Alternative Investment Fund Managers Directive (AIFMD)

Private Equity

pwc

AIFMD requires private equity managers to obtain authorisation, meet on-going operating conditions and comply with transparency and reporting requirements in order to manage and market private equity funds within the EU

Entities within scope will need to start complying from 22 July 2013

Background

AIFMD is likely to affect most private equity fund managers who manage funds or have investors in the European Union if they are identified as the Alternative Investment Fund Manager (AIFM) of a particular fund or funds. Limited grandfathering provisions apply, generally exempting closed-end funds which will end prior to 2016 or are fully invested by 2013.

Those EU funds with non-EU managers may be required to become authorised by 2015 . AIFMs managing funds below de minimus aggregate thresholds may only be subject to lighter touch requirements, which include registration with regulators, notification of investment strategies, and certain investment reporting.

Some of the significant impacts of the Directive

Directive area	Requirements	Impact on Private Equity
Remuneration	1) At least 50% of any variable remuneration consists of units or shares of the AIF (or equivalent). 2) At least 40% (in some cases 60%) of the variable remuneration is deferred over a period of at least three to five years (unless the fund life cycle is shorter). 3) Disclosure of fixed and variable remuneration in an annual report for a fund, number of beneficiaries and to include any carried interest paid by the fund.	• Carried interest - whether existing remuneration arrangements meet the requirements of AIFMD. • Requirement applies to senior management, those in control functions or individuals whose professional activities have a material impact on the risk profile of the PE fund they manage. • There are some options for disclosure of fixed and variable remuneration, but the underlying requirement is that this needs to be disclosed in the Annual Report of the fund.
Depositary	1) Appointment of a Depositary. 2) Strict liability to be assumed by the Depositary for potential loss of assets under custody. 3) Required to monitor cash flows (an oversight role).	• Typically custodians have not been used extensively beyond cash services, therefore a selection process for a suitable Depositary supported by appropriate due diligence procedures will be required. • Additional costs may result. • Procedures required to ensure the Depositary receives the appropriate information and escalation procedures for the Depositary, if required.
Risk management	1) Functional and hierarchical separation of the risk management and portfolio management functions. 2) Adequate risk management systems to identify, measure, manage and monitor appropriately all risks to each PE fund investment strategy and to which each fund may be exposed. 3) To include appropriate, documented and regularly updated due diligence process when investing on behalf of the PE fund.	• Smaller Private Equity houses may not have the resources to achieve this functional separation. A key member of senior management who is not involved in the acquiring or managing investments will need risk management duties assigned. • Due diligence procedures are currently determined according to professional judgement exercised by the PE house, this will become more formalised under AIFMD.
Transparency and reporting	1) Annual Report to investors. 2) Reporting to the regulator (quarterly for AIFs with AUM over €1.5bn).	• A number of detailed disclosure requirements, including: investment types & concentrations, valuation, risk management and stress tests.

Although AIFMs are obliged to start complying from 22 July 2013, for those AIFMs already in operation, they will have until 22 July 2014 to apply for authorisation by their regulator.

How we can help

We can provide a breadth of services ranging from discussions on the requirements of AIFMD to performing gap analysis and health checks through to implementation of the changes required.

Clarity	• Share our insight into AIFMD and what others in the industry are doing
Fit for purpose	• Analysis regarding compliance with the rules and regulations supported by clear guidance about what you need to do to become compliant
Resource	• Regulatory experts with experience to guide you through regulatory change
Controls framework	• Assurance on the control framework of the business including governance, or clear guidance on changes required to become AIFMD compliant
Implementation	• Risk specialists to work on operational and controls changes to your business with post implementation testing

Why PwC?

- We understand the **practical implications of the regulations** - our regulatory experts are focused on asset management, have the relevant experience and understand the private equity industry. In addition, they are supported by a number of specialists who focus on private equity clients.
- We have a **strong global network** which allows us to draw on expertise and share our knowledge across our member firms.
- On a global scale, we are the **largest asset management professional adviser** which allows us to bring our experience of industry practice to the project.

Other change

AIFMD is one regulatory change against a backdrop of a sea of change, most impacting from 2013 onwards. A few of the other regulatory requirements are Dodd-Frank, THE OTC Derivative Directive (EMIR), Solvency II, Basel III etc.

Some final thoughts

Although AIFMD has now become EU law, it remains a moving target, with limited clarity on the requirements to date, not least due to the finalisation of the outstanding level 2 measures. Our knowledge from holding forums, access to regulators and information from our European network provides us with an insight into some of these key issues to help you comply with the requirements of AIFMD.

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