

A Step Closer to AIFMD 2.0

On 20 July 2023, the European Council and European Parliament announced their provisional agreement on proposed amendments to the Alternative Investment Fund Managers Directive (commonly referred to as "AIFMD 2"), which will impact the management and marketing of AIFs in the European Economic Area.

The agreement concludes protracted negotiations over a targeted set of enhancements to the original AIFMD framework, as detailed in our update, *AIFMD 2.0: European Commission Publishes Legislative Proposals*¹. While the final text will not be available for some time, the provisional agreement has settled key aspects of certain of the most contentious proposals.

Delegation

Revisions to the delegation framework will include enhanced substance / oversight and reporting requirements for AIFMs in respect of delegated activities, both on authorisation and on a periodic basis. Although this may increase the administrative burden and costs for AIFMs, importantly the measures validate the continued ability to delegate portfolio or risk management (including outside the EU), thereby preserving EU investor access to global expertise.

Liquidity Management Tools

The agreement harmonises the availability of liquidity management tools across the EU to ensure that the activation and use of such tools remain the responsibility of the fund manager. The aim of these proposals is to provide greater

flexibility to deal with significant outflows during periods of market stress.

Loan Originating AIFs

A new dedicated framework will be introduced for Loan Originating AIFs (LO-AIFs), for which the provisional agreement settled on a definition for which AIFs fall within scope, along with several requirements to alleviate the risk of regulatory arbitrage and ensure an appropriate level of investor protection. This will include leverage caps (differentiated for open-ended and closed-ended AIFs), as well as liquidity management, risk management and risk retention requirements. It is further expected that the provisional agreement will allow for cross-border lending in the EU.

Undue Costs

The agreement includes measures to assist in identifying undue costs that could be charged to funds and their investors. This is in conjunction with the European Commission's recent announcement of a broader Retail Investment Strategy² (RIS), which will include an omnibus directive to amend the UCITS and AIFM Directives (amongst others) to address this issue.

Sustainability

- **Misleading names:** Amendments are proposed to ensure that information provided to investors is accurate, fair, clear and does not convey a misleading, materially deceptive or confusing message.
- **SFDR Compliance:** AIFMs will be obliged in their programmes of activity to confirm

¹ <https://maples.com/en/knowledge-centre/2021/12/aifmd-2-0-european-commission-publishes-legislative-proposals>

² https://finance.ec.europa.eu/publications/retail-investment-strategy_en

compliance with specific articles of SFDR rather than general compliance as a whole.

Timing

As noted above, the agreement remains provisional and the above-mentioned proposals will not be confirmed until the legal text is finalised and published. Member States and the European Commission will then have 18 months to transpose the revised directive into national law and finalise detailed technical rules implementing the legislation.

How can we help?

The Maples Group has significant experience in advising the world's leading AIFMs in the structuring, establishment and distribution of their AIFs. Our expertise covers many of the core areas of focus of AIFMD 2 including delegation, loan origination and marketing. In addition, our global network of offices gives us informed local perspectives on how these proposals will affect EU AIFMs, non-EU AIFMs and groups operating both inside and outside the EU.

Our global AIFMD advisory teams will continue to monitor and update on the AIFMD 2 amendments as the details are finalised.

Further Information

For further information, please liaise with your usual Maples Group contact or any of the persons listed below.

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The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland in terms of total number of funds advised (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2022).

July 2023

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