

Handbook on Marketing Foreign EU/EEA Alternative Investment Funds (AIF) in Germany

Alternative Investment Fund Managers (AIFMs) domiciled *in* the European Economic Area (EEA) must comply with specific regulatory requirements to market an EEA AIF in Germany. The scope and intensity of these requirements also depend on the type of investor targeted. As far as professional investors are concerned, AIFMs can make use of the *European passport regime* in accordance with the Alternative Investment Fund Managers Directive (AIFMD). Under the German *national private placement regime*, this option is also available for marketing to semi-professional investors—a distinct investor category not derived from AIFMD. The regulatory burden is highest for marketing to retail investors, requiring a BaFin notification procedure similar to a full AIFM authorisation process.

This handbook provides an overview of the conditions that EEA AIFMs must meet to market investment funds established in an EEA State in Germany. EEA AIFMs and non-EEA AIFMs intending to market non-EEA AIFs or German AIFs in Germany will need to comply with specific requirements that fall outside the scope of this handbook. **If you are a foreign non-EEA AIFM intending to market a non-EEA investment fund in Germany, please refer to Kronsteyn’s ‘Handbook on Marketing Foreign Non-EU/Non-EEA Alternative Investment Funds (AIF) in Germany’, available [upon request](#) free of charge.**

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1. Introduction

The German Capital Investment Code is the primary legislation governing collective investment undertakings, including AIFs and AIFMs. It implements EU directives on collective investment undertakings into national law, in particular the Undertakings for Collective Investment in Transferable Securities Directive and the Alternative Investment Fund Managers Directive. The German Capital Investment Code also incorporates specific German rules, such as a *national private placement regime* (NPPR)¹ for foreign AIFMs seeking to market AIFs they manage in Germany outside the scope of the *European passport regime*.

2. Interpretations

The following definitions apply to this document:

- ‘AIF’ refers to an alternative investment fund;
- ‘AIFM’ refers to an alternative investment fund manager;
- ‘Alternative Investment Fund Managers Directive’ refers to [Directive 2011/61/EU](#);
- ‘EEA’ refers to the territory of the member states of the European Union (EU) and the contracting states of the Agreement on the European Economic Area;
- ‘German Capital Investment Code’ refers to the [Kapitalanlagegesetzbuch \(KAGB\)](#);
- ‘German Investment Act’ refers to the [Gesetz über Vermögensanlagen \(Vermögensanlagengesetz – VermAnlG\)](#);
- ‘Markets in Financial Instruments Directive’ refers to Directive 2014/65/EU;
- ‘Markets in Crypto-Assets Regulation’ refers to [Regulation \(EU\) 2023/1114](#);
- ‘Member State’ refers to a member state of the European Union (EU) or a contracting state of the [Agreement on the European Economic Area](#);
- ‘Packaged Retail and Insurance-based Investment Products Regulation’ refers to [Regulation \(EU\) No 1286/2014](#);
- ‘Prospectus Regulation’ refers to [Regulation \(EU\) 2017/1129](#);
- ‘Sub-threshold AIFM’ refers to an AIFM is registered in its Member State in accordance with Article 3(2) of the Alternative Investment Fund Managers Directive;
- ‘UCITS’ refers to an undertaking for collective investment in transferable securities;
- ‘Undertakings for Collective Investment in Transferable Securities Directive’ refers to [Directive 2009/65/EC](#).

3. Key Principles on Marketing of AIF in Germany

The marketing regimes under the German Capital Investment Code apply to EEA AIFMs intending to ‘market’ a collective investment undertaking, either in the form of a UCITS or an ‘AIF’, ‘in Germany,’ provided no exemption applies. Accordingly, this Section 3 outlines key principles regarding the legal interpretation of these terms and the possible exemptions.

3.1 Definition of ‘AIF’

The overarching denominator of the German Capital Investment Code as well as of the Alternative Investment Fund Managers Directive and the Undertakings for Collective Investment in Transferable Securities Directive is the concept of the collective investment undertaking. Both, AIF and UCITS, are collective investment undertakings and share similar characteristics.

According to the legal definition, ‘AIF’ refers to a collective investment undertaking, including its investment compartments, which (i) raises 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 and (ii) do not require authorisation pursuant to the Undertakings for Collective Investment in Transferable Securities Directive.

The general characteristics of a collective investment undertaking are that (i) the undertaking does not have a general commercial or industrial purpose, (ii) the undertaking pools together capital raised from its investors for the purpose of investment with a view to generating a pooled return for those investors and (iii) the unitholders or shareholders of the undertaking – as a collective group – have no day-to-day discretion or control.

