

## FINANCIAL REGULATORY QUICK START GUIDE

### THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD): AN OVERVIEW

#### OVERVIEW

The AIFMD is an EU regime that aims to provide a harmonised regulatory framework for alternative investment fund managers (AIFMs) and the management, administration and marketing of the alternative investment funds (AIFs) that they manage.

The scope of the AIFMD is broad and includes requirements relating to authorisation, administration, remuneration, managing, marketing, and depositary oversight of funds. It focuses on regulating the manager rather than the fund itself.

The AIFMD had to be transposed into the national legislation of each EEA Member State, which has led to some significant divergences in practice and interpretation of key parts of the AIFMD, particularly with respect to the marketing of AIFs by third-country AIFMs.

The AIFMD was introduced as a reaction to the financial crisis, in a bid to bring greater transparency and oversight to the institutional funds sector.

Prior to the AIFMD, in many EEA Member States institutional funds and their managers were subject to relatively “light-touch” regulation, compared to the more stringent regulation of “retail” funds.

#### IMPACT OF BREXIT

The UK has maintained the AIFMD regime in UK law post-Brexit, but with a UK-only scope. This means that currently there is a UK AIFMD regime

that applies to UK AIFMs and non-UK AIFMs that market their AIFs into the UK. There is also the original EU AIFMD regime, which applies to EEA AIFMs and non-EEA AIFMs that market their AIFs into the EEA.

As a result, UK AIFMs are treated as third-country AIFMs under the EU regime, and EEA AIFMs are treated as third-country AIFMs under the UK regime, which has consequences for the marketing of funds across the UK and EEA.

As UK AIFMs can no longer benefit from the passporting regime under the EU AIFMD, and the third country passporting regime has not been enabled in the EU, UK AIFMs are subject to national rules in each Member State into which they wish to market their AIFs (subject to any temporary passporting arrangements). The UK has put in place a temporary marketing permissions regime for EEA AIFMs that were marketing funds into the UK pre-Brexit.

While the UK has maintained the AIFMD regime largely as it applied pre-Brexit (except for the necessary changes to scope), it is likely that the two regimes will diverge over time.

An EU-level review of the AIFMD has been ongoing for some time, and the European Commission has published proposals to revise the regime. These are fairly targeted and focus on delegation, depositories, liquidity risk management, data reporting, and loan origination. There is no suggestion that the UK will seek to mirror these changes.

#### SCOPE

**AIFM** – an AIFM is a legal person whose regular business is to manage one or more AIFs.

This includes managers of hedge funds, private equity firms, and investment trusts.

**AIF** – an AIF is a “collective investment undertaking” that is not a UCITS (UK UCITS under the UK AIFMD), which:

- Raises capital from a number of investors
- With a view to investing that capital in accordance with a defined investment policy
- For the benefit of those investors

**Exemptions** – the AIFMD exempts several entities from being AIFs, including family investment vehicles, holding companies, certain joint ventures and other vehicles. Further, AIFMs that manage funds where the investors consist only of the AIFM and/or the AIFM’s group companies are excluded.

**Small managers regime** – a different (less intensive) regime applies to AIFMs that meet the definition of a “small AIFM”. The definition includes consideration of assets under management, use of leverage, and redemption rights.

**Third-country AIFMs** – are subject to a lighter-touch regime than full-scope UK/EEA AIFMs. However, they are unable to use the AIFMD marketing passport in the EEA and instead have to comply with each individual Member State’s national private placement regime.

## IMPACT OF THE AIFMD ON CORPORATE TRANSACTIONS

The impact of the AIFMD should be considered in corporate transactions that involve any structures that involve the pooling of capital, as well as more traditional funds.

Key impact areas, or areas which should be considered, include:

- **Portfolio company disclosure regime** – a UK/EEA AIFM must disclose to regulators (and others) all acquisitions of “control” and “material” stakes in UK/EEA portfolio companies.
- **Asset stripping** – a UK/EEA AIFM needs to comply with asset stripping provisions (which restrict, for example, certain distributions, capital reductions, share redemptions and acquisitions of own shares) in respect of UK/EEA portfolio companies for a period of two years following acquisition of “control” of an UK/EEA portfolio company.
- **Structuring** – the AIFMD may impact the way in which firms choose to structure a deal, so should be considered at the outset of the transaction.
- **Other considerations** – it may be necessary to consider, for example, whether the intended deal creates an AIF, change in control requirements, leverage limits, depositaries, and the remuneration provisions.

## KEY REQUIREMENTS OF THE AIFMD

Requirement	Overview
Authorisation	Broadly, the AIFMD requires an AIFM to be authorised or registered, depending on the size of the manager.
Management and Marketing	The AIFMD imposes strict requirements on the management and marketing of AIFs in the UK/EEA.
Capital	UK/EEA AIFMs must meet the minimum capital requirements in relation to both initial capital and “own funds”, and must also meet the requirements in relation to professional indemnity insurance.
Conduct	UK/EEA AIFMs must comply with the governance and conduct of business requirements set out in the AIFMD relating to risk management, valuation, disclosures, liquidity and conflicts.
Remuneration	UK/EEA AIFMs must have the prescribed remuneration policies and practices in place.
Depositaries	The AIFMD sets out certain requirements in relation to depositaries, and makes service providers (including depositaries) subject to robust regulatory standards.
Transparency	The AIFMD imposes transparency and disclosure obligations on AIFMs in respect of information to investors, regulators, and other key stakeholders. The reporting requirements set out under the AIFMD can be onerous and time intensive.
Other	The AIFMD introduces certain procedures for independent valuation of AIF assets and use of leverage, imposes restrictions on delegation of AIFM functions (portfolio & risk management functions) and affords regulators wide powers of inspection and intervention.

## CONTACTS



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