

Directive 2011/61/EU of the European Parliament and of the Council of
8 June 2011 on Alternative Investment Fund Managers and amending
Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No
1060/2009 and (EU) No 1095/2010 (Text with EEA relevance)

CHAPTER I

GENERAL PROVISIONS

Article 5

Determination of the AIFM

1 Member States shall ensure that each AIF managed within the scope of this Directive shall have a single AIFM, which shall be responsible for ensuring compliance with this Directive. The AIFM shall be either:

- a an external manager, which is the legal person appointed by the AIF or on behalf of the AIF and which through this appointment is responsible for managing the AIF (external AIFM); or
- b where the legal form of the AIF permits an internal management and where the AIF's governing body chooses not to appoint an external AIFM, the AIF itself, which shall then be authorised as AIFM.

2 In cases where an external AIFM is unable to ensure compliance with requirements of this Directive for which an AIF or another entity on its behalf is responsible, it shall immediately inform the competent authorities of its home Member State and, if applicable, the competent authorities of the EU AIF concerned. The competent authorities of the home Member State of the AIFM shall require the AIFM to take the necessary steps to remedy the situation.

3 If, notwithstanding the steps referred to in paragraph 2 being taken, the non-compliance persists, and in so far as it concerns an EU AIFM or an EU AIF, the competent authorities of the home Member State of the AIFM shall require that it resign as AIFM of that AIF. In that case the AIF shall no longer be marketed in the Union. If it concerns a non-EU AIFM managing a non-EU AIF, the AIF shall no longer be marketed in the Union. The competent authorities of the home Member State of the AIFM shall immediately inform the competent authorities of the host Member States of the AIFM.