decree on the Supervision of the Conduct of Financial Undertakings pursuant to the Wft, section 10.3 Participation in investment institution or UCITS;
- Directive 2011/61/EU on Alternative Investment Fund Managers;
- Regulation on sustainability related disclosures in the financial services sector EU 2019/2088 (hereafter: SFDR);
- Delegated Regulation EU/231/2013 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (hereafter AIFM-delegated regulation); and
- Regulation on transparency of Securities Financing Transactions and of reuse (hereafter: SFTs Regulation).

New information disclosure requirements regarding sustainability

When preparing the prospectus you also have to take into account the upcoming information disclosure requirements regarding sustainability.

These requirements are outlined in Regulation EU/2019/2088 (SFDR) and will enter into force at 10 March 2021. Additional requirements will be set in Level 2 regulation (Regulatory Technical Standards), which needs to be finalised.

Based on these new requirements (management companies of) AIFs should incorporate the following information in the prospectus:

- **Information regarding the integration of sustainability risks in the investment policy:** (management companies of) AIFs shall include the following disclosure requirements in the prospectus: (a) the manner in which sustainability risks are integrated into their investment decision and (b) the results of the assessment of the likely impacts of sustainability risks on the returns of the AIF. When (management companies of) AIFs deem sustainability risks not to be relevant, the description shall include a clear and concise explanation of the reasons therefor.
- **Information regarding the principal adverse impact of sustainability factors:** (management companies of) AIFs shall include in the prospectus: (a) a clear and reasoned explanation of whether, and, if so, how the AIF considers principal adverse impacts on sustainability factors, and (b) a statement that information on principal adverse impacts on sustainability factors is available in the periodic reports. Where (the management company of) an AIF doesn't take the principal adverse impact of sustainability factors into account within the investment decision process, the prospectus outlines a statement that the AIF does not consider the adverse impacts of investment decisions on sustainability factors and the reasons therefore.
- **Information regarding sustainability fund objectives:** when the AIF aims to promote environmental or social characteristics or has sustainable investment as its objective, the prospectus text should disclose additional information on how the characteristics or objective is met and if an index is used as reference benchmark how this index is aligned with the objective.



Important considerations for using this checklist:

The following important considerations apply for using this checklist:

1. The definitions used are in accordance with the Wft. For additional references you have to consult the Wft. You can use the following [link](#).
2. The Wft requirements and references in this checklist are presented as at 1 December 2020. The user of this checklist is responsible to determine whether any relevant change occurred after this date. Consult your legal advisor, if deemed necessary.
3. The checklist applies only to (management companies of) AIFs offering units in the Netherlands. Other countries may have different or additional rules.
4. Guidance of the national supervision authority (AFM/ DNB) and the European supervision authority (ESMA) are not incorporated in this checklist.
5. Any specific sector guidance is not incorporated in this checklist.
6. This checklist does not guarantee a complete overview of the legal requirements regarding the prospectus. This checklist only outlines which information should be incorporated in the prospectus. The checklist does not provide any further details on how these requirements should be interpreted.



Please contact one of the contact persons, as referred to at the end of this document, if you have any questions with respect to this checklist.

Part 1



These requirements apply to a prospectus of an AIF where units are offered to professional and/or retail investors.

Article 4:37l Wft

1. If the AIFM offers units in an investment institution managed by him in The Netherlands, he will provide the investors with a prospectus over the AIF before they acquire the units.
2. The AIFM will update the prospectus, as mentioned in Article 4:37l (1), as soon as there is reason to do so.
3. If an investment institution consists of sub funds, the management company includes the conditions which apply specifically to each sub fund in the prospectus of the investment institution.
4. Rules are set by or pursuant to General Administrative Regulation with regard to the prospectus as mentioned Article 4:37l (1).
5. Article 4:37l (1) to (4) does not apply to management companies of investment institutions who manage investment institutions with transferable units, the units of which are at the participants' request, repurchased or redeemed, directly or indirectly, out of the assets, as far as the investment institution is required under Supervision of the conduct of financial markets (Gedragstoezicht financiële markten) to prepare a prospectus.

Article 115j BGfo

The prospectus as mentioned in Article 4:37l (1) contains at least the information as stated in Article 23(1) and (2) first sentence of the AIFMD.



