

# Important Improvements on the horizon: Are the Days of Securities Assessment by Special AIFs for investments in Closed- Ended Funds Numbered?

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As reported in a previous client update, when the last German government coalition collapsed, plans for the Second Financing the Future Act (*Zukunftsfinanzierungsgesetz II*) were temporarily shelved. On 10 September 2025, the new government has adopted the ministerial draft for the renamed Location Promotion Act (*Standortförderungsgesetz* – the “Draft”) picking up the same subject matter. We have selected in particular four very helpful changes that could be of special interest for German insurance and pension investors and of great relevance to investors investing through German Spezialfunds.

**Special AIFs’ Access to Closed-Ended Funds.** German investors often use captive investment funds pursuant to Sec. 284 of the German Capital Investment Act (the “KAGB”) in the form of “German special AIFs with fixed investment terms (*Spezial-AIF mit festen Anlagebedingungen* – the “Special AIFs”) as a vehicle through which they make their investments. Special AIFs are subject to investment restrictions permitting, i.a., investments in open-ended funds, “securities” and unlisted undertakings. This poses a challenge for investments in closed-ended alternative investment funds. An acquisition as an unlisted undertaking is undesirable for German investment tax reasons and otherwise, target funds need to be open-ended to qualify at first glance. However, in line with the UCITS Eligible Assets Directive (2007/16/EC), closed-ended funds can qualify as “securities” if certain conditions are met. Such conditions leave room for interpretation at the price of legal uncertainty. In practice, this has led to complicated feeder fund structures for such Special AIF investors, such as a Luxembourg FCP, along with a comprehensive assessment that the units fulfill all requirements of a transferable security, to ensure that the Special AIF is invested in an asset that is eligible from a German Capital Investment and Investment Tax Act perspective. This may come to an end if the Draft is adopted. The Draft envisages to open the open-ended fund asset class up to any kind of funds, including any German or foreign investment fund, whether open-ended or closed-ended. The legislator’s explanatory notes clarify this is supposed to foster investments in PE and VC funds, as well as ELTIFs irrespective of their structure.

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With respect to pension funds and insurance companies, which also often invest through such Special AIFs, it should be noted that BaFin's Capital Investment Circular 11/2017 (VA) (*Kapitalanlagerungsschreiben*) states German insurance and pension investors subject to the Investment Ordinance (*Anlageverordnung – AnlV*) or Pension Fund Supervisory Ordinance (*Pensionsfonds-Aufsichtsverordnung – PFAV*) can only invest in Special AIFs that invest, besides in securities, in target funds that are open-ended and also suitable investments for such regulated investors. We would assume that the reference to "open-ended funds" in the Circular is simply a repetition of the current investment restrictions and will be amended once the Draft is adopted.

**German Retail Real Estate Funds.** The Draft envisages adding infrastructure project entities as eligible asset for German retail real estate funds under the German Capital Investment Act, provided the infrastructure project entities' purpose is limited to acquiring, constructing, managing or holding installations to produce, transform, transport or store renewable energies or heat derived from renewable energies as well as transport or store waste heat. The Draft also clarifies that operating such companies and selling electricity to third parties does not amount to otherwise for real estate funds not permitted "operation of a business."

This will also benefit German insurance and pension investors because this will also apply to German and EU real estate funds that are eligible under the Pension Fund Supervisory and Investment Ordinance's real estate quota and those funds may then make the same types of infrastructure investments.

According to the explanatory notes to the Draft, the legislator intends to enable real estate funds to invest in such infrastructure projects that are built on real property that is only leased by the infrastructure project entity. To prevent German real estate retail funds from becoming, contrary to their name, infrastructure funds, those investments are limited to 15% of the retail fund's value. However, when deciding whether to allocate a fund to the real estate quota under the Insurance Ordinance or Pension Fund Supervisory Ordinance, only the definition of German retail real estate funds are typically used as a reference point for eligible investments without taking into account the investment limits. Should the Draft be adopted, it would remain to be seen whether BaFin will issue guidance in that regard.

**Millionenkreditmeldewesen.** The million-credit reporting regime pursuant to Sec. 14 of the German Banking Act (KWG) obliging German banks, as well as German loan originating funds to report million EUR loans to the central credit register on a quarterly basis is supposed to be abolished from 30 December 2026. Alternative information sources like the European Central Bank's AnaCredit and the securities statistic (*Wertpapierstatistik*), as well as the large exposure regime are considered sufficient for

supervisory purposes, and as a result, the million-credit reporting is considered an unnecessary administrative burden.

**Nominal Capital of German Stock Companies.** The Draft foresees that German stock companies can issue shares with a nominal capital of one Euro cent per share (currently, one Euro). This is supposed to improve the IPO market as an exit opportunity for private equity and venture capital funds.

**Next Steps.** The Draft will now be introduced to the German parliament for discussion. If adopted, the new law will apply on the day after publication, except for the abolition of the million-credit reporting regime applying on 30 December 2026.



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