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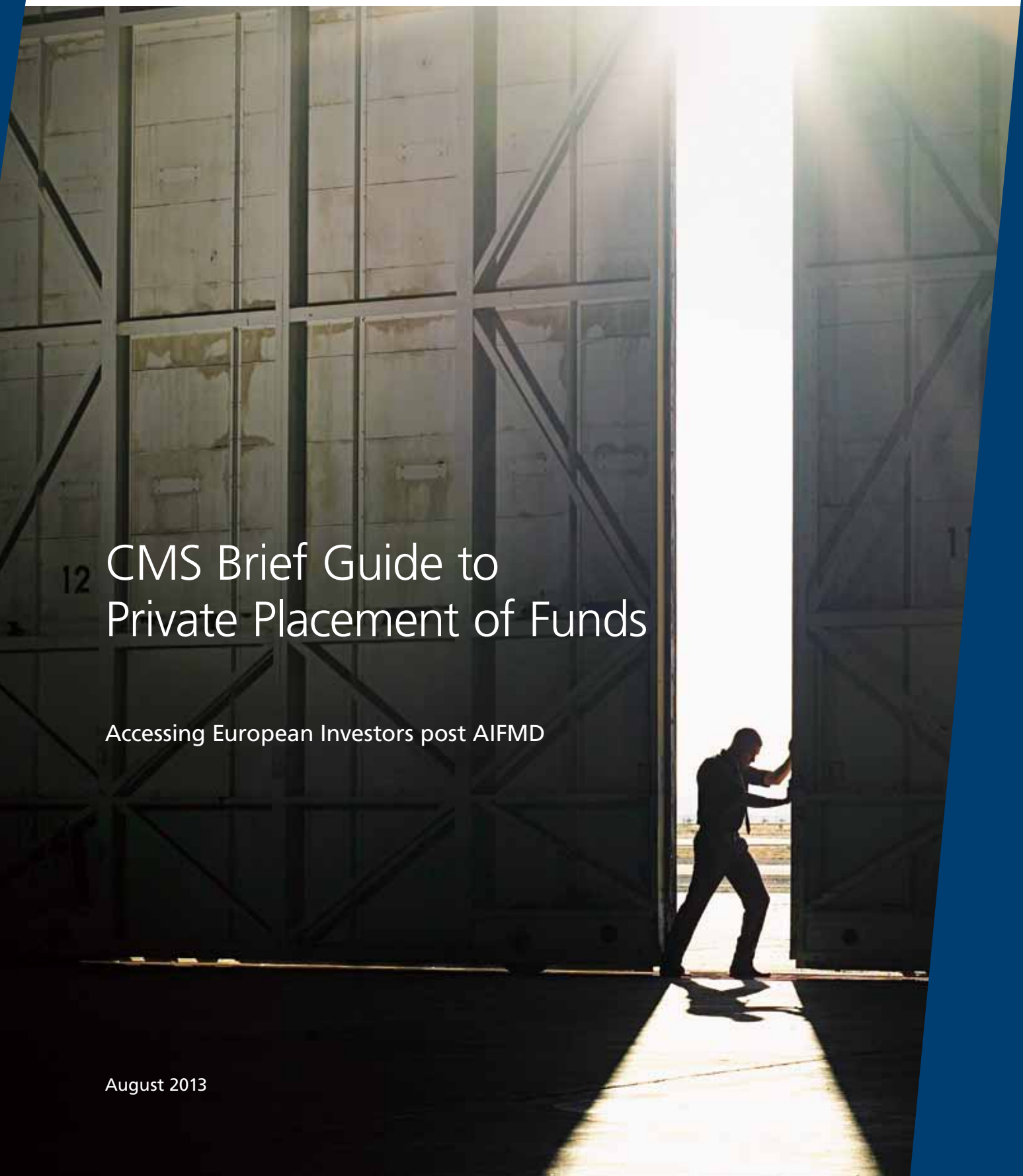

CMS Brief Guide to Private Placement of Funds

Accessing European Investors post AIFMD

August 2013

* Though not members of CMS, Maples and Calder (Ireland) and 1741 Fund Management AG (Liechtenstein) have kindly contributed to this Guide.

Introduction

Some EU States have tightened or even abolished their private placement regimes. A few States are still progressing draft legislation, and in certain cases have yet to issue proposals.

AIFMD is also having a territorial impact outside the EU, in terms of certain non-EU States revising legislation which applies when their managers market to EU investors. The legislation in these non-EU States aims at achieving a level playing field between the EU and non-EU managers when accessing EU investors.

Our Guide briefly summarises the latest developments in relation to the private placement regimes of EU States, as well as covering certain non-EU States.

The Guide will be regularly revised to reflect further regulatory changes, and please do contact one of us if you are interested in receiving revisions to the Guide.

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National Private Placement Regimes at a glance


Poland
Czech Republic
Austria

Austria

Summary of private placement provisions for fund interests (if applicable)

The Austrian Alternative Investment Fund Managers Act (**"AIFMG"**) does not impose an obligation to draw up a prospectus. However, AIFMG only allows AIFs and Non-EU-AIFs to be placed in accordance with a dedicated set of rules, which do not provide for a private placement exemption. The AIFMG imposes, from 22 July 2013, comparably high hurdles to the distribution of AIFs managed by Non-EU-AIFM to qualified investors (as defined below). These require, for distribution in Austria, that cooperation agreements are in place between the Austrian regulator and the regulator of the AIF's and/or Non-EU-AIFM's country of domicile.

Under the AIFMG, the distribution of AIFs to retail investors is in principle no longer permitted in Austria. Only those types of funds equivalent to those governed by the Austrian Real Estate Investment Fund Act or special funds (a portfolio of assets consisting of liquid financial assets) shall be exempt from this requirement. Distribution is understood to mean a direct or indirect offering or placement of units to Austrian investors. Private placements to retail investors will be covered by the term distribution and so will be prohibited.

However, the AIFMG provides a substantial improvement in relation to the distribution to qualified investors (defined in accordance with MiFID), e.g. banks, investment undertakings, insurance undertakings, enterprises of certain size classes, as Non-EU-AIFs and their managers (Non-EU-AIFM) can be authorised for distribution to qualified investors by way of a cross-border passporting process. For this purpose, a notification with regard to the Non-EU-AIF must be filed with the Austrian Financial Market Authority (**"FMA"**), and the FMA must decide within 20 working days whether the relevant Non-EU-AIF is allowed for distribution to qualified investors. Under this regime, Non-EU-AIFs which correspond to UCITS, can be offered to retail investors.

These regulations are to be implemented in further detail by a Commission Regulation, which will not be adopted before the end of 2015.

Other forms of possible placement options for fund interests outside fund regulations

AIFMG regulates, beside other issues, the distribution of AIFs. Distribution is defined as the direct or indirect offering or placement of shares in an AIF managed by the AIFM to investors whose place of residence or place of incorporation is in an EU State, on the initiative of the AIFM or on its behalf. Reverse solicitation is not regulated.

The distribution restrictions of the AIFMG are not applicable to:

— holding companies;
— institutions that provide occupational retirement provisions;
— supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund, and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;
— national central banks;

— national, regional and local governments and bodies or other institutions which manage funds supporting social security and pension systems;
— employee participation schemes or employee savings schemes; and
— securitisation special purpose entities.

Consequences of non-compliance with placement regimes for fund interests

The AIFMG does not explicitly provide for mandatory contractual consequences but provides that any disputes between a Non-EU-AIFM or the AIF and EU investors of the relevant AIF shall be settled in accordance with the law of, and subject to, the jurisdiction of an EU State.

From a regulatory perspective, distribution of fund interests in a non-compliant way with the AIFMG could constitute a criminal offence. Sanctions include fines and even imprisonment.

Private placement rules for non-fund investments available

Austrian law distinguishes between securities and investments. The Austrian Capital Market Act applies to both. Under Austrian law, securities are transferable instruments which are tradeable on capital markets. Other instruments, e.g. non-tradeable participations in companies, qualify as investments.

The private placement, meaning without publishing a prospectus, of securities and investments is regulated by the Austrian Capital Market Act.

There are various exemptions from the obligation to draw up and publish a prospectus. The following are highly relevant in practice:
— offers of securities or investments solely addressed to qualified investors (as defined above);
— offers whereby investors may only acquire securities or investments for a minimum amount or minimum denomination of EUR 100,000; or
— offers of securities or investment addressed to fewer than 150 investors (natural or legal persons) per EEA State.