The activity of *raising capital* refers to a commercial activity of taking direct or indirect steps by an undertaking or a person or entity acting on its behalf to procure the transfer or commitment of capital by one or more investors to the undertaking for the purpose of investing it in accordance with a defined investment policy.

Raising capital *from a number of investors* refers to raising capital from more than one investor, even if the undertaking has in fact only one investor.

¹ The term “private placement regime” suggests that the rules pertain exclusively to private placements, as opposed to public offerings. This is not accurate. The German NPPR applies to the marketing of AIFs in general and

is not restricted to private placements. Nevertheless, as the term has evolved into a market standard, it is also used in this handbook.

A defined *investment policy* refers to a policy about how the pooled capital in the undertaking is to be managed to generate a pooled return for the investors from whom it has been raised. The investment policy does not encompass a business strategy followed by an undertaking having a general commercial or industrial purpose.

If a collective investment undertaking qualifies as a *UCITS*, it falls outside the definition of an AIF. Broadly speaking, UCITS are open-ended investment funds dedicated exclusively to the collective investment of capital raised from the public in transferable securities or certain other liquid financial assets, operating under the principle of risk-spreading. The term UCITS applies only to collective investment undertakings regulated under the Undertakings for Collective Investment in Transferable Securities Directive. As this directive does not apply to collective investment undertakings domiciled outside the EEA, any such undertaking would fall under the definition of an AIF, even if it meets the other characteristics of a UCITS.

If the investment fund in question does not meet the specified criteria for collective investment undertakings, it falls outside the scope of the German Capital Investment Code. However, offering or placing such a fund in Germany may still be subject to other restrictive legal provisions, such as the Prospectus Regulation, the Markets in Crypto-Assets Regulation, or the German Investment Act.

3.2 Definition of ‘Marketing’

Marketing refers to the direct or indirect offering or placement of units or shares of a collective investment undertaking. According to BaFin’s administrative practice, the term ‘offering’ includes not only offers in the legal sense but also broader interpretations, such as an *invitatio ad offerendum* (invitation to make an offer). A ‘placement’ is considered to occur when the units or shares are actively sold.

The offering or placement must pertain to a *specific* collective investment undertaking. This is particularly relevant for AIFs that have already been launched or are currently being offered. General advertising for an AIFM should be assessed separately. Consequently, promoting an AIFM and its capabilities typically does not constitute marketing activity, as it does not involve the direct or indirect offering or placement of units or shares in a specific AIF.

Marketing encompasses not only *individual approaches* such as personal advice, sales meetings (including customer meetings with bank advisors, whether in person, by telephone, or via the internet), roadshows, customer letters, direct mail, and advertising emails, but also extends to *broader promotional efforts* targeting a wider audience. This includes advertisements in magazines, radio and television

commercials, online advertising (such as through websites or advertising banners), and the display of promotional materials. Essentially, marketing covers both direct, personalised approaches and more general promotional activities aimed at a broader group of potential investors.

Marketing of units or shares in an AIF does not occur if an investor is offered, directly or indirectly, the acquisition of additional units or shares in the same AIF, for example, through the delivery of a prospectus or other information.

Stipulated under the German Capital Investment Code, where no additional forms of marketing take place, the following cases shall not be considered as marketing in Germany:

- where investment funds are only named;
- where only the net asset values, prices determined on an organised market, or the issue and redemption prices of units or shares of an investment fund are mentioned or published;
- certain cases where sales documents of an investment fund with at least one investment compartment, whose units or shares may be marketed in Germany, are used, and these sales documents also contain information about other investment compartment that may not be marketed in Germany;
- where the tax bases pursuant to § 5 of the German Investment Tax Act (Investmentsteuergesetz, InvStG) are mentioned or disclosed;
- where information about an investment fund is provided due to legally required publications or disclosures;
- where AIFMs only fulfil their statutory publication obligations in the German Federal Gazette or exclusively their regular information obligations to investors already invested in the relevant investment fund.

The term ‘marketing’ does not necessarily require a *public offering*. It may also encompass *private placements*, meaning marketing directed at a non-public group of individuals.

Generally, marketing is initiated by the AIFM or conducted on its behalf. However, this does not apply in cases of *reverse solicitation*, where the initiative to acquire units or shares of an AIF originates from the potential investor. German law, however, imposes stricter rules for retail investors than for professional and semi-professional investors. The concept of reverse solicitation applies only to the latter two categories. If a retail investor contacts the AIFM on its own initiative, and a marketing communication subsequently develops or the investor makes an investment, this would be regarded as marketing.