	Article 23 AIFMD and article 53 AIFMDR	PAGE	COMMENTS
	Disclosure to investors (Article 23 (1))		
1.	AIFMs shall for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union make available to AIF investors, in accordance with the AIF rules or instruments of incorporation, the following information before they invest in the AIF, as well as any material changes thereof:		
a.	<ul style="list-style-type: none"> — a description of the investment strategy and objectives of the AIF; — information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds; — a description of the types of assets in which the AIF may invest; — the techniques it may employ and all associated risks; — any applicable investment restrictions. When the active of the AIF consists of securitisations, AIFMs shall include appropriate information on their exposures to the credit risk of securitisation and their risk management procedures in this area; — the circumstances in which the AIF may use leverage; — the types and sources of leverage permitted and the associated risks; — any restrictions on the use of leverage and any collateral and asset reuse arrangements; — the maximum level of leverage the AIFM is entitled to employ on behalf of the AIF. 		
b.	a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;		
c.	a 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;		
d.	the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;		
e.	a description of how the AIFM is complying with the requirements of Article 9(7); <i>(see appendix for further description)</i>		
f.	a description of any delegated management function as referred to in Annex I 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; <i>(see appendix for further description)</i>		

		PAGE	COMMENTS
g.	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 in accordance with Article 19; <i>(see appendix for further description)</i>		
h.	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;		
i.	a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;		
j.	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;		
k.	the latest annual report referred to in Article 22; <i>(see appendix for further description)</i>		
l.	the procedure and conditions for the issue and sale of units or shares;		
m.	the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with Article 19; <i>(see appendix for further description)</i>		
n.	where available, the historical performance of the AIF;		
o.	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 and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;		
p.	a description of how and when the information required under paragraphs 4 and 5 of Article 23 will be disclosed. <i>(see appendix for further description)</i>		
	Disclosure to investors with respect to liability depositary (Article 23 (2))		
2.	<p>The AIFM shall inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Article 21(13). <i>(see appendix for further description)</i></p> <p>The AIFM shall also inform investors of any changes with respect to depositary liability without delay.</p>		

Additional requirements on sustainability

The requirements below apply to a prospectus of an AIF on sustainability.

These requirements are applicable on AIF's and UCITS.

	Article 6 Transparency of the integration of sustainability risks (grey, light green and dark green)	PAGE	COMMENTS
1.	Financial market participants (like a management company of an AIF) shall include descriptions of the following in pre-contractual disclosures:		
a.	the manner in which sustainability risks are integrated into their investment decisions; and		
b.	the results of the assessment of the likely impacts of sustainability risks on the returns of the financial products they make available;		
c.	Where financial market participants deem sustainability risks not to be relevant, the descriptions referred to in the first subparagraph shall include a clear and concise explanation of the reasons therefor.		
	Article 8 Transparency of the promotion of environmental or social characteristics in pre-contractual disclosures (light green)		
1.	Where a financial product promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics, provided that the companies in which the investments are made follow good governance practices, the information to be disclosed in the pursuant to Article 6(1) and (3) shall include the following:		
a.	information on how those characteristics are met;		
b.	if an index has been designated as a reference benchmark, information on whether and how this index is consistent with those characteristics;		
2.	Financial market participants shall include in the information to be disclosed an indication of where the methodology used for the calculation of the index is to be found.		
	Article 9 Transparency of sustainable investments in pre-contractual disclosures (dark green)		
1.	Where a financial product has sustainable investment as its objective and an index has been designated as a reference benchmark, the information to be disclosed shall be accompanied by the following:		
a.	information on how the designated index is aligned with that objective;		
b.	an explanation as to why and how the designated index aligned with that objective differs from a broad market index.		
2.	If no index has been designated as a reference benchmark, the information to be disclosed shall include an explanation on how the objective is to be attained.		

		PAGE	COMMENTS
3.	Where a financial product has a reduction in carbon emissions as its objective, the information to be disclosed includes the objective of low carbon emission exposure in view of achieving the long-term global warming objectives of the Paris Agreement.		
a.	Where no EU Climate Transition Benchmark or EU Paris-aligned Benchmark is available, the information disclosed includes a detailed explanation of how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming objectives of the Paris Agreement.		
	Financial market participants shall include in the pre-contractual disclosures an indication of where the methodology used for the calculation of the indices and the benchmarks referred to in 3a are to be found.		



Part 2



Additional requirements for specific AIFs

The requirements below apply to a prospectus of an AIF who participates in securities financing transactions. These requirements apply to both AIFs and UCITS. In the articles below, each reference to UCITS has been removed to increase the readability of the articles.

Regulation EU/2015/2365 (SFTs Regulation)

Article 14 Transparency of collective investment undertakings in pre-contractual documents

Article 14 (1)

The UCITS prospectus referred to in Article 69 of Directive 2009/65/EC, and the disclosure by AIFMs to investors referred to in Article 23(1) and (3) of Directive 2011/61/EU shall specify the Securities Financing Transactions (SFTs) and total return swaps which AIFMs respectively, are authorized to use and include a clear statement that those transactions and instruments are used.

Article 14 (2)

The prospectus and the disclosure to investors referred to in paragraph 1 shall include the data provided for in Section B of the Annex (see below).