Belgium

Summary of private placement provisions for fund interests (if applicable)

Private placement rules have not changed as Belgium still has to implement AIFMD.

In Belgium, a private placement of funds which includes the following:
- offerings to professional or institutional investors (e.g. credit institutions, investment institutions, some categories of insurance companies, UCIs, fund managers);
- offerings to fewer than 100 legal or national persons, other than professional or institutional investors;
- offerings which need at least EUR 50,000 per investor and per security, other than UCIs with a variable number of participation rights;
- offerings which need at least an investment of EUR 250,000 per investor and per category of security of a UCI with a variable number of participation rights;
- offerings where the amount of each unit of security (other than a security of a UCI with a variable number of participation rights) is at least EUR 50,000; or
- offerings where the global amount is less than EUR 100,000, calculated on an annual basis.

Other forms of possible placement options for fund interests outside fund regulations

The following are not covered by law:
- offers by an unremunerated intermediary;
- reverse solicitation; and
- execution only transactions.

Consequences of non-compliance with placement regimes for fund interests

There is contractual and extra-contractual liability. There are also regulatory sanctions which can encompass a fine up to EUR 2,500,000 and the publication of the decision of the Regulatory authority. There are also criminal penalties of up to EUR 15,000 and/or incarceration up to one year.

Private placement rules for non-fund investments available

These cover:
- Securities, debt instruments, warrants of ordinary companies;
- Futures, swaps, forward rate agreements, equity swaps, derivatives on raw material.

Under Belgian law, in respect of non-fund investments, private placement covers:
- offerings only addressed to qualified investors;
- offerings only addressed to 100 legal or natural persons other than qualified investors per EEA State;
- offerings requiring a counterparty of minimum EUR 50,000 per investor and per offer;
- offerings where the nominal value is of minimum EUR 50,000;
- offerings where the total amount is of maximum EUR 100,000.

Exemptions:
— Qualified investors;
— Natural or legal persons when the offer is addressed to fewer than 100 persons other than Qualified investors, and this per EEA State;
— Investments of more than EUR 50,000 per investor and per distinct offer;
— Investments where the unit value of the security is more than EUR 50,000;
— Investments where the total investment is less than EUR 100,000.

In Belgium, a qualified investor means:
— legal entities established in Belgium, which are authorised or regulated to operate in the financial markets, including credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and their management companies, commodity dealers, as well as entities not so authorised or regulated whose corporate purpose is solely to invest in securities;
— the State, the Regions and Communities, the National Bank of Belgium and international and supranational institutions established in Belgium;
— other legal entities than those listed here above and established in Belgium, which meet two of the three following criteria according to their last annual or consolidated accounts: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43,000,000 and an annual net turnover not exceeding EUR 50,000,000;
— legal entities having their legal seat on the territory of another EEA State which are established on Belgian soil but which do not meet two of the three criteria listed in the third paragraph here above can be considered as qualified investors if they are considered as such in their home country;
— legal entities, other than those stated here above, and having their registered office on Belgian soil and which do not meet two of the three criteria listed in the third paragraph here above can submit a demand to the Belgian regulatory authority (the **"FSMA"**) in order to be recognised as such.

The outline above reflects the current legislation. The Directive 2010/73/EU is not yet implemented in Belgium.

The Regulatory authority published a communication on the application of the criteria of Directive 2010/73/EU before the implementation law, but the issue of the non-opposability of the horizontal effect of Directive 2010/73/UE is unresolved.

Czech Republic

Summary of private placement provisions for fund interests (if applicable)

There is no definition of "private placement" under Czech law. However, "public placement" is defined as any communication to a wider group of persons containing information about investment instruments which are offered and conditions for their acquisition so as to enable an investor to decide to purchase or subscribe to such investment instruments. The term "private placement" is commonly used in opposition to the term "public placement" and usually indicates a restricted offer of investment instruments that is exempted from the duty to publish a prospectus.

Private placement provisions apply to funds of qualified investors or similar foreign funds. Other types of funds, including local special (non-UCITS) funds are used for collective investment, i.e. for public placement.

Private placement exemptions apply to qualified investors, which are defined as any of the following:

— institutional investors and other licensed financial services entities (e.g. banks, brokers, insurance companies, investment companies, investment funds, pension funds, securitisation entities);
— large entities holding certain amounts of assets or with certain levels of turnover;
— an entity directly subordinated to a governmental authority;
— a person or entity with a minimal investment in the fund in the amount of EUR 125,000 which submits a declaration on awareness of the risks connected with investment into the fund of qualified investors;
— a person or entity which is the founder or shareholder of a different fund of qualified investors (with minimal investment contribution in the amount of EUR 125,000) which is managed by the same administrator having submitted a declaration on awareness of the risks connected with investment into the fund of qualified investors.

The AIFMD has been implemented in the Czech Republic by the new Act on Investment Companies and Investment Funds which replaces the previous regulation of investment funds and companies under the current Act on Collective Investment (2004) completely, including the regulation of UCITS, non-UCITS and AIFs in the Czech Republic.

The new legislation introduces more precise criteria in respect of the scope of qualified investors for the purpose of a private placement. It also makes substantial changes regarding the internal structure of the funds used for private placement, providing for new legal forms of such funds and new obligations in relation to the administration of such funds.

Other forms of possible placement options for fund interests outside fund regulations

Reverse solicitation is allowed. The new Act on Investment Companies and Investment Funds expressly sets out that reverse solicitation is not considered to constitute a form of placement, i.e. it is not subject to provisions of the Act regulating the placement.

Consequences of non-compliance with placement regimes for fund interests

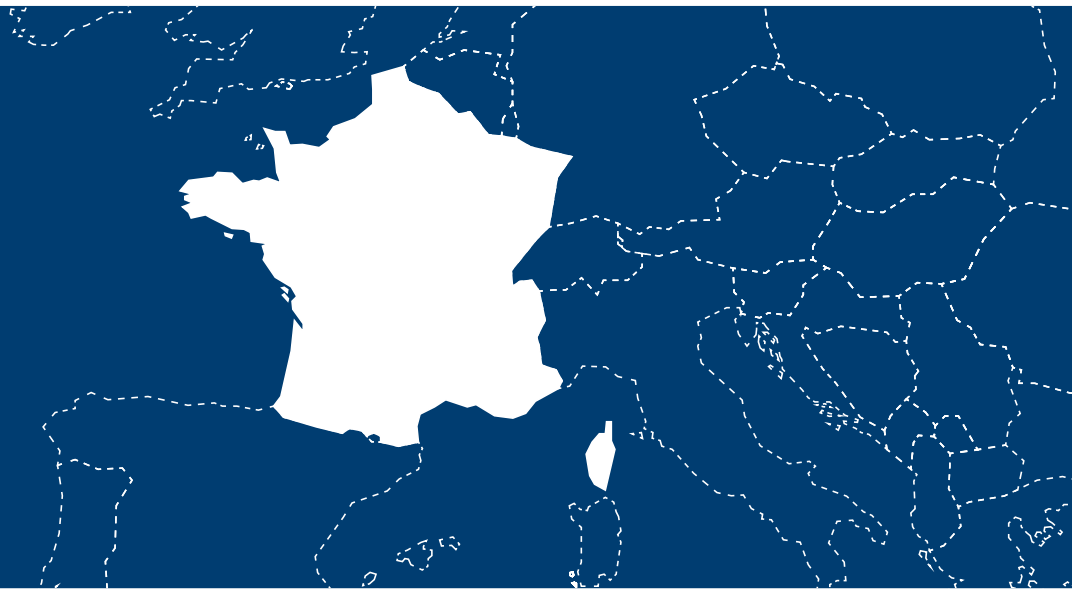
It is not clear what exactly the consequences of non-compliance with placement regimes will be, because new legislation introduces a broader scope of vehicles that can be used for private placement by qualified investors, which have not yet been tested in the Czech courts. It is likely that non-compliance with mandatory provisions on placement regimes might lead to the invalidity of a placement agreement and subsequent civil liability (i.e. return of unjust enrichment and damage compensation). A fund's management might also be held liable for the breach of managerial duties.

An administrative fine of up to CZK 10,000,000 may be imposed by the Czech National Bank for non-compliance with placement regimes.

Private placement rules for non-fund investments available

There is no distinction between private placement of fund and non-fund interests. All tradeable non-fund interests (such as shares, bonds, options, swaps, futures, other financial derivates etc.) may be subject to private placement rules.

