

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

Alternative Investment Fund Managers (AIFMs) domiciled *outside* the European Economic Area (EEA) must comply with specific regulatory requirements to market a non-EEA AIF in Germany. The *European third-country passport regime*, as outlined in the Alternative Investment Fund Managers Directive is unlikely to be enacted in the near future. However, foreign non-EEA AIFMs can utilise the *German national private placement regime* to gain access to the market. The scope and intensity of the applicable requirements vary based on the type of investor targeted and the type of investment fund being marketed, with the regulatory burden being lowest for professional investors, moderate for semi-professional investors, and highest for retail investors.

This handbook provides an overview of the conditions that foreign non-EEA AIFMs must meet to market in Germany investment funds domiciled in a non-EEA state. EEA AIFMs and non-EEA AIFMs intending to market 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 EEA AIFM intending to market an EEA AIF in Germany, please refer to Kronsteyn's 'Handbook on Marketing Foreign EU/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](#).

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

3. Key Principles on Marketing of AIF in Germany

The marketing regimes under the German Capital Investment Code apply to non-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 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.

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

Non-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 marketing of non-EEA AIF by non-EEA AIFMs is governed by the German *national private placement regime*. If it is exclusively directed to professional investors (see Section 4.1 below), its permissibility will require compliance with only certain provisions of the German Capital Investment Code (so-called *KAGB light*) (see Section 4.2 below) and a marketing notification to BaFin (see Section 4.3 below). The *European third-country passport regime*, as outlined in the Alternative Investment Fund Managers Directive, has not yet been enacted and is unlikely to be enacted in the near future.

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 to the [Markets in Financial Instruments Directive 2014/65/EU \(MiFID\)](#).

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 Permissibility of Marketing to Professional Investors

The German Capital Investment Code stipulates certain requirements for the permissibility of marketing non-EEA AIF by non-EEA AIFM to German professional investors. These requirements in particular refer to the AIFM and the AIF (see Section 4.2.1 below) and to the state of domicile (see Section 4.2.2 below).

4.2.1 Requirements Referring to the AIFM and AIF

(1) Regulatory Reporting

An AIFM shall regularly report to BaFin on the principal markets and instruments in which it trades on behalf of the AIFs it manages.²

Additionally, an AIFM shall for each of the AIFs it markets in Germany, provide the following information to BaFin:³

- the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- any new arrangements for managing the liquidity of the AIF;
- the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
- information on the main categories of assets in which the AIF is invested;
- the results of the stress tests performed in accordance with the Alternative Investment Fund Managers Directive.

Upon request, the AIFM shall provide to BaFin the following documents with regard to the non-EEA AIF marketed in Germany:

- an annual report of each AIF marketed by it in Germany, for each financial year;

- for the end of each quarter a detailed list of all AIFs which the AIFM manages.

As far as the AIFM is managing AIFs to be marketed in Germany employing *leverage on a substantial basis*, the AIFM shall make available the following information:

- the overall level of leverage employed by each AIF it manages;
- a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives;
- the extent to which the AIF's assets have been reused under leveraging arrangements; and
- the identity of the five largest sources of borrowed cash or securities.

Reports must be submitted to BaFin via the [MVP Portal](#).⁴

Except for the annual reports and AIF lists, data must be reported in XML format in accordance with ESMA guidelines.⁵

(2) Control of a Non-listed Company

If the non-EEA AIFM is managing one or more AIFs which are either individually or jointly on the basis of an agreement aimed at acquiring control of a certain type of a non-listed company or if the AIFM cooperates with one or more other AIFMs on the basis of an agreement pursuant to which the AIFs managed by those AIFMs jointly, acquire control of a non-listed company, it may be subject to a specific notification and disclosure regime.

(3) Depositary Light

If marketing is exclusively directed at professional investors, full depositary regulation of the AIF is not required. Instead, a single entity must be appointed to carry out only specific depositary functions (so-called *depositary light regime*). These functions include cash flow monitoring, asset safekeeping, and oversight. The AIFM itself cannot perform these functions itself.