Article 14 (3)

In order to reflect evolving market practices or to ensure uniform disclosure of data, ESMA may, taking into account the requirements laid down in Directives 2009/65/EC and 2011/61/EU, develop draft regulatory technical standards further specifying the content of Section B of the Annex.

In preparing the draft regulatory technical standards referred to in the first subparagraph, ESMA shall take into account the need to allow for a sufficient time before their application.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Section B of the Annex	PAGE	COMMENTS
Information to be included in the AIF disclosure to investors		
General description of the SFTs and total return swaps used by the collective investment undertaking and the rationale for their use.		
Overall data to be reported for each type of SFTs and total return swaps: <ul style="list-style-type: none"> — Types of assets that can be subject to them — Maximum proportion of AUM that can be subject to them — Expected proportion of AUM that will be subject to each of them. 		
Criteria used to select counterparties (including legal status, country of origin, minimum credit rating).		
Acceptable collateral: description of acceptable collateral with regard to asset types, issuer, maturity, liquidity as well as the collateral diversification and correlation policies.		
Collateral valuation: description of the collateral valuation methodology used and its rationale, and whether daily mark-to-market and daily variation margins are used.		
Risk management: description of the risks linked to SFTs and total return swaps as well as risks linked to collateral management, such as operational, liquidity, counterparty, custody and legal risks and, where applicable, the risks arising from its reuse.		
Specification of how assets subject to SFTs and total return swaps and collateral received are safe-kept (e.g. with fund custodian).		
Specification of any restrictions (regulatory or self-imposed) on reuse of collateral.		
Policy on sharing of return generated by SFTs and total return swaps: description of the proportions of the revenue generated by SFTs and total return swaps that is returned to the collective investment undertaking, and of the costs and fees assigned to the manager or third parties (e.g. the agent lender). The prospectus or disclosure to investors shall also indicate if these are related parties to the manager.		

Part 3



If units are offered to retail investors, *additional* requirements are applicable for the prospectus, except for the situation that units can only be acquired if the counter-value per participant is at least €100,000 or the nominal value is at least €100,000.

Article 4:37p Wft

1. More detailed regulations will be provided by or pursuant to General Administrative Regulation with respect to business operations, information to investors and participants, information to supervisory bodies and the adequate treatment of participants. These additional rules apply if an AIFM offers units to non-professional investors in the Netherlands. The additional rules do not apply if the AIFM offers units:
 - a. which can only be acquired for a counter value (tegenwaarde) of at least €100,000 per participant; of
 - b. which have a nominal value per unit of at least €100,000.
2. More detailed regulations can be provided by General Administrative Regulation. Pursuant to which the Authority for the Financial Markets (AFM) can grant an exemption of the rules pursuant to the first paragraph.

Article 115v(2) BGfo	PAGE	COMMENTS
2. The management company shall state the address of the website in the prospectus, pursuant to Article 4:37l of the Act.		



	Article 115x BGfo	PAGE	COMMENTS
1.	Without prejudice to Article 115j, the prospectus also contains (please note: the term 'investment institution' is replaced by the term 'AIF' to increase the readability):		
a.	the information as mentioned in Annex I with the exception of paragraphs 1.3, 1.5, 1.6, 1.7, 1.8, 1.10, 3.2, 3.3, 4.7, 5.1, 5.3, 5.12, 5.15–5.18, 5.20, 7.1, 7.4, 10.2 and 11.1;		See Annex I
b.	the information as mentioned in Annex I, paragraphs 3.2, 3.3, 4.7 and 10.2. This information will only be published on the website of the management company;		See Annex I
c.	the information which is necessary for investors to form an opinion on the AIF and the costs and risks of the AIF;		
d.	a statement of the management company that the management company itself, the AIF and, if applicable, the depositary associated with it, comply with the applicable rules laid down by or Pursuant to the Act and that the prospectus complies with the rules laid down by or pursuant to the Act.		
e.	a statement from the auditor (with the name and the office address of the auditor) that the prospectus contains the information as required in the applicable laws and regulations.		
2.	The Authority for the Financial Markets (AFM) may require that the prospectus, as mentioned in Article 4:37I of the Wft, of the management company, will become available in one or more additional languages, if determined necessary in view of the planned distribution for providing adequate information to the public.		
3.	Article 118 (2) and (3) apply accordingly.		See below
4.	This article does not apply when units of the AIF's are tradeable and where assets cannot be redeemed (or paid back) directly or indirectly by action of the unitholders.		
Article 118 (2) BGfo			
2.	The prospectus shall contain in separate paragraphs information on the following subjects (<i>please note: UCITS must be read as AIF based on Article 115x (3) BGfo</i>):		
a.	the costs of the UCITS and the manner in which these costs are charged to the result of the UCITS, are offset against the managed assets or are charged in other ways, either directly or indirectly, to the unitholders in the UCITS; and		
b.	the risks associated with the UCITS.		
Article 118 (3) BGfo			
3.	The Authority for the Financial Markets (AFM) can lay down additional rules concerning the manner in which the information as listed in Annex I BGfo is included in the prospectus.		