France



Summary of private placement provisions for fund interests (if applicable)

Marketing of an AIF that does not benefit from the AIFMD passporting regime is prohibited unless the Fund obtains a specific authorisation from the *Autorité des marches financiers* (**"AMF"**).

The concept of private placement under French Law is based on the definition given under the Prospectus Directive. It benefits closed-ended funds but not open-ended funds.

Private placement covers any offer of financial securities (a concept that includes negotiable securities) (an **"Offer"**) in France:

- made to qualified investors (i.e. investors qualifying as professional investors or eligible counterparties under MiFiD) (**"Qualified Investors"**);
- made to 150 natural or legal persons per EU State, other than Qualified Investors;
- where the total amount of the Offer in the Union is less than EUR 100,000 or the foreign currency equivalent thereof;
- where the total amount of the Offer in the Union is between EUR 100,000 and EUR 5,000,000 or the foreign currency equivalent thereof and the transaction concerns financial securities accounting for no more than fifty per cent of the capital of the issuer;
- where the transaction is intended for investors acquiring at least EUR 100,000 worth, or the foreign currency equivalent thereof, per investor and per transaction, of the relevant financial securities; and
- where the transaction concerns financial securities with a minimum denomination of at least EUR 100,000 or the foreign currency equivalent thereof.

The French private placement rules are not intended to be amended as a result of the implementation of the AIFMD.

Other forms of possible placement options for fund interests outside fund regulations

The prohibition on marketing does not include a prohibition on the introduction of financial securities in France and therefore French investors may invest in such products (either directly or through a discretionary investment management agreement), provided that the investment was made at the specific request of the investor (the reverse solicitation exemption).

However, in order to fully comply with the spirit of such restrictions, any request for information should be interpreted strictly. Thus, a request from a potential investor to receive the prospectus for an offer should not be replied to by forwarding the prospectus and the application form for such an offer.

According to the AMF, payment of fees to a third party as a result of subscriptions by a French investor raises a rebuttable presumption of an unlawful reverse solicitation exemption.

Consequences of non-compliance with placement regimes for fund interests

- Marketing of a non authorised fund in France is subject to heavy criminal sanctions; and

- Although not yet clear, it is likely that a subscription made further to the unlawful marketing of financial securities issued by a non-authorised fund may be declared null and void.

Private placement rules for non-fund investments available

Any instruments covered by the Prospectus Directive may benefit from the private placement exemption, in particular:

— securities by "ordinary companies"; and
— closed-ended AIF exempted structures whose securities fall within the ambit of The Prospectus Directive (e.g. an AIF outside the scope of the AIFMD that does not allow redemption of its interests in line with ESMA guidelines on closed-ended funds and whose interests qualify as financial securities under The Prospectus Directive); etc.

Private placement may benefit either:

— Qualified Investors i.e. both professional investors and eligible counterparties within the meaning of MiFID; or
— any non-Qualified Investor within a group of fewer than 150 offerees.

There is no distinction between a private placement of the interests of a fund or a non-fund.

Germany

Summary of private placement provisions for fund interests (if applicable)

As of 22 July 2013 fund interests can no longer be distributed in Germany on a private placement basis. Consequently, there is no defined set of rules regarding the private placement of fund interests.

The German law implementing the AIFMD, the German Capital Investment Code *(Kapitalanlagegesetzbuch),* allows for domestic German as well as EU and non-EU funds to be placed only in accordance with a dedicated set of rules. Those rules do not provide for a private placement exemption, meaning that placement would be exempted from regulatory requirements. In particular, funds targeting professional and private investors cannot rely on private placement exemptions. In respect to the latter investor group, the German Capital Investment Code applies – beyond what the AIFMD stipulates – to retail funds.

Most relevant, the German Capital Investment Code imposes as of 22 July 2013 comparably high hurdles to the placement of non-EU funds or funds managed by non-EU managers. Those require, inter alia, for placement in Germany that cooperation agreements are in place between the German regulator and the regulator of the fund's and/or manager's country of domicile.

The legal situation in Germany has significantly changed as of 22 July 2013. The private placement rules previously available for fund interests have been abolished.

Other forms of possible placement options for fund interests outside fund regulations

Placement of fund interests is not subject to the regulations of the German Capital Investment Code when not made on "initiative" of the fund manager. This exemption is commonly referred to as reverse solicitation.

From a German perspective "reverse solicitation" applies to both (i) an approach by a potential investor on its own initiative and (ii) a fund manager approaching a potential investor when there is a pre-existing relationship with the potential investor. A relationship is deemed to pre-exist when there has been a certain intensity in past contacts and where a connection with the relevant product category can be made.

For the sake of completeness, certain other activities are also not classified as marketing activities pursuant to the German Capital Investment Code. Such activities include the publication of NAV and ISIN and other information published to comply with legal requirements as well as the issuance of interests in a German UCITS, which is a feeder to an EU master UCITS.

Placement of certain interests is exempted from the German Capital Investment Code and can therefore be made on private placement basis. Issuances made by one of the following vehicles or structures are exempted from the German Capital Investment Code:

— holding companies;
— institutions for occupational retirement provision;
— supranational institutions, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;
— national, regional and local governments and bodies or other institutions which manage funds supporting social security and pension systems;

— employee participation schemes or employee savings schemes;
— securitisation special purpose vehicles;
— AIFs in so far as their only investors are their AIFM or the AIFMs parent undertakings, their subsidiaries or other subsidiaries of their parent undertaking and where those investors are not themselves AIFs;
— AIFs managed by an AIFM where the aggregated assets managed do not exceed EUR 100 million (leverage included) or 500 million (without leverage);
— AIFs for private investors where the assets do not exceed a value of EUR 5 million and have not more than five investors;
— AIFs for private investors in the form of a cooperative society which invests in clean energy; and
— AIFs for private investors where the assets of the AIFM managing such AIF do not exceed EUR 100 million.

Private placement options for non-fund interests are available and outlined below under private placement rules for non-fund investments.

Consequences of non-compliance with placement regimes for fund interests

From a civil law perspective, the new German law implementing AIFMD creates some uncertainty. Contracts concluded should principally be regarded as valid under general German law even if one of the parties may have acted in non-compliance with the German Capital Investment Act when entering into the agreement. However, if a fund needs to be unwound, e.g. for regulatory requirements, an investor might under general German civil law principles hold the fund and/or its manager responsible and claim compensation and damages for losses suffered.

From a regulatory perspective, distribution of fund interests which breaches the German Capital Investment Code could constitute a criminal offence. Sanctions include fines and even imprisonment. Further, the German regulator may issue a request to the fund manager to adapt their operations so that they comply with the legal requirements or may prohibit further distribution activities and request unwinding of the fund.

Private placement rules for non-fund investments available

Any instrument, other than a fund instrument, can be subject to private placement rules in Germany. German law distinguishes between two different regimes: (1) private placement of securities and (2) private placement of non-securities. Both regulations explicitly allow for private placement.

Under German law, securities are transferable instruments which are tradeable on capital markets. All other instruments, e.g. non-tradeable participations in companies, are non-securities.

The private placement of securities is regulated in the German Securities Prospectus Act *(Wertpapierprospektgesetz).* This law provides for a number of private placement exemptions, the most important applying to offers (i) where the minimum subscription amount is EUR 100,000 per investor or (ii) addressing fewer than 150 investors per EEA State or (iii) which are restricted to professional investors (professional investors defined in accordance with the MiFID definition of professional clients).

The private placement of non-securities is regulated by the German Asset Investment Act *(Vermögensanlagengesetz).* Again, this law provides for a number of private placement exemptions of which the most important apply to offers where (i) the minimum subscription amount is EUR 200,000 per investor or (ii) a maximum of 20 interests are issued.

Ireland

Contributed by: Maples and Calder

Summary of private placement provisions for fund interests (if applicable)

Pre-AIFMD

The Central Bank of Ireland (the **"CBI"**) has no published rules on the scope of marketing/offering activity that may be conducted by a fund in Ireland that would fall outside of the public offering regime.

A generally acceptable standard set for private placement to date has developed upon precedent and CBI guidance extracted from specific cases. This "grey" guidance, in essence, provides that, an offer should not constitute public marketing (and thus not require registration with the CBI) where:

— the number of invitations did not exceed 15;
— the offer was non-transferable;
— there was an existing relationship with the offeree.

However, the CBI has indicated that an interpretation of what constitutes an offer to the public will not just be a question of the number of offerees and that consideration should be given more generally to the nature and extent of the invitation to participate.

