



Implementation of the AIFM Directive in Germany – Challenge and opportunity –

Directive 2011/61/EU on Alternative Investment Fund Managers (AIFM) sees the European Union (EU) extending its supervision to all open-ended and closed-ended funds with more than one investor that are not covered by the UCITS Directive (“**alternative investment funds**”).

This affects the following:

- Closed-end fund structures
- Hedge funds
- Infrastructure and commodity funds
- Renewable energy and real estate funds (open-ended and closed-ended)
- Institutional funds
- Funds investing in private equity

The Directive must be transposed into national law **by 22 July 2013**. The German legislature’s AIFM Implementation Act (AIFM-UmsG) establishes a coherent legal framework for the entire fund industry (open-ended and closed-ended funds) and for fund managers in the form of the Capital Investment Code (KAGB), which:

- transposes the AIFM Directive,
- incorporates the provisions of Directive 2009/65/EC (UCITS Directive) and simultaneously repeals the Investment Act (InvG), and
- includes the provisions required for application of the European Regulation on Venture Capital Funds and the European Regulation on European Social Entrepreneurship Funds.

Despite an Implementation Act that remains open to criticism (because it is unclear on many points) and a lack of implementation measures to add necessary detail, the draft of the Capital Investment Code (KAGB-E) **will come into force in Germany on 22 July 2013**. Since there are numerous issues still outstanding, AIF providers need to **develop appropriate solutions to ensure success in the licensing procedure**. These solutions should be based on the specific risk situation, particularly with regard to (i) the short transitional period (and unclear transitional arrangements) and (ii) the complex organisational changes to be expected.

Against this backdrop, it is **the responsibility of each individual company** to identify the specific steps needed to meet the legal requirements. Together with their professional advisors, companies must take the action appropriate to their own situation in order to ensure compliance. **Time is of the essence here.**



It is apparent from the draft version of the Capital Investment Code (KAGB-E) that the **management and organisation of alternative investment funds will be subject to considerable change:**

- Licence requirement/including supervision by BaFin, the German financial regulator
- "Fit & proper" test for management team
- Rules on remuneration/commission
- Independent risk management
- Custodian bank
- Conflict of interests management
- Independent valuation
- EU passport

It should also be noted that the European legislative process regarding specific aspects of how the AIFM Directive is to be implemented (Level 2 Regulations) is still ongoing.

Further detailed stipulations are to be expected. Since the European legislative process will probably be concluded in the very near future and these EU regulations must come into force at the same time as the deadline for transposition of the AIFM Directive (22 July 2013), they must also be taken into account. The draft versions of the above-mentioned EU regulations have been used as a basis thus far. If further amendments are made during the European legislative process, the draft legislation may have to be changed accordingly at short notice. We recommend bearing this in mind since it may necessitate changes to planned project structures in relation to AIFM implementation.

Please do not hesitate to get in touch if you have any queries about the above or require advice.



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