

German AIFMD II Implementation Back on Track

29 August 2025

Background. On 8 August 2025, the German Federal Ministry of Finance published the ministerial draft of the Fund Risk Limitation Law (*Fondsrisikobegrenzungs-gesetz*—the “Draft”) with a view to implementing the recent amendments to Directive 2011/61/EU introduced by Directive (EU) 2024/927 (the “AIFMD II”) as well as additional changes into national law, particularly the German Capital Investment Act (the “KAGB”). The Draft picks up legislative initiatives from last year that had been shelved when the last governing coalition collapsed.

Marketing Under the NPPR Regime. As set out in AIFMD II, the requirements of the NPPR regime will become stricter. Non-EU AIFMs and EU AIFMs will only be able to notify marketing of non-EU AIFs (or their feeder funds) in Germany if (A) neither the non-EU AIF nor the non-EU AIFM, if any, are established in a state (i) that is listed on the European Union’s AML blacklist or (ii) that is listed on the list of non-cooperative jurisdictions for taxation purposes, and (B) it is established in a third country that has entered into a double-taxation treaty with Germany fully complying with Art. 26 of the OECD Model Tax Convention. There is a concern that the requirement of “fully complying” cannot always be answered in a straightforward manner and requires an assessment which the regulator will not make and hence in practice will lead to many commonly used jurisdictions such as the Cayman Islands and Delaware not being deemed to meet the “full compliance” requirement and therefore not being able to apply the NPPR regime in Germany.

Funds Originating Loans. The Draft seeks to implement the European Union’s AIFMD II regime for loan origination by investment funds without making use of goldplating (see also our previous client info on more details about the [AIFMD II](#) regime generally).

The Draft permits lending by any German so called “Spezial AIFs” (i.e. funds which admit only professional and semi-professional investors¹) without imposing any further

¹ A semi-professional investor under German investment law is an investor that has to commit to invest at least EUR 200,000 and has to be assessed in writing by the AIFM to have the necessary knowledge and experience to be able to understand the underlying risks associated with the investment. In addition, managing directors or

restrictions beyond the lending regime of the AIFMD II. The existing investment limitations prohibiting lending for German funds will be removed. The limitations that the German law (sec. 240 KAGB)² includes with respect to shareholder loans to “real estate companies” (i.e. companies whose sole purpose is to hold and administer real estate assets) can be waived for open-ended “Spezial AIFs” that are already subject to separate restrictions in sec. 284 KAGB. German retail funds, including closed-ended and certain open-ended funds (*Sonstige Investmentvermögen*), are also permitted to originate loans. Such closed-ended retail funds may, however, only invest up to 50% of their capital into loan origination and up to 30% in shareholder loans, provided that such loans may not exceed the equity held in the respective borrower. Loans originated by certain open-ended retail funds (*Sonstige Investmentvermögen*) may, together with certain other assets (inter alia precious metals, derivatives and non-securitised loans), not exceed 30% of such funds’ NAV.

All German funds are prohibited from lending to consumers, but they are permitted to originate consumer loans to consumers abroad, where permitted by applicable foreign law.

Sub-Threshold AIFMs. As already the case for the current loan origination rules, the Draft envisages application of the same rules to sub-threshold AIFMs with respect to loan origination. Moreover, sub-threshold AIFMs managing funds that originate loans (other than shareholder loans and equity-like mezzanine loans) must comply with the same additional organisational, risk and liquidity management rules that apply to fully authorised AIFMs. The exemption with respect to shareholder loans and mezzanine loans is particularly important for private equity and venture capital funds because such tools are commonly used by such funds outside Germany.

The Draft, unhelpfully, provides that, in connection with the sub-threshold scoping test, the assets under management (“AuM”) must be calculated on the basis of the market value in accordance with the valuation rules of the AIFMD. This is a crucial change for German sub-threshold AIFMs, which are subject to the lighter sub-threshold regime only as long as their AuM remain below Euro 500 million (without use of leverage). Currently, German sub-threshold AIFMs were able to rely on German GAAP when determining the value of their AuM. Using German GAAP has the advantage that the AIFM (and the supervisory authority) can use the value determined for accounting purposes and, where relevant, audited without additional efforts. Because German GAAP regularly leads to lower values than the AIFMD valuation rules, sub-threshold

other associates of AIFMs, investors that commit to invest EUR 10 million or legal entities governed by public law may qualify as semi-professional investors.

² For example, the loan provided to a real estate company cannot exceed 50% of the value of the real estate held by the real estate company; the loan provided to all real estate companies cannot exceed 25% of the value of the real estate fund.

AIFMs would have to ascertain carefully if they will require a full authorisation in the future should this change become law.

Banking Monopoly Rules—Loan Fund SPVs. In Germany (such as in France, Italy and Austria, together the “Banking Monopoly Countries”) lending is subject to the so-called “banking monopoly”, i.e. lending requires a banking license under the applicable banking laws. This is the case if the lender is based in those Banking Monopoly Countries but also if the borrower is based in such Banking Monopoly Countries, and the loan is granted from outside the Banking Monopoly Countries.

The AIFMD II regime and its implementation under the German investment laws only govern the question of if and to what extent a fund is permitted to originate a loan for investment-law purposes. They do not address the question whether the fund is permitted to originate the loan to a borrower in Germany under the German banking laws. Already today the German Banking Act (the “KWG”) permits German AIFs and EU AIFs as well as non-EU AIFs that are permitted to market to semi-professional investors in Germany (and hence are required to comply with AIFMD requirements) to originate loans in Germany. However, the Draft now expands such exemption from the banking monopoly rules to any special purpose vehicles acting as direct lender. The Draft sets out to provide an additional exemption for “credit special purpose vehicles”, i.e. vehicles controlled by a fund and originating loans on account or on behalf of a fund that itself would fall under the KWG exemption, provided that the AIFM participates in structuring the loan or setting its terms beforehand. This is a very helpful addition for domestic and foreign funds lending into Germany. This also aligns with the definition of loan origination in AIFMD II, which explicitly includes loan origination by special purpose vehicles and even third parties on behalf of funds, provided the AIFM participates in structuring the loan or setting its terms.

Limitation of AIFM’s Liability. A significant change for German AIFMs managing contractual funds (*Sondervermögen*) is a new limitation of liability. AIFMs will no longer be obliged to satisfy obligations entered on behalf of the contractual fund, to the extent and as long as the AIFM cannot satisfy the obligation out of the fund’s assets (which does not prevent default or enforcement in collateral). This aims to align the liability regime for contractual funds with partnership and corporate funds. Attention should be paid if such obligation arises from a contract subject to foreign law because the AIFM remains a contractual counterparty, and the German law liability limitation may not help here.

More Scrutiny with Respect to Hosted AIFMs. The Draft addresses for the first time the widely used hosted/service AIFM model and introduces disclosure obligations on hosted AIFMs to BaFin (the German financial regulatory authority) regarding measures to avoid or identify, manage and disclose conflicts of interest when managing a fund on

behalf of a third party, including when using the name of a third-party fund sponsor or delegating functions to such sponsor.

Closed-Ended Retail Funds. After last year saw the introduction of closed-ended contractual funds for (semi-)professional investors, the Draft envisages introducing this option for retail investors as well.

Next Steps. The Draft is open for consultation, which will lead to a governmental draft that will then be introduced to the German Parliament for consideration. The consultation will end on 5 September 2025. The deadline for implementation of AIFMD II into national laws is 16 April 2026.

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