Annex I BGfo

REMARK: In the text below as derived from the Dutch BGfo, the term 'icbe/UCITS' has been replaced by the term 'AIF' to increase the readability. Substantially all articles of Annex I BGfo are applicable for AIFs, based on Article 115x of the BGfo.

		PAGE	COMMENTS
1.	General information on the AIF		
1.1	The legal form of the AIF.		
1.2	<ul style="list-style-type: none"> — The name of the AIF. — The location of the registered office and location of the headquarters of the AIF. — The date of incorporation. — The period of time for which the AIF was incorporated if it was not established for an indefinite period. — If applicable, the number under which the AIF is registered in the Trade Register and the location of registration. 		
1.4	<ul style="list-style-type: none"> — The names of advisors and advisory firms whose services the AIF procures for its investments. — The services provided by advisors and advisory firms, insofar their services are based on a contract. — The manner in which the costs of the services are charged to the result of the AIF, are deducted from the assets under management or otherwise are charged directly or indirectly to the unitholders in the AIF, and any notification thereof can be of importance to the unitholders. 		
1.9	A description of the main points of the management and depositary agreement between the management company and the depositary of the AIF and a statement to the effect that, upon request, a copy of the agreement can be obtained on payment of a fee not exceeding the cost price.		
1.11	The names of any other UCITS and AIFs managed by the AIFM.		
1.12	The manner in which unitholders can lodge complaints about the AIF to the management company.		
2.	Information regarding the persons who determine or co-determine the AIF (daily) policy or who are part of the supervisory board of the AIF		
	The names of the persons who determine or co-determine the AIFs policy or who belong to a body responsible for supervising the investment company's policy and general affairs, a list of the principal activities performed by these persons outside the AIF insofar as these activities are related to the AIFs operations.		

		PAGE	COMMENTS
3.	Information regarding amendments of the terms and conditions		
3.1	The manner in which the terms and conditions applicable between the AIF and the unitholders may be amended.		
3.4	Monitoring of the fact that an amendment to the terms and conditions applicable between the AIF and the unitholders entailing a reduction of the unitholders' rights or security or the imposition of charges on the unitholders will not be invoked towards the unitholders before one month has elapsed since the publication of the amendment as referred to in section 3.3, and that unitholders may withdraw under the usual terms and conditions during this period.		
3.5	Mentioning the fact that an amendment to the terms and conditions applicable between the AIF and the unitholders entailing a change in the investment policy will not be implemented before one month has elapsed since the publication of the amendment as referred to in section 3.3, and that unitholders may withdraw under the usual terms and conditions during this period.		
4.	Information regarding sharing of information		
4.1	The way in which the AIF regularly provides information.		
4.2	The date on which the annual report and the half-year figures of the AIF must be completed pursuant to its terms and conditions or Part 9 of Book 2 of the Dutch Civil Code, mentioning the fact that these documents are available on the management company's website and that the unitholders can obtain these documents from the management company free of charge.		
4.3	The locations where the license of the AIFM and the fund regulations or the articles of association of the AIF can be obtained.		
4.4	Mentioning the fact that anyone can obtain a copy of the fund regulations or the articles of association upon request, free of charge.		
4.5	Mentioning the fact that, upon request, anyone can obtain the data of the management company, the AIF and, if applicable, the depositary, which must be included in the Trade Register pursuant to any legal regulation, on payment of a consideration not exceeding the cost price.		

		PAGE	COMMENTS
4.6	Mentioning the fact that, upon request, the unitholders can obtain the following information on payment of a consideration not exceeding the cost price:		
a.	a copy of the management company's license;		
b.	a copy of a decision taken by the Authority for the Financial Markets (AFM) to grant dispensation from the provisions arising from the Act (Wft) with regard to the management company, the AIF under its management and any depositary affiliated to this scheme; or		
c.	a copy of the statement referred to in Article 50(2) BGfo. <i>(see appendix of this checklist for further description).</i>		
5.	Information on operations and investment policies		
5.2	The manner in which it is decided whether the returns of the AIF will be paid out or reinvested.		
5.4	If applicable: the authority to take out loans as a debtor or to lend financial instruments.		
5.5	If applicable: a description of the main points of agreements concluded with the affiliated parties of the management company, investment company or depositary.		
5.6	If there are transactions with the AIFM, investment company or depositary related parties:		
a.	a description of the types of transactions concerned;		
b.	a statement as to whether the transactions with the affiliated parties take place on market-based terms and conditions, and if not, the reason for this; and		
c.	in the case of transactions not conducted on a regulated market or another market in financial instruments: a statement to the effect that the transaction is based in all cases on an independent valuation, or that a valuation by one or more of the parties involved in the transaction is also possible.		
5.7	If applicable: a statement that the AIF may invest in parties affiliated to the AIFM, investment company or depositary of the AIF.		
5.8	If applicable: a statement to the effect that the AIF may invest in other UCITS or AIFs, either directly or indirectly.		