Pre-marketing does not constitute an offer or placement to potential investors. It is permissible under specific requirements and entails a notification obligation to BaFin.

Pre-marketing refers to the provision of information or communication, either direct or indirect, about investment strategies or investment ideas by an AIFM or on its behalf, to potential professional or semi-professional investors. The purpose is to gauge their interest in an AIF or a compartment that is either not yet established or established but not yet notified for marketing.

3.3 Marketing ‘in Germany’

An AIFM markets an AIF in Germany when its marketing activities are directed at investors—whether natural or legal persons—whose habitual residence or registered office is located within the territory of the Federal Republic of Germany.

3.4 Exemptions

EEA AIFMs intending to market in Germany an AIF that meets all legal requirements of an AIF may, however, fall outside the scope of the German marketing regimes if an exemption applies. For instance, the holding exemption excludes holding companies from the application of the German Capital Investment Code. The term ‘holding company’ encompasses a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participations in order to contribute to their long-term value, and which is either a company (i) operating on its own account and whose shares are admitted to trading on a regulated market in the EEA; or (ii) not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated companies, as evidenced in its annual report or other official documents.

4. Marketing Regime for Professional Investors

The German marketing regime for Alternative Investment Fund Managers (AIFMs) domiciled in the EEA intending to market Alternative Investment Funds (AIF) also domiciled in the EEA to professional investors in Germany is generally governed by the *European passport regime* (see Section 4.2 below). However, making use of the passport regime requires that the AIFM is fully authorised under the principles of the Alternative Investment Fund Managers Directive. If the AIFM is only registered in its home Member State in accordance with Article 3(2) of the Directive (sub-threshold AIFM), the passport regime does not apply. In this case, the AIF may be marketed under the *German national private placement regime* (see Section 4.3 below).

4.1 Definition of Professional Investors

The term ‘professional investor’ refers to an investor which is considered to be a *professional client* or may, on request, be treated as a professional client within the meaning of Annex II of the Markets in Financial Instruments Directive.

Categories of clients within the meaning of the Markets in Financial Instruments Directive that are considered to be professionals:

- (1) entities which are required to be authorised or regulated to operate in the financial markets, the list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned, entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country, (a) credit institutions, (b) investment firms, (c) other authorised or regulated financial institutions, (d) insurance companies, (e) collective investment schemes and management companies of such schemes, (f) pension funds and management companies of such funds, (g) commodity and commodity derivatives dealers, (h) locals, (i) other institutional investors;
- (2) large undertakings meeting two of the following size requirements on a company basis, (a) balance sheet total of EUR 20 million, (b) net turnover of EUR 40 million, (c) own funds of EUR 2 million;
- (3) national and regional governments, including public bodies that manage public debt at national or regional level, central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations;
- (4) other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

Clients within the meaning of the Markets in Financial Instruments Directive who may be treated as professionals on request:

As a minimum, two of the following criteria shall be satisfied, to qualify as a client who may be treated as professional on request:

- (i) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters,
- (ii) the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000 and

(iii) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

4.2 Marketing by a Fully Regulated EEA AIFM Under the European Passport Regime

EEA AIFMs that are fully regulated under the principles of the Alternative Investment Fund Managers Directive who intend to market an EEA AIF to German professional investors can rely on the *European passport regime*.

Under the laws of the Member State where the AIFM is domiciled (home Member State) the AIFM will have to submit a notification to its competent authority in respect of each EEA AIF that it intends to market in another Member State. That notification shall comprise the documentation and information set out in Annex IV of the Alternative Investment Fund Managers Directive.

The competent authority of the home Member State of the AIFM will transmit the complete notification file to BaFin. The competent authority will also enclose a statement to the effect that the AIFM is authorised to manage AIFs with a particular investment strategy.

Upon transmission of the notification file, the competent authority of the home Member State will notify the AIFM about the transmission. The AIFM may start marketing the AIF to professional investors in Germany as of the date of that notification.

Where the AIF is a feeder AIF the right to market the AIF in Germany is subject to the condition that the master AIF is also an EEA AIF and is managed by an authorised EEA AIFM.