(4) Pre-Investment Disclosures

The non-EEA AIFM shall for each of the non-EEA AIFs it markets in Germany make available to investors the

² Details are regulated in Article 110 of [Delegated Regulation \(EU\) No 231/2013](#). Article 24(1) of the Alternative Investment Fund Managers Directive will be amended by Article 1(12)(a) of [Directive \(EU\) 2024/927](#) (AIFMD II) with effect from 16 April 2026.

³ Details are regulated in Article 110 of [Delegated Regulation \(EU\) No 231/2013](#). Article 24(2) of the Alternative Investment Fund Managers

Directive will be amended by Article 1(12)(b) of [Directive \(EU\) 2024/927](#) (AIFMD II) with effect from 16 April 2026.

⁴ BaFin, [Merkblatt zu den Meldepflichten von AIF-Verwaltungsgesellschaften](#), as of 30 June 2023.

⁵ ESMA, [Guidelines on reporting obligations under Articles 3\(3\)\(d\) and 24\(1\), \(2\) and \(4\) of the AIFMD](#), as of 8 August 2014, ESMA/2014/869EN.

following information before they invest in the AIF, as well as any material changes thereof:⁶

- a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF;
- a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
- a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;
- the identity of the AIFM, the AIF's depository, auditor and any other service providers and a description of their duties and the investors' rights;
- a description of how the AIFM is complying with the requirement to cover potential professional liability risks resulting from activities the AIFM may carry out pursuant to the Alternative Investment Fund Managers Directive, either by additional own funds or by holding a professional indemnity insurance;
- a description of any delegated management function by the AIFM and of any safe-keeping function delegated by the depository, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value;
- a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a

- description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;
- the latest annual report;
- the procedure and conditions for the issue and sale of units or shares;
- the latest net asset value of the AIF or the latest market price of the unit or share of the AIF;
- where available, the historical performance of the AIF;
- the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depository on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;
- a description of how and when the information on liquidity, risks, fees and leverage that is required to be disclosed on a regular basis (see post-investment disclosures in Section 4.2.1(5) below) will be disclosed;
- if securities financing transactions (SFTs) or total return swaps are used, a specification of which of such transactions and instruments the AIFM is authorised to use and a clear statement that those are used, and specific further data;
- sustainability-related disclosures;
- if swing pricing is provided for, information on its type (full or partial swing pricing) and mode of operation and on the calculation of the modified net asset value;
- any arrangement made by the depository to contractually discharge itself of liability.

(5) Post-Investment Disclosures

The German Capital Investment Code obliges AIFMs to carry out the following post-investment disclosures:

Annual Reports for AIFs:

An AIFM shall, for each of the AIFs it markets in Germany, make available an annual report for each financial year no later than 6 months following the end of the financial year. The annual report shall be provided to investors on request and shall be made available to BaFin.

The annual report for each AIF shall at least contain the following:

- a balance-sheet or a statement of assets and liabilities;
- an income and expenditure account for the financial year;
- a report on the activities of the financial year;

⁶ Article 23(1) of the Alternative Investment Fund Managers Directive will be amended by Article 1(11)(a) of [Directive \(EU\) 2024/927](#) (AIFMD II) with effect from 16 April 2026.

- any material changes in the information disclosed to investors that happened during the financial year covered by the report;
- the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;
- the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.

Special rules apply for annual reports of feeder AIFs.

Other Regular Disclosures:

The AIFM shall, for each of the AIFs that it markets in Germany, periodically disclose to investors:⁷

- the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- any new arrangements for managing the liquidity of the AIF;
- the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

The AIFM marketing in Germany AIFs employing leverage shall, for each such AIF disclose, on a regular basis:⁸

- any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
- the total amount of leverage employed by that AIF.

Ad-hoc Disclosure:

The AIFM shall inform investors of any changes with respect to depositary liability without delay.

(6) Retail Barrier

The AIFM must have taken the necessary precautions to prevent units or shares of the AIF from being marketed to other investor groups, namely semi-professional and retail investors, in particular if the AIFM uses independent companies to provide investment services for the AIF.