		PAGE	COMMENTS
5.9	If the AIF invests 20 percent or more of the managed assets in another AIF or UCITS, either directly or indirectly:		
a.	a description of the manner in which information is provided about the other UCITS or AIF; and		
b.	if applicable: the arrangements between the AIF and the other UCITS or AIF about cost distribution and to whom the benefits will accrue.		
5.10	If applicable: a statement that the investment institution (AIF) invests in another investment company, UCITS or a party related to the management company, investment company (AIF), UCITS or depositary or in another investment institution (AIF) or UCITS managed by a party related to the management company, investment company (AIF), UCITS or depositary and the conditions under which the sale or purchase of, as well as the repayment on the units in the other investment institution (AIF) or UCITS takes place.		
5.11	If the AIF invests 85 percent or more of the managed assets in another investment institution (AIF) or UCITS, either directly or indirectly: a description of the investment policy of the other investment institution (AIF) or UCITS.		
5.13	If applicable: the regulated market and the other markets in financial instruments where the financial instruments in which the AIF invests are traded.		
5.14	If applicable: the manner in which and the terms and conditions on which third parties maintain the market in units on the instructions of the AIF or on the instructions of its management company.		
5.19	If applicable: mentioning the fact that the value of the assets may fluctuate considerably as a result of the investment policy.		
6.	Information on fees and costs		
6.1	The incorporation costs of the AIF and the manner in which these costs are charged to the result of the AIF, offset against the managed assets or charged in other ways to the unitholders in the AIF, and which portion accrues to the management company, the depositary, to the directors of the management company, AIF or depositary, or to parties affiliated to the management company or depositary, AIF or depositary.		
6.2	The costs incurred for the management of the AIF, the custody of the assets of the AIF, the auditor, the supervision and the marketing, including the calculation basis and the manner in which these costs are charged to the result of the AIF, offset against the managed assets or charged in other ways to the unitholders in the AIF.		
6.3	The identifiable and quantifiable transaction costs, and the manner in which these costs are charged to the result of the AIF, offset against the managed assets or charged in other ways to the unitholders in the AIF.		

		PAGE	COMMENTS
6.4	If applicable: the costs incurred or fees demanded in connection with the borrowing and lending of financial instruments, and the manner in which these costs are charged to the result, offset against the managed assets or charged in other ways to the unitholders in the AIF, respectively to whom these fees accrue.		
6.5	If applicable: the costs of issuing orders to third parties to perform one or more activities in the context of the management of the AIF or the custody of the assets of the AIF, and the manner in which these costs are charged to the result, offset against the managed assets or charged in other ways to the unitholders in the AIF.		
6.6	A description of the current remuneration policy, with at least a description of the method of calculating the remuneration and the benefits, the identity of the persons responsible for awarding the remuneration and the benefits, including the composition of the remuneration committee, if such a remuneration committee has been established, or a summary of the remuneration policy and a statement that a description of the current remuneration policy is available via the website stating the address of the website and that a copy can be obtained free of charge upon request.		
6.7	All costs other than those referred to in sections 6.1 to 6.5, distinguished by type, which exceed 10 percent of the total costs, including the calculation basis, and the manner in which these costs are charged to the result of the AIF, offset against the managed assets or charged in other ways to the unitholders in the AIF.		
6.8	If the level of the costs referred to in sections 6.1 to 6.6 is not known yet: the maximum amount of these costs.		
6.9	The total sum of the costs referred to in sections 6.1 to 6.6.		
6.10	The costs, distinguished by type, which result from direct or indirect investments in other investment institution (AIF) or UCITS.		
6.11	The manner in which the surcharges and discounts are calculated and to whom the surcharges and discounts accrue, as well as all the other one-off amounts paid by the unitholders in the AIF at the time of admission and withdrawal, including the calculation basis.		
6.12	If applicable: a description of the arrangements regarding return provisions, specifying the parties to whom the return provisions accrue.		
6.13	If applicable: a description of arrangements regarding items received by or promised to the management company, the depositary, the directors of the management company, AIF or depositary, parties affiliated to the management company, AIF or depositary or third parties for executing orders for the benefit of the management company or the AIF.		