Also, it is important to note that the above remains "grey" guidance and the CBI has stated that it retains discretion to consider each offer on a case-by-case basis to determine whether it falls within the scope of the public offering regime as outlined in Non-UCITS Notice 19.

Due to the lack of prescribed parameters of what constitutes private placement in Ireland currently (pre-AIFMD), it is advisable in any given scenario to consider formally notifying the CBI of the proposed activity and seek their clearance.

Post-AIFMD

AIFMD has been transposed in Ireland through regulations.

In the context of **"marketing"** to **"professional investors"** (as each term is defined within AIFMD) without a passport, Irish implementing regulations are expected to implement the following provisions of AIFMD:

(a) Article 36 (marketing without a passport of non-EU AIFs managed by an Irish AIFM or an AIFM from another EU State); and
(b) Article 42 (marketing without a passport of AIFs managed by non-EU AIFM).

It is not expected that Irish implementing regulations will carry stricter supplemental rules. However, they will grant the CBI the power to impose additional conditions or requirements where it considers it necessary for the proper and orderly regulation and supervision of alternative investment fund managers. No such conditions or restrictions have been made to date.

In the case of both the article 36 facility and the article 42 facility referred to above, it is expected that it will be a requirement that the affected AIFM must give written notification to the CBI before marketing units or shares of an AIF it manages to professional investors in Ireland. This notification should include the name of the AIFM and the AIF and the identity of the jurisdiction in which the AIFM is domiciled and the jurisdiction where the AIF is domiciled.

Prospectus Directive
Where a fund is closed-ended, any offer made to the public will be subject to a requirement to publish a prospectus under the Prospectus (Directive 2003/71/EC) (Amendment) Regulations 2005 (as amended) (the **"PDR"**).

For closed-end funds any offer which falls either (1) outside of the definition of a public offer; or (2) within the exemptions of Regulation 9 of the PDR (equivalent to Art. 3(2) of the Prospectus Directive 2003/71/EC, as amended), should not be subject to the prospectus requirement.

Other forms of possible placement options for fund interests outside fund regulations

An approach made by a potential investor on an unsolicited basis would not as a matter of principle breach any marketing restrictions under the applicable private placement exemption.

Consequences of non-compliance with placement regimes for fund interests

As set out above, the current private placement rules are only based on an accepted market standard and it is only where a fund acts outside of the accepted market standard that there may be consequences where a fund's activities are deemed to fall under another set of rules/regulations (i.e. where a fund is deemed to be within the scope of the public offering regime as outlined in Non-UCITS Notice 19 or, where a fund is a closed-ended, any offer made to the public will be subject to a requirement to publish a prospectus under the PDR).

The CBI may to administer sanctions in respect of prescribed contraventions by regulated financial service providers and persons concerned in the management of regulated financial service providers.

Private placement rules for non-fund investments available

The PDR require that a prospectus be published in respect of, inter alia, any **"offer of securities to the public".** The PDR defines an **"offer of securities to the public"** as:
"a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities or apply to purchase or subscribe for those securities and this definition shall be construed as –
(a) being also applicable to the placing of securities through financial intermediaries; and
(b) as not being applicable to trading on a regulated market or any other market operated by an approved stock exchange".

The definition of issuer in the PDR is any body corporate or other legal entity which issues or proposes to issue securities. It is irrelevant whether the issuer is an Irish or foreign company.

If a body corporate is making an offer of securities to the public in Ireland, it must comply with the PDR, unless the offer is in relation to a class of securities which are considered to be outside the scope of the PDR pursuant to Regulation 8 of the PDR (equivalent to Article 1(2) of the Prospectus Directive) (including but not limited to units issued by collective investment undertakings other than closed-end types).

The PDR defines *"securities"* as *"transferable securities as defined by Article 1(4) of Directive 93/22/EEC with the exception of money market instruments as defined by Article 1(5) of Directive 93/22/EEC, having a maturity of less than 12 months".*

There is no definition of **"private placement";** however, the following shall not be considered to be offers to the public (and therefore could be considered to be private placements for purposes of Irish law:
(a) an offer of securities addressed solely to **"qualified investors"** (defined in accordance with MiFID);
(b) an offer of securities addressed to fewer than 150 natural or legal persons, other than qualified investors;
(c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100,000 per investor, for each separate offer;
(d) an offer of securities whose denomination per unit amounts to at least EUR 100,000; and/or
(e) an offer of securities with a total consideration in the European Union less than EUR 100,000, which shall be calculated over a period of 12 months.

Italy

Summary of private placement provisions for fund interests (if applicable)

Italian laws and regulations do not provide for a definition of **"private placement"**.

The term **"private placement"** is commonly used to indicate a restricted offer of financial products to professional investors that is exempted from the duty to publish a prospectus.

In particular, according to art. 100 of the Italian Consolidated Financial Act (Legislative Decree no. 58/1998, "**CFA"**), as implemented by art. 34-ter of the Issuers Regulation no. 11971/1999 issued by Consob (the Italian Securities Market Supervisory Authority), the offer of financial products exclusively to professional investors is exempted from the duty to publish a prospectus.

The definition of professional investors is set out under art. 26 and Attachment 3 of Consob Intermediaries Regulation no. 16190/2007, whereby professional investors include:

- professional investors by operation of law, i.e.:
  - Italian and foreign entities authorised and regulated to operate in financial markets (e.g. banks, investment companies, insurances, pension funds etc.)
  - large companies meeting certain requirements; and
  - institutional investors whose main activity is investment in financial instruments;
- professional investors on request, provided that certain criteria and procedures are met (in this case the offeror is in any case obliged to assess whether the investor is able to make informed investments decisions and to understand the risks thereof); and
- public professional investors, subject to certain procedures and requirements.

According to the private placement provisions currently in force, and in particular art. 42 of the CFA, as implemented by Regulation of the Bank of Italy on Collective Assets Management dated 8 May 2012, the offer in Italy of non-harmonized funds must be prior authorized by the Bank of Italy, after having heard Consob, even if the offer is addressed only to institutional (i.e. professional) investors.

Furthermore, according to art. 16 of Ministerial Decree no. 228/1999, speculative/hedge funds cannot be offered to the public, meaning that they can be offered only to pre-identified investors, or through the reverse enquiry mechanism. Under certain binding resolutions issued by Consob, it would not be sufficient to identify the addressee of the offer on the basis of a specific qualification (e.g. only to professional investors), but it is necessary to pre-identify the specific investors.

According to the draft amendments to the CFA, which were published on 3 July 2013 for public consultation by the Italian Ministry of Treasury, in order to implement the AIFMD (the **"Draft CFA"**), following the implementation of the AIFMD the authorization of the Bank of Italy shall no longer be required for offers of non harmonised funds.

In particular, the marketing of AIFs to professional investors shall be preceded by the prior notification to Consob under art. 43 of the Draft CFA, requiring:

— the prior notification to Consob and an assessment by the Bank of Italy of the adequacy of the AIFMs to manage the relevant AIF, in order to market to professional investors:
  (i) Italian AIFs reserved to professional investors; and
  (ii) EU and non-EU AIFs
  managed by either Italian SGRs (asset management companies) or non-EU AIFMs authorised in Italy;
— the prior notification to Consob by the home State Authority in order to market to professional investors:
  (i) Italian AIFs (either reserved or not reserved to professional investors); and
  (ii) EU and not-EU AIFs
  managed by either EU AIFMs or non EU AIFMs authorised in a country other than Italy.

The above notification duties apply also to Italian, EU and non EU AIFs managing their own assets.

Based on the above, it results that only Italian AIFs other than reserved AIFs that are managed by non-EU AIFMs authorized in Italy are not subject to private placement provisions.

With regard to the offer of speculative/hedge funds, the Ministry of Treasury has anticipated that Ministerial Decree no. 228/1999 will be subject to amendments in connection with the implementation of the AIFMD.

Other forms of possible placement options for fund interests outside fund regulations

Fund interests can be placed outside fund regulations through the reverse solicitation mechanism (i.e. following a genuine unsolicited request by the investor).

Certain requirements must be met if the (unsolicited) request is made by a bank/investment company when providing a portfolio management service to Italian clients.

Consequences of non-compliance with placement regimes for fund interests

If there is a breach of the provisions on private placement an agreement may be declared null and void for violation of mandatory provisions according to art. 1419 of the Italian Civil Code and the breaching party may have to refund the relevant sums invested by the customers plus proved damages and interest.