4.2.2 Requirements Referring to the State of Domicile

An appropriate cooperation arrangement for the purpose of systemic risk oversight and in line with international standards needs to be in place between BaFin and the supervisory authority of the non-EEA state where the non-EEA AIFM is domiciled and, as far as applicable, the supervisory authorities of the non-EEA state where the non-EEA AIF is established in order to ensure an efficient exchange of information that allows BaFin to carry out its duties in accordance with the Alternative Investment Fund Managers Directive. At the time of writing, BaFin has signed memorandums of understanding (MoU) with supervisory authorities of the following non-EEA states:

- Australia;
- Bahamas;
- Bermuda;
- Canada;
- Cayman Islands;
- Guernsey;
- Hong Kong;
- India;
- Japan;
- Jersey;
- South Korea;
- Singapore;
- Switzerland;
- United Kingdom;
- United States.

Additionally, the non-EEA state where the AIFM is established shall not be listed as a Non-Cooperative Country or Territory (NCCT) by Financial Action Task Force (FATF). After the entry into force of the Alternative Investment Fund Managers Directive, FATF has quit to publish its NCCT reviews but instead publishes so-called black and grey lists.⁹ As, currently, none of the black and grey listed countries have entered into an MoU with BaFin, this requirement is moot. With effect from 16 April 2026, the respective clause will be amended by Directive (EU) 2024/927 (AIFMD II) and will then refer to the high-risk countries determined by the European Commission under the EU Anti-Money Laundering Directive (AMLD).¹⁰

From 16 April 2026 onwards,¹¹ the non-EEA state where the AIFM or AIF is established has to have signed an agreement with the Federal Republic of Germany which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital¹² and ensures an

⁷ For details: Article 108 of [Delegated Regulation \(EU\) No 231/2013](#). Article 23(4) of the Alternative Investment Fund Managers Directive will be amended by Article 1(11)(b) of [Directive \(EU\) 2024/927](#) (AIFMD II) with effect from 16 April 2026.

⁸ For details: Article 109 of [Delegated Regulation \(EU\) No 231/2013](#).

⁹ FATF, "[Black and grey" lists](#), as of 25 October 2024.

¹⁰ Article 1(18) of [Directive \(EU\) 2024/927](#) (AIFMD II).

¹¹ Article 1(18) of [Directive \(EU\) 2024/927](#) (AIFMD II).

¹² [Last version as of 21 November 2017](#).

effective exchange of information in tax matters, including any multilateral tax agreements, and that third country is not mentioned in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes. The Federal Republic of Germany has entered into agreements on the exchange of information with several countries.¹³

4.2.3 Special Requirements for Feeder AIF

If the non-EEA AIF that is to be marketed in Germany is a feeder AIF, the requirements prescribed in this Section 4.2 will also have to be fulfilled for the master AIF and its AIFM.

4.3 Marketing Notification

The non-EEA AIFM shall submit a marketing notification to BaFin in respect of the non-EEA AIF that it intends to market in Germany. If the AIFM intends to market more than one AIF, it must submit a notification for each AIF.

The marketing notification shall comprise the following documentation and information:

- a programme of operations identifying the AIF the AIFM intends to market in Germany and information on where the AIF is established;
- the AIF rules or instruments of incorporation;
- identification of the depositary of the AIF;
- a description of, or any information on, the AIF available to investors;
- information on where the master AIF is established if the AIF is a feeder AIF;
- any pre-investment disclosures for each AIF the AIFM intends to market (see Section 4.2.1(4) above);
- where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

Additionally, the following documentation and information is to be provided:

- all essential information about the AIFM of the notified AIF and its governing bodies and the depositary or depositary light (see Section 4.2.1(3) above);
- a declaration by the AIFM that it undertakes to (i) submit the certified annual report of the AIF to BaFin no later than six months after the end of each financial year, (ii) inform BaFin of any material changes to the

circumstances stated in the notification of distribution and provide evidence of the changes and (iii) to provide BaFin with information and documents on its business activities upon request and to fulfil the reporting and information obligations vis-à-vis BaFin;

- a proof of payment of the notification fee.¹⁴

If the notified AIF is a feeder AIF, the notification must be accompanied by certain additional information and documents relating to the master AIF and its AIFM.