		PAGE	COMMENTS
7.	Information of the units in the AIF		
7.2	The nature and the main features of the units in the AIF, including a description of any voting right attached to the units and of the form in which they can be traded and any restrictions to this trade.		
7.3	A statement as to whether the AIF is listed on a regulated market or another market in financial instruments.		
7.5	If applicable: the manner of determining the offering price, the selling or purchase price, and the amount upon repayment of the value of the units, in particular:		
a.	how and with what regularity these prices are calculated; and		
b.	how, where and with what regularity these prices are published.		
	This obligation shall not apply to AIFs whose units are officially listed on a regulated market or another market in financial instruments designated by the Authority for the Financial Markets (AFM), or whose units are likely soon to be listed on such a market; nor shall this obligation apply to the investment companies referred to in Article 126(1). <i>(Article 126(1) is withdrawn as of 15 March 2016).</i>		
7.6	A description of the regulations governing the determination and appropriation of the profit, and of the manner in which and frequency with which profit distributions will be made.		
7.7	A statement to the effect that every unit of the same type gives an entitlement to a proportional share in the capital of the AIF insofar as this capital accrues to unitholders.		
7.8	A statement to the effect that, except where provided free of charge, units will only be offered if the net price has been paid into the capital of the AIF within the specified periods.		
7.9	A statement that the AIF is required to, at the unitholders' request, directly or indirectly repurchase its units against the assets or to repay the value of the units. This obligation does not apply to the investment companies as referred to in Article 126(1) BGfo. <i>(Article 126 is withdrawn as of 15 March 2016)</i>		
7.10	The locations in each Member State where the AIF markets its units, or has these marketed.		

		PAGE	COMMENTS
7.11	In the case of an AIF offering units with a different risk profile:		
a.	the types of units; and		
b.	how a unitholder in the AIF can convert an investment in one type of units to another offered type of units in the AIF and the associated costs for the unitholder.		
7.12	In the case of a AIF whose units are repurchased or repaid out of the assets at the unitholders' request, either directly or indirectly, insofar as reasonably foreseeable: the cases in which the repurchase of the units or the repayment of the value of the units may be suspended in the interest of the unitholders', and the manner in which the repurchase and repayment, respectively, may be suspended.		
7.13	In the case of a AIF whose units are repurchased or repaid directly, or indirectly out of the assets, at the unitholders' request: a statement to the effect that there are sufficient guarantees to ensure that, subject to statutory provisions and the cases referred to in section 7.12, the repurchase and repayment obligation can be fulfilled.		
7.14	If it concerns a investment company as referred to in Article 126(2) (Article 126 is withdrawn as of 15 March 2016): the regulated market or the other market in financial instruments in the trading state whose quotation determines the price for the transactions that are performed by the investment companies in that state outside the regulated market or the market in financial instruments.		
8.	Information on the risk profile		
8.1	A statement to the effect that the value of the investments may either increase or decrease, and that the investors may not receive the full amount of the investment.		
8.2	A description of each risk which investors may run on their investment, insofar as this risk is significant and relevant in the light of its consequences and probability. This description must contain a brief and clear explanation of each specific risk arising from a particular investment policy or relating to specific markets relevant to the AIF, including:		
a.	the risk of the entire market or an investment category plummeting, which will affect the price and value of the investments;		
b.	the risk of an issuing institution or a counterparty defaulting;		

		PAGE	COMMENTS
c.	if applicable: the risk that a settlement via a payment system does not take place in accordance with expectations, because the payment or the transfer of the financial instruments by a counterparty does not take place or takes place later than expected;		
d.	the risk that a position cannot be liquidated in time at a reasonable price;		
e.	the risk that the value of an investment is affected by exchange rate fluctuations;		
f.	if applicable: the risk of losing assets placed in custody as a result of insolvency, negligence or fraudulent acts on the part of the custodian or a sub-custodian; and		
g.	the risk attached to a strong concentration of the investments in particular types or on particular markets.		
8.3	Where applicable, the description referred to in section 8.2 shall also address the following factors that may affect the AIF:		
a.	the yield risk, including the fact that the risk may vary in accordance with the choices possible under the investment policy, as well as the existence or absence of, or limitations to, any third-party guarantees;		
b.	risks to the capital, including the potential risk of erosion caused by unit withdrawals and profit distributions that exceed the investment return;		
c.	the dependence on a provider's or guarantor's performance, if the investment in the product entails a direct investment in a provider rather than an investment held by the provider;		
d.	the inflexibility inherent in the product itself, including the risk of premature surrender, and restrictions on switching to other providers;		
e.	the inflation risk;		
f.	the risk of uncertainty about external factors, such as the applicable tax regime.		
8.4	The information referred to in sections 8.1 to 8.3 shall be presented in order of importance, to be determined on the basis of the size and relevance of the risks.		
8.5	If applicable: a separate and identifiable statement to the effect that an investment institution is divided into different categories of unitholders, whereby a separate investment policy applies to each individual category and one or more categories of unitholders may run financial risks under the investment policy that go beyond the capital which they accumulated for investment in the AIF.		