According to art. 190 of the Draft CFA if offers of fund interests in Italy breach the private placement regime under art. 42 and art. 43 of the Draft CFA, an administrative sanction from EUR 2,500 to EUR 250,000 can be applied to representatives, directors and employees of the offeror.

Private placement rules for non-fund investments available

Financial products are generally subject to private placement opportunities, for example, tradeable securities, money market instruments, options, futures, swaps and other derivative contracts. These are subject to the private placement provisions when the exemptions from the duty to publish a prospectus apply.

Liechtenstein

Contributed by: 1741 Fund Management AG

Summary of private placement provisions for fund interests (if applicable)

There is no general definition of "private placement" in Liechtenstein. This term refers generally to the exemption from the obligation to draw up a prospectus in accordance with the provisions of the Securities Prospectus Act (the **"SPA"**).

Article 187 of the ordinance on Alternative Investment Fund Managers (**"AIFMV"**) as of 2 July 2013 states that the obligation to draw up a Prospectus shall not apply in the case of an offering of units or shares of an AIF in Liechtenstein:

(a) which is directed exclusively at professional investors;
(b) which is directed at fewer than 150 non-professional investors in Liechtenstein;
(c) provided that the minimum denomination of a unit or share or the minimum contribution per investor is EUR 100,000 or the equivalent amount in another currency; or
(d) where the constitutional documents of the AIF exclude the subscription for integration in other financial instruments and investment agreements which are marketed to private investors, particularly the subscription by an AIF, UCITS, index fund or as reference value for a structured product or certificate and as an investment of a life insurance.

All AIFs are subject to the above provisions. Generally, the exemption above is directed at professional investors. Where units or shares of an AIF are marketed to professional investors only, measures have to be taken to prevent marketing to private investors, in particular by way of

(a) appropriate design of the subscription form;
(b) references in the documentation of the AIF; and
(c) the exclusion of marketing of units or shares to private investors in the distribution agreements.

Professional investors are defined as investors which are considered to be professional clients or which may be treated as professional clients within the meaning of Annex II to Directive 2004/39/EC.

When the Law on Alternative Investment Fund Managers (**"AIFMG-L"**) comes into effect on 22 July 2013 and the AIFM Directive is incorporated into the EEA Agreement, the Law on Investment Undertakings (**"IUG"**) together with the existing private placement rules for the marketing of units of investment undertaking from a third state will disappear. Therefore, the IUG will still be in force parallel to the AIFMG until the incorporation of the AIFM Directive into the EEA Agreement has been completed.

Other forms of possible placement options for fund interests outside fund regulations

As an exemption from the general authorisation rule, unsolicited business with Liechtenstein residents does not trigger any licensing requirement in Liechtenstein. Therefore there is no restriction on the right of persons and entities domiciled in Liechtenstein to request the services of any entity on their own initiative. Financial services and transactions requested on the client's own initiative without any prior solicitation and marketing are therefore not subject to any licensing requirements in Liechtenstein.

Consequences of non-compliance with placement regimes for fund interests

There are no mandatory contractual consequences. However, the marketing of units or shares without compliance with the requirements of Article 87 of the AIFMV could lead to claims for damages by investors.

In the case of non-compliance with relevant provisions the District Court shall impose imprisonment for up to one year or a fine of up to 360 daily rates upon a person who inter alia acts as an AIFM without authorisation, markets units or shares of an AIF which may only be marketed to professional investors to private investors without the required approval or authorisation or acts as an distributor without the required authorisation.

Should circumstances appear to endanger investor protection, the reputation of Liechtenstein as a fund centre or the stability of the financial system, the Liechtenstein Financial Market Authority may, in particular, without prior warning or setting of a deadline, require the suspension of issue of units or shares or prohibit the marketing.

Private placement rules for non-fund investments available

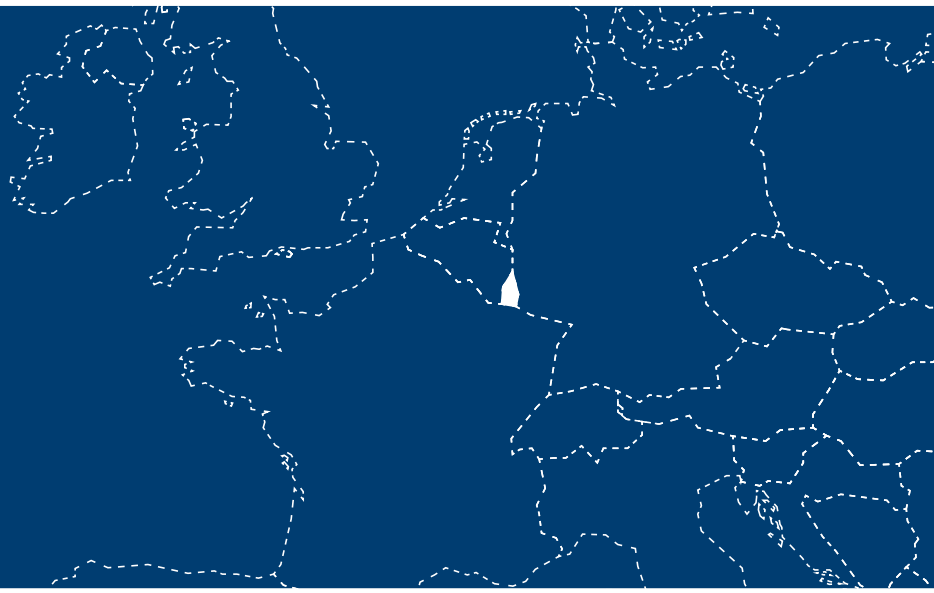
Generally, all public offerings of an offeror or issuer in or to Liechtenstein residents are subject to a duty to prepare a prospectus. This includes the offering of securities negotiable on securities market, shares equivalent to equity or shares of legal entities, bonds and other securitised debts and any other securities qualifying as transferable securities.

However, the prospectus duty does not apply according to Article 5 of the Securities Prospectus Act ("SPA") in the following cases:
(a) if the offer is directed solely at qualified investors;
(b) if the offer is directed at fewer than 150 non-qualified investors in each State;
(c) if the offer price does not exceed EUR 100,000 or the equivalent in another currency over a period of twelve months; or
(d) if the denomination per unit or per investor amounts to at least EUR 100,000 or the equivalent in another currency.

Qualified investors according to the SPA are professional clients which are considered to be treated as professional clients or may be treated as professional clients within the meaning of Annex II to Directive 2004/39/EC or eligible counterparties within the meaning of Annex II, paragraphs I (1) and (3), to Directive 2004/39/EC.

In addition, the SPA provides for several other exemptions which depend on the nature of the security (securities offered in connection with a takeover, shares representing, over a period of twelve months, securities that are traded on a regulated market etc.).

Luxembourg



Summary of private placement provisions for fund interests (if applicable)

There is no specific definition of private placement under Luxembourg law but the concept is interpreted as the opposite to a public offer and by referring to the exemption from the requirement to publish a prospectus under the provisions of the prospectus law implementing the Prospectus Directive, as amended ("Prospectus Law").

The following criteria may be used for defining "private placement":
- whether the offer is made to a small circle of persons (UCIs part II and UCITS): as the Luxembourg supervisory authority (the **"CSSF"**) will consider cases on an individual basis, there is no maximum number of investors to fulfil the criteria;
- whether the offer is made to well-informed investors (SIFs, SICARs), being an institutional investor, a professional investor and any investor having confirmed that (a) he adheres to the status of well-informed investor and (b) either (i) invests a minimum of EUR 125,000 in the vehicle or (ii) has been subject to an assessment certifying his expertise, his experience and his knowledge in apprising an investment in the vehicle;
- the form of the offer: targeting existing customers, high sales amount, no advertisement…;
- Luxembourg law distinguishes between a placement to the public and public offerings: a placement to the public may take place by means of a private placement.

The following types of funds are subject to private placement provisions:
- EU AIFs: until July 2014
- Non-EU AIFs: until July 2015

The following types of investor are in scope of private placement exemptions:
- EU professional investors (as defined under Annex II of Directive 2004/39/EC (MiFID));
- Luxembourg retail investors.

There are no potential changes to private placement rules following AIFMD implementation in Luxembourg.