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, a possible obligation to make public a prospectus under the Prospectus Regulation will generally not apply either, as public offers of securities addressed exclusively to qualified investors are exempt. 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 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 Directive but not treated as such under national law. 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

¹³ The agreements are available at the [website of the German Federal Ministry of Finance](#).

¹⁴ 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 27 January 2025).

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 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; or

(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 Investors

The German Capital Investment Code allows non-EEA AIFMs to choose whether to apply the marketing regime for professional investors (see Section 4 above), taking into account certain special requirements for the marketing to semi-professional investors (see Sections 5.2.1 and 5.2.2 below), or to apply the marketing regime for retail investors (see Section 6 below).

5.2.1 Permissibility of Marketing to Semi-professional Investors

Within the marketing regime for professional investors, the non-EEA AIFM is required to comply only with a limited set of rules (see Section 4.2 above). Marketing of AIF to semi-professional investors goes beyond these requirements. The AIFM must generally adhere to the full set of rules of the Alternative Investment Fund Managers Directive as implemented in the German Capital Investment Code to both

the AIFM and the AIFs marketed in Germany. This has, among others, the following implications:

- the substantive (not formal) authorisation requirements have to be fulfilled, in particular sufficient own funds, reliability and professional suitability of the AIFM's managing directors and the suitability of the AIFM's shareholders;
- the operating conditions must be met, particularly with regard to the AIFM having policies in place for remuneration, conflicts of interest, risk management, liquidity management, and delegations, each in accordance with the Alternative Investment Fund Managers Directive and the relevant ESMA guidelines;

i Kronsteyn can provide you with the required policies or review existing ones to ensure compliance with the Alternative Investment Fund Managers Directive. Please feel free to [contact](#) the law firm for any questions.

- a single depositary (not a depositary light as referred to in Section 4.2.1(3) above) is to be appointed that carries out its duties in accordance with the Alternative Investment Fund Managers Directive.

The non-EEA AIFM is not required to comply with the gold plating provisions of the German Capital Investment Code. These higher standards must be adhered to if the AIFM intends to market AIFs to retail investors (see Section 6.2.1 below).

5.2.2 Marketing Notification

If a non-EEA AIFM chooses to apply the marketing regime for professional investors when marketing a non-EEA AIF to semi-professional investors in Germany, they must generally adhere to the notification rules applicable to professional investor marketing (see Section 4.3 above).

Additionally, the AIFM will have to provide BaFin with the following information and documents:

- suitable evidence of the capital required for business operations of the AIFM;
- the names of the managing directors of the AIFM;
- information on the assessment of the reliability of the managing directors of the AIFM;
- information on the assessment of the professional suitability of the AIFM's managing directors;
- the names of the shareholders with significant holdings in the AIFM as well as information on the assessment of their reliability and the amount of their respective holdings;
- details on facts indicating a close connection between the AIFM and other natural or legal persons;

- a business plan which, in addition to the organisational structure of the AIFM, also contains information on how the AIFM intends to comply with its obligations under the German Capital Investment Code;
- information on the AIFM's remuneration policy and remuneration practice;
- information on outsourcing agreements of the AIFM;
- the key information document (KID) within the meaning of the Packaged Retail and Insurance-based Investment Products Regulation.

5.3 Application of the Marketing Regime for Retail Investors

If the AIFM chooses to apply the marketing regime for retail investors when marketing non-EEA AIF to semi-professional investors, it will have to apply the respective set of rules (see Section 6 below).

5.4 Prospectus and Key Information Document

If the 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 6.3 below). If, however, irrespective of the applicable marketing regime, the units or shares of the AIF qualify as transferable securities, a public offering would oblige the AIFM to make public a prospectus within the meaning of 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 within the meaning of European law.