		PAGE	COMMENTS
8.6	If the AIF borrows or lends financial instruments:		
a.	the maximum percentage of financial instruments that may be borrowed or lent in relation to the investment portfolio;		
b.	a description of the security obtained by the AIF;		
c.	a description of the types of institutions from which or to which financial instruments may be borrowed and lent, respectively; and		
d.	the risks attached to securities borrowing or lending.		
8.7	If the AIF invests funds borrowed on behalf or at the expense and risk of the unitholders:		
a.	the risks attached to investing funds borrowed on behalf or at the expense and risk of the unitholders in the AIF;		
b.	mentioning of any obligation for the unitholders in the AIF to make up possible deficits of the AIF if the losses exceed the investment; and		
c.	mentioning of the maximum size of the investments that may be purchased with borrowed funds. This maximum size may be indicated as an absolute value or as a percentage of the managed assets.		
9.	Information on termination of the AIF		
	A description of the manner in which and the terms and conditions on which the termination and liquidation of the AIF will take place, in particular in relation to the rights of the unitholders in the AIF.		
10.	Information on meetings of the unitholders		
10.1	The situations in which meetings of unitholders in the AIF will be held, the regulations for convening these meetings and the manner in which the voting right is arranged.		
11.	Information about the valuation of the assets		
11.2	Disclosing the fact that the net asset value of the units in the AIF will be disclosed on the management company website.		
11.3	Disclosing of the circumstances under which and the manner in which unitholders will be compensated for an incorrectly calculated net asset value, in particular any maximum percentage of deviation, measured against the correctly calculated net asset value, for which compensation is granted.		

		PAGE	COMMENTS
12.	Information on the tax system		
12.1	A brief description of the tax system applicable to AIF, including, where applicable, an indication that withholding tax will be deducted from revenue and capital gains which the AIF pays out to unitholders.		
12.2	Officially published amendments to the applicable tax system of which it is certain that they will enter into force unchanged in terms of form and content, insofar as these amendments are of direct importance to the unitholders in the AIF.		
13.	Information regarding the policy on voting rights and voting behavior		
	A description of the policy regarding the voting rights and voting behavior of the AIF in respect of shares in other enterprises.		

Appendix: Articles of laws, referred to in the checklist



Articles from the AIFM-Directive (2011/61/EU)

Article 9 (7) (further elaborated in Regulation (EU) No. 231/2013, Article 12 to 15):

To cover potential professional liability risks resulting from activities AIFMs may carry out pursuant to this Directive, both internally managed AIFs and external AIFMs shall either:

- a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
- b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

Article 19 (further elaborated in Regulation (EU) No. 231/2013, Article 67 to 74):

1. AIFMs shall ensure that, for each AIF that they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with this Article, the applicable national law and the AIF rules or instruments of incorporation.
2. The rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of the AIF shall be laid down in the law of the country where the AIF is established and/or in the AIF rules or instruments of incorporation.
3. AIFMs shall also ensure that the net asset value per unit or share of AIFs is calculated and disclosed to the investors in accordance with this Article, the applicable national law and the AIF rules or instruments of incorporation.

The valuation procedures used shall ensure that the assets are valued and the net asset value per unit or share is calculated at least once a year.

If the AIF is of the open-ended type, such valuations and calculations shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency.

If the AIF is of the closed-ended type, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the relevant AIF.

The investors shall be informed of the valuations and calculations as set out in the relevant AIF rules or instruments of incorporation.

4. AIFMs shall ensure that the valuation function is either performed by:
 - a) an external valuer, 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; or
 - b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented.

The depositary appointed for an AIF shall not be appointed as external valuer of that AIF, 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.

5. Where an external valuer performs the valuation function, the AIFM shall demonstrate that:
 - a) the external valuer is subject to mandatory professional registration recognised by law or to legal 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 in accordance with paragraphs 1, 2 and 3; and
 - c) the appointment of the external valuer complies with the requirements of Article 20(1) and (2) and the delegated acts adopted pursuant to Article 20 (7).
6. The appointed external valuer shall not delegate the valuation function to a third party.
7. AIFMs shall notify the appointment of the external valuer to the competent authorities of their home Member State which may require that another external valuer be appointed instead, when the conditions laid down in paragraph 5 are not met.
8. The valuation shall be performed impartially and with all due skill, care and diligence.
9. Where the valuation function is not performed by an independent external valuer, the competent authorities of the home Member State of the AIFM may require the AIFM to have its valuation procedures and/or valuations verified by an external valuer or, where appropriate, by an auditor.
10. AIFMs are responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value. The AIFM's liability towards the AIF and its investors shall, therefore, not be affected by the fact that the AIFM has appointed an external valuer.