Other forms of possible placement options for fund interests outside fund regulations

Reverse solicitation may be considered as non-marketing activity but does not exclude the qualification of AIF for the relevant vehicle. Reverse solicitation is only available to professional investors and cannot be used as a placement strategy. Further interpretation is required in Luxembourg and permission for the reverse solicitation exemption would be given on a case-by-case basis.

Consequences of non-compliance with placement regimes for fund interests

- The following mandatory contractual consequences may apply: Payment of damages under contractual law (i.e. Article 1147 of the Civil code).

- The following regulatory and other sanctions may also apply: caution, official warning, penalty, ban on operations or activities, professional ban on the directors/managers of the entities supervised by the CSSF.

Private placement rules for non-fund investments available

The following non-fund investments are subject to private placement opportunities outside fund regulation:

— Securities (i.e. shares, units, bonds, notes, warrants, certificates etc. issued by ordinary companies, holding companies, securitization companies etc.)

The following types of non-funds are subject to private placement provisions:

— Securitization vehicles;
— Holdings/Soparfi.

The following types of investor are in scope of private placement exemptions:

— Professional investors (as defined in MiFID); and
— Retail investors.

The Netherlands

Summary of private placement provisions for fund interests (if applicable)

A manager of a fund whose seat is outside the EU is allowed to distribute funds in the Netherlands without a licence if the offer is solely addressed to qualified investors. The following conditions must be satisfied: (i) there should be an appropriate cooperation arrangement between the Dutch Authority for Financial Markets (*Autoriteit Financiële Markten,* **"AFM"**) and the supervisory authorities of the third country where the non-EU AIFM is established, (ii) the third country where the non-EU AIFM is established must not be listed as a Non-Cooperative Country and Territory by FATF and (iii) the manager must comply with certain transparency requirements.

A manager of a fund whose seat is in Guernsey, Jersey or the US (provided that the US investment funds are under the supervision of the SEC) and which is adequately supervised in its country of origin, may distribute in the Netherlands without a licence, including to non-qualified investors. The funds must comply with certain information requirements.

Only managers of collective investment undertakings, including investment compartments thereof, which (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, (ii) do not qualify as UCITS, and (iii) have a seat outside the EU are subject to the above private placement provisions.

The Dutch private placement rules have changed in connection with the implementation of the AIFMD. In addition to the designated countries regime and the exemption for offers that are solely addressed to qualified investors, Dutch law also used to include an exemption for offers addressed to fewer than 100 non-qualified investors, or (iii) offers of units that could only be acquired for at least EUR 100,000 per investor. These exemptions no longer exist.

Other forms of possible placement options for fund interests outside fund regulations

— The 'initiative test' applies to the question of where activities are considered to take place. Under this test, activities are considered to take place where the relationship was initiated. If the services of a fund or its manager are performed solely on a Dutch investor's initiative, the services will not be considered to take place in the Netherlands but in the country where the fund or its manager is located. In the event that activities carried out by a non-EU fund with a non-EU manager are not considered to take place in the Netherlands, they will in principle not be limited by Dutch law. If a fund is approached by a client, the initiative test may nevertheless conclude that it is acting in the Netherlands if the fund advertised or made an offer in the Netherlands in advance.

— To determine whether a financial institution is acting in the Netherlands via media such as the internet, telephone, fax, newspapers or emails, AFM has published the following indicators:
  - the failure to use disclaimers or inadequate maintenance thereof;
  - failure to include a list of countries at which the activities are expressly aimed, or inadequate maintenance thereof;
  - use of Dutch as the language of the activities;
  - canvassing (for example via e-mail) of Netherlands residents;
  - supply of information about the Netherlands tax system;

- supply of information about a foreign tax system in relation to the Netherlands;
- references to or the supply of information about Dutch laws;
- "hyperlinks" on the internet which lead the user to a website where securities services are offered or performed;
- the regular distribution area of a website is the Netherlands; or
- mentioning of an contact point/person in the Netherlands.

Consequences of non-compliance with placement regimes for fund interests

In the event that there is a contract in place with a dealer, non-compliance can result in breach of contract. The AFM may impose an administrative fine or an order for incremental penalty payments, or it can issue instructions to follow a specific line of conduct.

Private placement rules for non-fund investments available

The following non-funds are subject to private placement opportunities:
— institutions for occupational retirement provision;
— holding companies;
— supranational institutions, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;
— national, regional and local governments and bodies or other institutions which manage funds supporting social security and pension systems;
— employee participation schemes or employee savings schemes;
— securitisation special purpose entities;
— AIFMs in so far as they manage AIFs whose only investors are the AIFMs themselves or their parent undertakings, their subsidiaries or other subsidiaries of their parent undertaking and where those investors are not themselves AIFs.

The following non-fund investments are subject to private placement opportunities:
— bonds and notes;
— investment objects *(beleggingsobjecten)*.

Qualified investors (as defined in MiFiD) are subject to private placement provisions.

Certain regimes in the Netherlands are deemed "private placement". There is no single definition. The following rules and exemptions are relevant:
— Prospectus
  A prospectus must be prepared and approved by the competent authority if transferable securities are offered to the public in the Netherlands, unless an exemption applies. Exemptions from the obligation to issue a prospectus for an offering include (i) offerings addressed solely to qualified investors, (ii) offerings addressed to fewer than 150 nonqualified investors per EU State and (iii) offerings addressed to investors who acquire securities for at least EUR 100,000 in each separate offer.
— Investment objects
  No party may offer investment objects to consumers in the Netherlands without a licence granted for that purpose by the AFM. Investment objects relate to property, entitlement to property, and or entitlement to a return in cash or part of the proceeds from the sale of property. There must be the prospect of a return on investment, and the party that mainly manages the property must not be the same as the acquiring party.
  An exemption from the licensing requirement exists for offers of investment objects for a nominal amount per investment object of at least EUR 100,000.

Poland

Summary of private placement provisions for fund interests (if applicable)

There is no specific definition of private placement under Polish law. The concept of "private placement" is determined by opposition to public offer and by referring to the exemption from the requirement to publish a prospectus under the provisions of the prospectus law implementing Directive 2003/71/EC, as amended ("Prospectus Law"). According to the Prospectus Law, a placement by any entity (including an AIF) will be deemed a private placement provided it is not addressed to more than 149 investors or an unspecified investor.

A public placement will be exempted from the prospectus requirement if, among others, (i) it is addressed to professional entities only, (ii) it is addressed to investors acquiring securities worth no less than EUR 100,000 or securities with a face value of no less than EUR 100,000, (iii) the value of the whole placement does not exceed EUR 100,000.

Closed-end funds that invest in non public assets (so-called closed end private equity funds) are subject to private placement provisions.

As mentioned, a public placement (a placement with over 149 investors) will be exempted from the prospectus requirement if, among others, it is addressed to professional entities only. A professional entity is one which has the experience and knowledge enabling it to make the right investment decisions and to correctly evaluate the risk associated with such decisions. A detailed list includes, among others: banks, investment firms, insurance companies, dealers/brokerage, investment funds, pension funds, entrepreneurs meeting certain capitalization thresholds and it is based on MiFID.

There are no potential changes to private placement rules following the implementation of AIFMD in Poland. The Polish government has not yet enacted any piece of legislation implementing AIFMD, and has not presented any draft of such legislation.

Other forms of possible placement options for fund interests outside fund regulations

Reverse solicitation may be considered as non-marketing activity. Assessments of reverse solicitation are made on a case-by-case basis.

Consequences of non-compliance with placement regimes for fund interests

Mandatory contractual consequences:
Possible application of contractual law resulting in an invalidation of the placement and payment of damages. However, market practice is very limited.

Regulatory sanctions:
A administrative penalty of up to PLN 5,000,000 (EUR 1,250,000).

Penal sanctions:
A criminal penalty of up to PLN 10,000,000 (EUR 2,500,000) and/or a two year prison sentence may be adjudicated if public placement securities are offered in a private placement.

Private placement rules for non-fund investments available

Generally, the private/public placement distinction is applicable to securities issued by any entity (such as an "ordinary company"). Accordingly, securities such as bonds, notes, warrants may constitute a good private placement opportunity outside fund regulation, as long as these are issued in a private placement (i.e. a placement to less than 149 investors).

Generally, the private/public placement distinction is applicable to all issuers of securities, including in particular ordinary companies, municipalities and other separately regulated issues.

Spain

Summary of private placement provisions for fund interests (if applicable)

As of yet, Spain has not implemented the AIFMD.