6. Marketing Regime for Retail Investors

The Alternative Investment Fund Managers Directive generally allows marketing of AIFs to professional investors. However, EEA states may allow AIFMs to market to retail investors in their territory units or shares of AIFs they manage in accordance with the Alternative Investment Fund

¹⁵ 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, an effective supervision requires a supervisory authority that carries out supervision for the protection of investors as a sovereign duty, performs this duty permanently and comprehensively and enforces orders issued in this context. As a supervisory authority, it ensures compliance with the contractual terms and conditions

Managers Directive, irrespective of whether such AIFs are marketed on a domestic or cross-border basis or whether they are EEA or non-EEA AIFs. In such cases, Member States may impose stricter requirements on the AIFMs or 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 domestic and cross-border marketing regimes for retail investors.

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

6.2.1 Requirements Referring to the AIFM and AIF

The marketing of non-EEA AIFs by a non-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;¹⁵
- the supervisory authority of the state of domicile is prepared to co-operate with BaFin;¹⁶
- the AIFM and the AIF must comply with the requirements of the Alternative Investment Fund Managers Directive (see Section 5.2.1 above);
- the AIFM appoints a domestic credit institution or a reliable, professionally qualified person domiciled or resident within Germany as a representative who is adequately equipped to also fulfil a compliance function;

i Kronsteyn may assume the function of a legal representative and the compliance function for non-EEA AIFM as an ancillary service. Please [contact](#) the law firm for any questions.

- a depositary safeguards the assets of the AIF in a manner comparable to the respective provisions of the German Capital Investment Code;

or articles of association, the sales prospectuses and the legal provisions protecting investors abroad. This requirement is, however, restricted to the following requirement, namely that the supervisory authority of the state of domicile needs to be prepared to co-operate with BaFin.

¹⁶ This rule requires, in the case of non-EEA AIFs, that BaFin has concluded a memorandum of understanding (MoU) with the supervisory authority responsible for the supervision of the AIFM and AIF. Refer to Section 4.2.2 above for a list of MoUs entered into by BaFin.

- a facility available to retail investors is provided;¹⁷
- 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 of 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.

6.2.2 Requirements Referring to the State of Domicile

Additionally, the following special requirements of the German Capital Investment Code, which are applicable solely for non-EEA AIF, must be met:

- an appropriate cooperation arrangement needs to be in place between BaFin and the supervisory authority of the third country where the AIFM and AIF is established (see Section 4.2.2 above);
- the third country where the AIFM and AIF are established shall not be listed as a Non-Cooperative Country and Territory (NCCT) by FATF (see Section 4.2.2 above);
- the third country where the AIFM or AIF are established has to have signed an agreement with the Federal Republic of Germany which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital¹⁸ and ensures an effective exchange of information in tax matters (see Section 4.2.2 above).

6.3 Prospectus and Key Information Document

The non-EEA AIFM shall draw up a prospectus before marketing the non-EEA AIF to German retail investors. If the units or shares of the AIF qualify as transferable securities

within the meaning of the Markets in Financial Instruments Directive, the mandatory content is specified by the Prospectus Regulation, with some peculiarities to be considered. If the units or shares do not qualify as transferable securities, the mandatory content of the prospectus is specified by the German Capital Investment Code.

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.

6.4 Marketing Notification

If the non-EEA AIFM intends to market units or shares in a non-EEA AIF managed by it in Germany to private investors, it must notify BaFin thereof. The notification letter must contain the following information and documents:

- suitable evidence of the capital required for business operations;
- the names of the managing directors;
- information on the assessment of the managing directors' reliability;
- information on the assessment of the professional suitability of the managing directors;
- the names of the shareholders with significant holdings in the AIFM as well as information on the assessment of their reliability and the amount of their respective holdings;
- details on facts indicating a close connection between the AIFM and other natural or legal persons;
- a business plan which, in addition to the organisational structure of the AIFM, also contains information on how the AIFM intends to comply with its obligations under the German Capital Investment Code;
- information on the remuneration policy and remuneration practice;
- information on outsourcing agreements;
- information on the agreements on the appointment of the depositary for the AIF that the AIFM intends to market in Germany;
- all material information on the AIFM, the AIF, the representative, 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;

¹⁷ See Article 43a of the Alternative Investment Fund Managers Directive for further information on such facility.

¹⁸ [Last version of 21 November 2017.](#)

- 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 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;¹⁹
- 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.

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¹⁹ 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 27 January 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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