Notwithstanding the first subparagraph and irrespective of any contractual arrangements providing otherwise, the external valuer shall be liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

11. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying:
 - a) the criteria concerning the procedures for the proper valuation of the assets and the calculation of the net asset value per unit or share;
 - b) the professional guarantees the external valuer must be able to provide to effectively perform the valuation function;
 - c) the frequency of valuation carried out by open-ended AIFs which is both appropriate to the assets held by the AIF and its issuance and redemption policy.

Article 21 (13) (further elaborated in Regulation (EU) No. 231/2013, Article 100):

The depositary's liability shall not be affected by any delegation referred to in paragraph 11. Notwithstanding the first subparagraph of this paragraph, in case of a loss of financial instruments held in custody by a third party pursuant to paragraph 11, the depositary may discharge itself of liability if it can prove that:

- a) all requirements for the delegation of its custody tasks set out in the second subparagraph of paragraph 11 are met;
- b) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and
- c) a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.

Article 22 (further elaborated in Regulation (EU) No. 231/2013, Article 103 and 104):

1. An AIFM shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, make available an annual report for each financial year no later than 6 months following the end of the financial year. The annual report shall be provided to investors on request. The annual report shall be made available to the competent authorities of the home Member State of the AIFM, and, where applicable, the home Member State of the AIF.

Where the AIF is required to make public an annual financial report in accordance with Directive 2004/109/EC only such additional information referred to in paragraph 2 needs to be provided to investors on request, either separately or as an additional part of the annual financial report. In the latter case the annual financial report shall be made public no later than 4 months following the end of the financial year.

2. The annual report shall at least contain the following:
 - a) a balance-sheet or a statement of assets and liabilities;
 - b) an income and expenditure account for the financial year;
 - c) a report on the activities of the financial year;
 - d) any material changes in the information listed in Article 23 during the financial year covered by the report;

- e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;
 - f) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.
3. The accounting information given in the annual report shall be prepared in accordance with the accounting standards of the home Member State of the AIF or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF rules or instruments of incorporation.

The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts (26). The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

By way of derogation from the second subparagraph, Member States may permit AIFMs marketing non-EU AIFs to subject the annual reports of those AIFs to an audit, meeting international auditing standards in force in the country where the AIF has its registered office.

4. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the content and format of the annual report. Those measures shall be adapted to the type of AIF to which they apply.

Article 23 (4) (further elaborated in Regulation (EU) No. 231/2013, Article 103 and 104):

AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union, periodically disclose to investors:

- a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- b) any new arrangements for managing the liquidity of the AIF;
- c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

Article 23 (5):

AIFMs managing EU AIFs employing leverage or marketing in the Union AIFs employing leverage shall, for each such AIF disclose, on a regular basis:

- a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
- b) the total amount of leverage employed by that AIF.

Annexure I

1. Investment management functions which an AIFM shall at least perform when managing an AIF:
 - a) portfolio management
 - b) risk management
2. Other functions that an AIFM may additionally perform in the course of the collective management of an AIF:
 - a) Administration:
 - i) legal and fund management accounting services;
 - ii) customer inquiries;
 - iii) valuation and pricing, including tax returns;
 - iv) regulatory compliance monitoring;
 - v) maintenance of unit/shareholder register;
 - vi) distribution of income;
 - vii) unit/share issues and redemptions;
 - viii) contract settlements, including certificate dispatch;
 - ix) record keeping;
 - b) Marketing;
 - c) Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

Articles from the BGfo

Article 50 (2)¹:

Monthly, the management company of a AIF publishes a statement to the unitholders. This statement will be published on the website of the management company of the AIF, for the benefit, whereas there is a period of at least one week between the moments of compilation of the respective statements. The statement will be, if applicable, co-signed by the depositary. The information included in the statement will include at least:

- a) the total value of investments held by the AIF;
- b) an overview of the composition of the investments;
- c) the number of outstanding units; and
- d) the most recent net asset value of the units, including the information about the calculation date of the net asset value.

The management company of the AIF will provide the information (upon request) to the unitholders for, at the highest, at cost.

¹ the term 'UCITS' is replaced by the term 'AIF' to increase the readability of this article.

Contact persons for this publication

Kees Roozen

Director

roozen.kees@kpmg.nl

T +31 (0)20 656 2416

Winand Paulissen

Partner

paulissen.winand@kpmg.nl

T (020) 656 2400



kpmg.nl



© 2020 KPMG Accountants N.V., a Dutch limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organisation.

The information contained herein is of a general nature and is not intended as advice aimed at a specific situation and is not intended to address the circumstances of any particular individual or entity. There can be no guarantee that the information is accurate as of the date it is received or that it will continue to be accurate in the future. Use of this document and/or the information contained herein is at your own risk. KPMG, the authors and the publisher are not liable to you and/or third parties for any damage as a result of (the use of) this document. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.