In Spain, the position remains that open-ended CIS cannot be distributed on a private placement basis, while closed-ended CIS can be distributed on a private placement basis under the exceptions contained in the Prospectus Directive, as implemented in Spain. The following types of offer of closed-ended CIS will not qualify as a public offer of securities and therefore will not be subject to the obligation to publish a prospectus:

— an offer exclusively directed at qualified investors;
— an offer directed at fewer than 150 natural or legal persons of an EU State, without including qualified investors;
— an offer directed at investors who acquire securities/interests for a minimum of EUR 100,000 per investor, for each separate offer;
— an offer, the unit nominal value of which is at least EUR 100,000;
— an offer for a total sum of less than EUR 5 million, the limit of which is calculated over a 12-month period.

Other forms of possible placement options for fund interests outside fund regulations

There are no other forms of possible placement options for open-ended CIS. Please see above for private placement exceptions for closed-ended CIS.

Consequences of non-compliance with placement regimes for fund interests

From a regulatory perspective, marketing fund interests in Spain (whether open or closed-ended) without complying with the relevant placement regime as applicable to the relevant fund, could, in principle, constitute a very serious infringement.

Private placement rules for non-fund investments available

In general, the placement of any other securities in Spain (except open-ended CIS) may be subject to Spanish private placement rules contained in local rules implementing the Prospectus Directive. Please see the private place exemptions above.

Switzerland

Summary of private placement provisions for fund interests (if applicable)

Switzerland is not a member state of the EU and thus not subject to the AIFMD and the respective rules. Switzerland has its own

(a) set of rules, laid down in the Collective Investment Scheme Act (**"CISA"**, *Kollektivanlagegesetz)* and the corresponding Ordinance (**"CISO"**, *Kollektivanlageverordnung);* and

(b) terminology related to funds or collective investment schemes (**"CIS"**), the term commonly used in Switzerland for any type of fund. Besides the law, the placement of CIS is based on rules published by the Financial Market Supervisory Authority (**"FINMA"**).

A new regime effective as of 1 March 2013 does not distinguish between private and public placement, but solely relies on the term *"distribution",* being defined as any *"offering"* and *"marketing"* of CIS, *which is not exclusively* aimed at a limited group investors, which are listed in the respective provision of the law. The CISA and CISO define *activities,* which are not considered to be distribution (or placements) and thus not subject to the law as

(a) any offering and marketing of CIS exclusively aimed at *prudentially supervised financial intermediaries* such as banks, securities dealers, fund management companies, insurance companies and asset managers of CIS; and

(b) provided that no third party (such as the sponsor, manager or a promoter of the CIS) is involved
- reverse solicitation by or "execution only" transactions on behalf of an investors in particular in the context of an advisory mandate;
- acquisitions of CIS by prudentially supervised financial intermediaries (excluding insurance companies) for their clients based on a discretionary asset management agreement; and
- acquisitions of CIS by an independent asset manager for a client based on a discretionary asset management agreement, if certain criteria are met, namely that (i) the independent asset manager is (aa) a registered financial intermediary for money laundering purposes and (bb) subject to a code of conduct, accepted by FINMA and that (ii) the particular discretionary asset management agreement meets industry standards, accepted by FINMA.

(c) the publication of prices, net asset values and quotes for CIS by supervised financial intermediaries; and

(d) employee participation schemes based on CIS.

All other forms of distribution (or placements) are subject to the CISA and CISO and the respective regulatory constraints, whereby a distinction is to be made between two different distribution forms, namely

(a) to *qualified investors* (**"QIs"**) other than prudentially supervised financial intermediaries, namely
- public entities, pension schemes and private enterprises, each with professional treasury;
- high net worth individuals (**"HNWIs"**) declaring to be treated as a QI in writing (opt-in); and
- clients of asset managers not waiving the QI status (opt-out);

which is subject to *some* (but not all); and

(b) to non-qualified investors (Non-QIs), which is subject to *all* the rules of the law with respect to distribution.

Distribution to QIs requires the CIS to appoint a Swiss representative and a paying agent and may only be made by domestic fund distributors (having a distribution license or being exempt from applying for a license) or foreign entities (subject to an adequate foreign supervision), based on a distribution agreement with the Swiss representative.

Distribution to Non-QIs requires in addition to what is required for distribution to QIs a regulatory license for CIS (a Swiss passport).

There is a level playing field, meaning that the same rules apply to all foreign (and domestic) CIS irrespective of the legal format or jurisdiction of the CIS.

Other forms of possible placement options for fund interests outside fund regulations

The following are not covered by the law and thus exempt from the distribution rules related to CIS:

(a) placements to prudentially supervised financial intermediaries;
(b) reverse solicitation by or "execution only" transactions by investors in particular in the context of an advisory mandate;
(c) acquisitions of CSI by prudentially supervised financial intermediaries (excluding insurance companies) for clients based on a discretionary asset management agreement;
(d) acquisitions of CIS by an independent asset manager for a client based on a discretionary asset management agreement, if certain criteria are meet;
(e) the publication of prices, net asset values and quotes for CIS by supervised financial intermediaries; and
(f) employee participation schemes based on CIS.

The exemptions in (b) to (d) above do not apply, if induced by activities of a third party, such as the sponsor, manager or promoter of the CIS.

Consequences of non-compliance with placement regimes for fund interests

There are no explicit mandatory contractual consequences, so the subscription remains valid, unless there are other reasons to have it declared invalid. However, a violation of the placement rules are subject to criminal penalties. Unlawful activities are punishable with incarceration of up to three years or fines for intentional violations; negligent violations are subject to a fine of up to CHF 250,000. FINMA may act against private individuals or legal entities that are in violation of the placement rules and/or acting without the required license. FINMA may initiate an investigation, which could lead to a ceasure and foreclosure of illicit gains or the liquidation of a legal entity at issue.

Private placement rules for non-fund investments available

Private placement outside the fund regulation is available for Structured Products, such as inter alia (i) financial instruments (aa) with capital protection or (bb) a maximum return and (ii) for certificates. Shares, bonds and warrants follow a different set of rules and not rules laid down in the CISA and CISO, whereby public as opposed to private placement requires a prospectus. The term QI for the purpose of permissible private placements of Structured Products is the same as used in the context of CIS and defined above.

Private Placement of structured products to Non-QIs may occur, but only if

(a) the structured products are issued, guaranteed or provided with an equivalent protection by
    - prudentially supervised financial intermediaries [such as banks, securities dealers or insurance companies]; or
    - foreign entities subject to a similar, prudential supervision;

    and if
(b) there is a simplified prospectus.

Definition of "private placement" in respect of non-fund investments
The term private placement used and applicable is different in the context of (a) CIS, (b) Structured Products and (c) shares, bonds and warrants. With respect to private placements of Structured Products, a distinction has to be made on the basis of the type of investors, i.e. Non-QIs, requiring a prospectus and QIs, where private placement without a prospectus is possible. Private placements of CIS is a much narrower concept, as outlined above, and not possible to QIs, but only to prudentially supervised financial intermediaries and some other, limited forms of placements. The term private placements of shares, bonds and warrants is not defined by the law and there are different views, one being that a placement is public, if more than 20 individuals are contacted. As opposed to private placements of CIS and Structured Products, the type of investor is not relevant.

United Kingdom

Summary of private placement provisions for fund interests (if applicable)

The UK private placement regime applying from 22 July 2013 is set out at Chapter 3, Part 6 of the Alternative Investment Fund Managers Regulations 2013 (the **"AIFM Regulations"**), and in new Rules and Guidance in the Financial Conduct Authority (**"FCA"**) Handbook. There is no definition of private placement. However, new FCA Guidance states:

"An offering or placement takes place for the purposes of the AIFMD UK regulation when a person seeks to raise capital by making a unit or share of an AIF available for purchase by a potential investor. This includes situations which constitute a contractual offer that can be accepted by a potential investor in order to make the investment and form a binding contract, and situations which constitute an invitation to the investor to make an offer to subscribe for the investment."

"… a 'placement' includes situations where the units or shares of an AIF are only made available to a more limited group of potential investors."

An AIFM is simply required to notify the FCA of its intention to market under the UK private placement regime, providing certain information about each AIF concerned, and confirming that it meets the relevant conditions in the AIFM Regulations. The AIFM is entitled to market the AIF as soon as a notification containing all of the required information has been sent to the FCA.

A fee must be paid to the FCA in order to market under the private placement regime: The fee for an AIF managed by a full-scope non-EEA AIFM is GBP 250. For an AIF managed by a sub-threshold non-EEA AIFM, it is GBP 125. For a non-EEA AIF managed by EEA AIFM, where the AIFM is not otherwise paying any FCA fee as an AIFM, it is GBP 250.