4.3 Marketing by a Sub-threshold EEA AIFM

EEA AIFMs are subject only to a registration requirement and some other minor requirements under the rules applicable in the home Member State which implement Article 3(2) of the Alternative Investment Fund Managers Directive, provided that their assets under management remain below certain thresholds (Sub-threshold AIFMs). The thresholds are, in short, EUR 100 million if the AIFM employs leverage, or EUR 500 million if the portfolio is unleveraged and investors have no redemption rights exercisable during a period of 5 years following the date of initial investment.

The drawback is that Sub-threshold AIFMs do not have access to the European passport regime. However, the German Capital Investment Code provides for a national private placement regime that enables Sub-threshold AIFMs to market AIF to German professional investors. The AIFM may commence its marketing activities if marketing is

permissible (see Section 4.3.1 below) and a complete marketing notification has been received by BaFin (see Section 4.3.2 below).

4.3.1 Permissibility of Marketing

According to the German Capital Investment Code marketing of AIF to German professional investors by a Sub-threshold AIFM is permissible if the following conditions are met:

- the AIFM is registered in its home Member State in accordance with the rules applicable in the home Member State implementing Article 3 of the Alternative Investment Fund Managers Directive, and
- the home Member State of the AIFM also permits the marketing of AIFs managed by German Sub-threshold AIFMs that fulfil the conditions set out in the German rules implementing Article 3 of the Alternative Investment Fund Managers Directive and are registered accordingly and the home Member State does not make the marketing of such AIFs subject to stricter conditions than those set out in the German Capital Investment Code (principle of reciprocity).

With the principle of reciprocity, the German legislator aims to create a level playing field for the cross-border market access for German Sub-threshold AIFMs if, in return, marketing is permitted in Germany for EEA Sub-threshold AIFMs. An analysis of the national law of the AIFM's home Member State is not required if no additional obligations are imposed on German Sub-threshold AIFMs.

4.3.2 Marketing Notification

EEA Sub-threshold AIFMs who intend to access the German professional investor market shall submit a marketing notification to BaFin. The notification shall comprise the following documentation and information:

- an attestation by the competent authority of the AIFM's home Member State in English or German language that the AIFM is registered in accordance with the rules applicable in the home Member State which implement Article 3 of the Alternative Investment Fund Managers Directive;
- a declaration by the AIFM that it undertakes to inform BaFin of any material changes to its registration and to provide evidence of such changes;
- to provide BaFin with information on its business activities and documents upon request; and

- a proof of payment of the fee for the notification.²

Foreign-language documents must be submitted in German translation or in English.

4.4 Prospectus and Key Information Document

The German Capital Investment Code does not impose an obligation to draw-up a prospectus for AIFs marketed to professional investors. If the units or shares of the AIF qualify as transferable securities, the obligation to make public a prospectus under the Prospectus Regulation will generally not apply either, at least because public offers of securities addressed exclusively to qualified investors are exempt.³ The terms ‘qualified investor’ and ‘professional investor’ are considered equivalent.

An obligation to draw up a key information document (KID) as defined in the Packaged Retail and Insurance-based Investment Products Regulation will likewise not apply, primarily because the regulation does not cover PRIIPs marketed exclusively to professional investors.

5. Marketing Regime for Semi-professional Investors

The category of semi-professional investors is not derived from the implementation of the Alternative Investment Fund Managers Directive or another directive into German law but rather from the discretion granted to Member States to permit AIFMs to market units or shares of the AIFs they manage to retail investors within their jurisdiction. The semi-professional investor is a retail investor within the meaning of the Alternative Investment Fund Managers Directive but not treated as such under the German Capital Investment Code. It is characterised by a level of expertise and risk-bearing capacity that makes investing in AIFs—under a lower level of investor protection, similar to that afforded to professional investors—appear appropriate.

5.1 Definition of Semi-professional Investors

A semi-professional investor is:

- (1) any investor, (a) who undertakes to invest at least EUR 200,000, (b) who states in text form in a document separate from the contract on the investment commitment that he is aware of the risks associated with the intended commitment or investment, (c) whose expertise, experience and knowledge is assessed by the AIFM or its authorised

² According to § 2(1) in conjunction with No. 15.1.9.4 of the Annex of the German Financial Services Supervision Fees Ordinance (FinDAGebV) the fee is EUR 1,641 (as of 26 January 2025).

distributor without assuming that the investor has the market knowledge and experience of professional clients within the meaning of the Markets in Financial Instruments Directive, (d) where the AIFM or its authorised distributor is reasonably satisfied, taking into account the nature of the commitment or investment envisaged, that the investor is capable of making his own investment decisions and understands the risks involved and that such a commitment is appropriate for the investor concerned, and (e) to whom the AIFM or its authorised distributor confirms in text form that it has carried out the assessment referred to in (c) and that the conditions referred to in (d) are met;

(2) a manager or employee of the AIFM who qualifies as a risk taker, provided that he invests in AIFs managed by the AIFM, or a member of the management or the management board of an externally managed investment company, provided that he invests in the externally managed investment company;

(3) any investor who undertakes to invest at least EUR 10 million in collective investment undertaking; or

(4) any investor in the legal form of (a) an institution under public law, (b) a foundation under public law, or (c) a company in which the Federal Government or a federal state holds a majority interest, if the Federal Government or the federal state invests or has invested in the special AIF in question at the time the institution, foundation or company invests.

