



AIFM Directive Implementation: Fund Marketing

The European Private Equity and Venture Capital Association (EVCA) published an analysis of the circumstances under which European and non-European private equity fund managers are able to market their funds under national placement rules across Europe as of 22 July 2013. This is the day the EU Alternative Investment Fund Managers Directive took effect in national law.

The EVCA memorandum examines how the AIFMD provisions pertaining to marketing private equity funds under national placement rules have been implemented and will apply across the European Union.

The December 2013 report from EVCA evaluates the following implications of the AIFMD marketing provisions:

- The possibility for third-country funds to be marketed to investors in various jurisdictions (or the extent to which third-country funds can be marketed to investors in various jurisdictions);
- Local interpretation of the term “marketing”;
- When the Directive will be transposed into national law, and advice on whether to heed existing domestic law or the AIFM Directive if transposition is not yet complete;
- The relevance to investors who are established in a jurisdiction but who are not physically located there at the time marketing takes place;
- Restrictions on pre-marketing;
- The conditions under which a fund manager can rely on a “grandfather” provision (delaying compliance with certain AIFMD requirements) once the Directive is in effect;
- Additional domestic restrictions on marketing fund interests after the transitional period, if any, expires;
- Registration/notification requirements with the national EU competent authorities; and,
- Interpretation given to marketing initiated by the investor, i.e., “active” versus “passive”

The application/implementation of the AIFMD marketing rules is detailed on a country-by-country basis, and according to the following four scenarios:

1. Fund Managers outside the European Economic Area (EEA) who are marketing non-EEA Funds under Article 42 (i.e. no AIFMD passport)
2. Fund Managers inside the EEA who are marketing non-EEA Funds under Article 36 (i.e. without a passport)
3. Marketing by sub-threshold Fund Managers who are subject to domestic registration or authorization only in their home Member State
4. Marketing AIFs (both EEA and non-EEA) by Fund Managers inside the EEA relying on transitional relief under Article 61

As not all EU Member States have finished transposing the AIFMD into national law, the analysis focuses on the sixteen countries that, as of July 2013, had completed (or are close to completing) the transposition. Switzerland is included for comparative purposes.

“AIFM Directive Implementation Fund Marketing” is available for download, free, at http://www.evca.eu/uploadedfiles/EVCA_AIFMD_Fund_Marketing_Guide.pdf

Other EVCA publications that may of interest include:

- AIFMD Third Country: a simple introduction to the impact of the EU’s AIFMD on non-European GPs and LPs (published December 2013). http://www.evca.eu/uploadedfiles/EVCA_AIFMD_third_Country_Paper.pdf
- AIFMD Essentials (published July 2013). http://www.evca.eu/uploadedfiles/EVCA_AIFMD_Essentials_2013.pdf