

AIFM DIRECTIVE

Reference Text: European Directive 2011/61/EU on alternative investment fund managers

Link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF>

Presentation

The AIFM (Alternative Investment Fund Manager) Directive has the objective of regulating the alternative investment fund managers that manage and/or market these funds and not the funds themselves, considering the extreme heterogeneity of this type of fund. In fact all funds not subject to the UCITS Directive and managed within the EU, irrespective of their country of domiciliation, are considered alternative investment funds by the AIFM Directive, along with all alternative investment funds domiciled and managed outside of the EU and sold on EU territory. In particular, hedge funds, investment capital funds and real estate funds, with or without leverage, closed or open, fall within the scope of the AIFM. It should be noted that the passport granted by the Directive only allows marketing within the EU for investors that are at least professionals (in reference to the terminology of the MiFID) and therefore not for the broad population of individual investors targeted by the marketing of UCITS funds.

With an objective of harmonisation, the Directive lists the various conditions for approval in terms of minimum level of equity, competence and good character of the directors, management of conflicts of interest, organisation of controls, delegation of duties to third parties, use of leverage funds, etc.

The Directive creates a passport for European fund managers will be effective as of the application date in 2013 and extended to non EU fund managers in 2015.

Furthermore, for each fund managed by a fund manager, this fund manager, like with UCITS funds, must mandate a depositary who must be subject to a supervisory authority. For the first time at European level, however, the Directive clearly establishes the principle of liability of the depositary with regard to the fund managed in the event of loss of the assets under management, thus obliging the custodian to return identical assets or the cash value of these assets to the fund managed, with the exception of an external event beyond reasonable control; the conditions for exoneration will be specified in the level 2 measures: in the current proposal, the European Commission would tend towards stronger responsibility of the depositary in the event of loss of assets due to fraud/bankruptcy of a sub-custodian unless local insolvency law does not recognize the effects of the segregation of assets.

At the same time, based on the current proposal, due diligence at the sub-custodian level will be reinforced specifically requiring the depositary to inform the fund manager of any risks which might impact assets held abroad. In addition, if, for reasons of the applicable law, including the law relating to property or insolvency, the segregation of the assets cannot be achieved, the depositary should take additional measures to minimise the risk of loss and maintain an adequate level of protection of the assets held by the sub-custodian.

Current Situation:

19/12/2012: Publication of the Level 2 measures

- 1st Quarter 2013: Adoption of the Level 2 measures

- February 2013: Publication of ESMA guidelines on remuneration

- 2 April 2013: Publication of ESMA technical standards and guidelines on types of AIFM and AIF definition

- 16.05.2013: Implementing regulation (opt-in procedure) + Implementing regulation (definition of the Member State of reference)

- 24.05.2013: Publication of ESMA guidelines on AIFMD key concepts (AIF definition)

- 22.07/2013: Entry into application (deadline for transposition)

- 01.10.2013: Publication of ESMA guidelines on reporting obligations

Next Step:

- July 2014: deadline for (existing) AIFM to be compliant with AIFMD

- 2015: Management and marketing Passport (subject to adoption by the Commission) for non-EU AIFM and/or marketing of non EU-AIF

- 2018: End of private placement regime (subject to adoption by the Commission)

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