5.2 Application of the Marketing Regime for Professional or Retail Investors

The German Capital Investment Code permits both fully regulated and sub-threshold EEA AIFMs that intend to market EEA AIFs to not only professional investors but also semi-professional investors to choose between the marketing regime for professional investors (see Sections 4.2 or 4.3 above) and the marketing regime for retail investors (see Section 5.3 below).

5.3 Prospectus and Key Information Document

If the EEA AIFM chooses to apply the marketing regime for professional investors, he would not be under an obligation to draw up a prospectus under the rules of the German Capital Investment Code. If the AIFM chooses to apply the marketing regime for retail investors, he would have to draw up such prospectus (see Section 6.4 below). If, however, irrespective of the applicable marketing regime, the units or

³ If the EEA AIFM's marketing activity does not qualify as a public offering or an application for admission to trading on a regulated market, Article 3 of the Prospectus Regulation does not apply on its merits, and reliance on an exemption is not necessary.

shares of the AIF qualify as transferable securities, a public offering would oblige the AIFM to make public a prospectus under the Prospectus Regulation, if no exemption applies.

The AIFM would generally be under an obligation to draw up a key information document (KID) within the meaning of the Packaged Retail and Insurance-based Investment Products Regulation, because semi-professional investors qualify as retail investors in the sense of the Regulation.

6. Marketing Regime for Retail Investors

The Alternative Investment Fund Managers Directive generally permits marketing of AIFs to professional investors. However, Member States may allow AIFMs to market to retail investors in their territory units or shares of AIFs they manage in accordance with the Directive, irrespective of whether such AIFs are marketed on a domestic or cross-border basis or whether they are domiciled within the territory of the EEA or outside of it. In such cases, Member States may impose stricter requirements on the AIFMs and the AIFs than the requirements applicable to the AIFs marketed to professional investors in their territory. Germany has made use of this option and implemented a domestic and cross-border marketing regime for retail investors.

The German Capital Investment Code permits EEA AIFMs to market AIFs they manage to retail investors under certain requirements. This marketing regime is however not available to Sub-threshold AIFMs.

6.1 Definition of Retail Investors

A retail investor is every investor that is neither a professional investor (see Section 4.1 above) nor a semi-professional investor (see Section 5.1 above).

6.2 Permissibility of Marketing to Retail Investors

The marketing of EEA AIFs by an EEA AIFM to retail investors in Germany is permissible if the following general requirements, as stipulated in the German Capital Investment Code, are met:

- AIFM and AIF are subject to effective supervision for the protection of investors in the state of their *joint* domicile;⁴
- the supervisory authority of the state of domicile is prepared to co-operate with BaFin;⁵
- the AIFM and the AIF must comply with the requirements of the Alternative Investment Fund Managers Directive including the authorisation requirement (AIFMs that are registered in accordance with Article 3(2) of the Alternative Investment Fund Managers Directive are not permitted to market AIF to German retail investors);
- a depositary safeguards the assets of the AIF in a manner comparable to the respective provisions of the German Capital Investment Code;
- a facility available to retail investors is provided;⁶
- the terms and conditions of investment, the articles of association or the partnership agreement must meet certain minimum requirements as specified in the German Capital Investment Code that are dependent on the specific type of AIF and go beyond those required under Alternative Investment Fund Managers Directive (so-called *German gold plating*), including but not limited to:
 - specific minimum content, e.g., with regard to the AIF's investment, redemption and distribution policies;
 - permitted assets, investment limits and risk diversification;
 - no pledging or other encumbrance of assets, except in certain cases;
 - provisions relating to the repayment of the portion of the assets attributable to the unit or share, if applicable at the end of the term;
 - provisions on the valuation of assets;
 - restrictions on leverage and prohibition of short sales;
- certain disclosure obligations are duly fulfilled.

If the AIF is a feeder AIF, certain further requirements must be met with regard to the feeder and the master AIF.