Conditions for EEA AIFMs (Regulation 57)

A full scope UK AIFM or a full scope EEA AIFM notifying the FCA of its intention to market a non-EEA (or "third country") AIF, or UK or feeder AIFs of third country master AIFs in the UK under the local private placement regime must confirm the following conditions are satisfied:

— It complies with the majority of the requirements of the AIFMD;
— Appropriate co-operation arrangements are in place between the regulatory authority of the AIFM's home EU State and the regulatory authority of the third country AIF or master AIF; and
— The country of establishment of the third country AIF or master AIF is not listed as a Non-Cooperative Country and Territory (**"NCCT"**) by the Financial Action Task Force (**"FATF"**).

Conditions for non-EEA AIFMs (Regulation 59)

A non-EEA AIFM notifying the FCA of its intention to market any AIF (whether UK, EEA or non-EEA) in the UK under the local private placement regime must confirm the following conditions are satisfied:

— The AIFM is the person responsible for complying with the implementing provisions relating to the marketing of the AIF;
— It complies with certain transparency requirements under the AIFMD;
— If it manages AIFs which acquire majority control of non-listed companies and issuers (with certain exceptions), it complies with the additional disclosure requirements and asset stripping restrictions under Part 5 of the AIFM Regulations;

— Appropriate co-operation arrangements are in place between the FCA and the regulatory authority of the AIF's/AIFM's EU State; and
— The country where the third country AIFM and, if applicable, the third country AIF is established must not be listed as a NCCT by FATF.

Conditions for "small" non-EEA AIFMs (Regulation 58)
A small non-EEA AIFM notifying the FCA of its intention to market any AIF (whether UK, EEA or non-EEA) in the UK under the local private placement regime, must confirm that the AIFM is the person responsible for complying with the implementing provisions relating to the marketing of the AIF; and that the AIFM is a small third country AIFM. The AIFM must also provide the FCA with certain information on the main instruments in which the AIFM trades, and the principal exposures and most important concentrations of the AIFs that it manages.

The relevant forms to notify the FCA are available on the FCA website.
(Note the UK rules refer to "EEA" rather than "EU" AIFs/AIFMs)

Both professional and retail investors in the UK are in scope of the private placement provisions (although marketing to retail investors is caught by additional UK financial promotion rules). There has been no significant change to the private placement rules.

Other forms of possible placement options for fund interests outside fund regulations

The UK national private placement regime will not apply to: "an offering or placement of units or shares of an AIF to an investor made at the initiative of that investor" (AIFM Regulations, Reg 47). A confirmation from the investor that the offering or placement of units of shares of the AIF was made at its initiative, should normally be sufficient to demonstrate that the marketing is at the initiative of the investor, provided this is obtained before the offer or placement takes place. Industry practice also seems to be that investment firms *acting for the investor* (e.g. investment managers and advisers) can make the initial approach to the AIF/AIFM and complete such confirmations on behalf of the investor. However, AIFMs and investment firms acting for AIFs/AIFMs should not be able to rely upon such confirmation if this has been obtained to circumvent the requirements of AIFMD.

The UK national private placement regime will not apply to the marketing of AIFs where securities are subject to an offer to the public under a prospectus that has been drawn up and published in accordance with the prospectus directive before 22 July 2013. This applies for the duration of the validity of that prospectus. (AIFM Regulations, Reg 73).

Consequences of non-compliance with placement regimes for fund interests

Carrying out marketing in contravention of the UK private placement regime is defined as "unlawful marketing" under the AIFM Regulations.

An agreement entered into by a customer as a consequence of unlawful marketing by a person who is not authorised by the FCA is unenforceable and the customer is entitled to recover money paid under the agreement and compensation for any loss sustained. (However the court may allow the agreement to be enforced and money to be retained if it is satisfied that it is just and equitable.) If an AIFM or an investment firm authorised by the FCA carries out unlawful marketing, this is actionable at the suit of a private person who suffers loss as a result of such marketing, subject to the defences and other incidents applying to actions for breach of statutory duty.

For persons who are not authorised by the FCA, unlawful marketing is a criminal offence subject to imprisonment for a term not exceeding three months or a fine, or both. FCA authorised persons who carry out unlawful marketing may be sanctioned through public censure, a financial penalty and potentially enforcement action by the FCA leading to the withdrawal of FCA authorisation.

Private placement rules for non-fund investments available

Non-fund investments subject to other private placement opportunities
— Investments offered by a holding company
— Investments offered by an employee participation scheme or employee savings scheme
— Investments offered by a securitisation special purpose entity
— Shares in listed and non-listed companies
— Rights under pension

Promotions of investments must be made by an FCA authorised person or else approved by an FCA authorised person (unless exempt under the Financial Promotions Order). Private placement of investments by FCA authorised persons must comply with FCA Rules on financial promotion in the Conduct of Business Sourcebook in the FCA Handbook.

Definitions

AFM	Autoriteit Financiële Markten (The Netherlands)
AIF	Alternative Investment Fund, defined in the AIFMD as: "A collective investment undertaking, including investment compartments of such an undertaking, which – (a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of these investors; and (b) does not require authorisation pursuant to Article 5 of the UCITS directive."
AIFM	Alternative Investment Fund Manager, defined in the AIFMD as a legal person whose regular business is managing one or more AIFs
AIFMD	Alternative Investment Fund Managers Directive of 8 June 2011 (2011/61/EC)
AIFMG	Alternative Investment Fund Managers Act (Austria)
AIFMG-L	Alternative Investment Fund Managers Law (Liechtenstein)
AIFM Regulations	Alternative Investment Fund Managers Regulations 2013
AIFMV	Alternative Investment Fund Managers Ordinance (Liechtenstein)
AMF	Autorité des marchés financiers (France)
CBI	Central Bank of Ireland
CFA	Consolidated Financial Act (Italy)
CIS	Collective Investment Scheme
CISA	Collective Investment Scheme Act (Switzerland)
CISO	Collective Investment Scheme Ordinance (Switzerland)
Consob	Commissione Nazionale per le Società e la Borsa (Italy)
CSSF	Commission de Surveillance du Secteur Financier (Luxembourg)
Draft CFA	Draft amendments to the Consolidated Financial Act (Legislative Decree no. 58/1998) (Italy)
EEA	European Economic Area
EU AIF	AIF which is registered or authorised in an EU State under the applicable national law or which is not registered or authorised in an EU State but has its registered office and/or head office in an EU State
EU AIFM	AIFM which has its registered office in an EU State
FATF	Financial Action Task Force
FCA	Financial Conduct Authority (United Kingdom)
FCA Handbook	FCA's handbook of rules and guidance for regulated firms (United Kingdom)

Financial Promotions Order	Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (United Kingdom)
FINMA	Financial Market Supervisory Authority (Switzerland)
FMA	Financial Market Authority (Austria)
FSMA	Financial Services and Markets Authority (Belgium)
HNWIs	High Net Worth Individuals
ISIN	International Securities Identification Number
IUG	Law on Investment Undertakings (Liechtenstein)
MiFID	Markets in Financial Instruments Directive of 21 April 2004 (Directive 2004/39/EC)
NAV	Net asset value
NCCT	Non-Cooperative Country and Territory
Non-EEA	Non-European Economic Area
Non-EU AIF	AIF not qualifying as an EU-AIF
Non-EU AIFM	AIFM which has its registered office in a state which is not an EU State
PDR	Prospectus (Directive) Regulations 2005 (Ireland)
Prospectus Directive	Directive 2003/71/EC of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading
QIs	Qualified Investors (for Swiss law purposes)
SEC	Securities and Exchange Commission (United States of America)
SICAR	Société d'Investissement en Capital A Risque (Luxembourg)
SIF	Specialised Investment Fund (Luxembourg)
Small AIFM	AIFM managing AIFs whose assets under management, calculated in accordance with Article 2 of the AIFMD Level 2 Regulation: (a) do not exceed EUR 500 million in total in cases where the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF; or (b) do not exceed EUR 100 million in total in other cases, including any assets acquired through the use of leverage.
SPA	Securities Prospectus Act (Liechtenstein)
UCIS	Unregulated Collective Investment Schemes
UCITS	Undertakings for Collective Investment in Transferable Securities
UK AIFM	AIFM which has its registered office in the United Kingdom

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