6.3 Marketing Notification

If an EEA AIFM intends to market in Germany units or shares in an EEA AIF managed by it to private investors, it must notify BaFin thereof. According to the German Capital Investment Code, the notification letter must contain the following information and documents:

⁴ This rule sets out two key requirements. First, the AIFM and the AIF need to be domiciled in the same country, as cross-border management of retail AIFs is not considered appropriate, in particular in the absence of harmonised product rules. Second, the effective supervision can be assumed for AIFMs and AIFs domiciled in a county within the European Economic Area (EEA).

⁵ This requirement is deemed to be fulfilled if the state of domicile is located within the European Economic Area (EEA).

⁶ See Article 43a of the Alternative Investment Fund Managers Directive for further information on such facility.

- a certificate issued by the competent authority of the AIFM's home Member State in a language commonly used in the international financial world, confirming that the AIFM and the AIF it manages comply with the Alternative Investment Fund Managers Directive and that the AIFM is authorised to manage AIFs with a specific investment strategy;
- all material information on the AIFM, the AIF, the representative,⁷ the depositary and the paying agent as well as the confirmations of the representative, the depositary and the paying agent on the assumption of these functions;
- the terms and conditions of investment, the articles of association or partnership agreement of the AIF, its business plan, which also contains the key information on its governing bodies, as well as the prospectus, the key information document (KID) and all other information available to the investor on the notified AIF as well as key information on the distribution companies intended for distribution in Germany;
- the most recent annual report of the AIF, which must fulfil certain legal requirements accompanied by an auditor's certification;
- the approved annual balance sheet for the last financial year together with the profit and loss account (annual financial statements) of the AIFM accompanied by an auditor's certification;
- information on the arrangements for marketing the AIF;
- a declaration by the AIFM that it undertakes to submit the annual financial statements of the AIFM and the annual report of the AIF to BaFin no later than six months after the end of each financial year, accompanied by an auditor's certification, to inform BaFin of all relevant material changes, to provide BaFin with information on its business activities upon request and to submit documents, at the request of BaFin, to limit the use of

leverage to the extent required by BaFin or to cease such use, to fulfil the relevant reporting obligations vis-à-vis BaFin;

- proof of payment of the notification fee;⁸
- all material information and documentation demonstrating that the AIF and the AIFM are subject to effective supervision with regard to the protection of investors in the third country in which they are domiciled;
- where applicable, the agreements for master-feeder structures.

Foreign-language documents must be submitted with a German translation. During the notification procedure, BaFin may request further documents and information from the AIFM. At the end of the notification procedure, BaFin will inform the AIFM whether it may market the AIF in Germany.

6.4 Prospectus and Key Information Document

The EEA AIFM shall draw up a prospectus before marketing the EEA AIF to German retail investors, with detailed formal and substantial requirements set out in the German Capital Investment Code. If, however, the units or shares of the AIF qualify as transferable securities within the meaning of the Markets in Financial Instruments Directive, the Prospectus Regulation might apply which specifies the mandatory prospectus content, with some peculiarities to be considered.

Additionally, the AIFM shall draw up a key information document (KID) within the meaning of the Packaged Retail and Insurance-based Investment Products Regulation, if the AIF also qualifies as a packaged retail investment product (PRIP).

Prospectus and KID must be written in German or accompanied by a German translation.

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⁷ In the case of an EEA AIFM entering the German market, the appointment of a representative is not required. Instead, information regarding the facility available to retail investors, as outlined in Article 43a of the Alternative Investment Fund Managers Directive, must be provided.

⁸ According to § 2(1) in conjunction with No. 15.1.9.4 of the Annex of the German Financial Services Supervision Fees Ordinance (FinDAGebV) the fee is EUR 1,641 (as of 10.1.2025).

7. Legal Notice

This document does not constitute professional legal advice provided by Kronsteyn. It contains general information only and is not intended to serve as a basis for making business or financial decisions or taking any action. For such purposes, you should consult a qualified advisor that takes into account your individual circumstances and goals you want to achieve. No representations, warranties, or assurances (express or implied) are made as to the accuracy or completeness of the information provided, and neither Kronsteyn nor its employees or agents shall be liable or responsible for any loss or damage of any kind arising directly or indirectly from reliance on this document.

8. About Kronsteyn

Kronsteyn provides comprehensive advice on German financial market law. The focus is on securities and emissions trading, market infrastructures, crypto assets, and investment solutions. Legal excellence is the standard – every day, to meet the highest expectations.

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