

AIFMD – the burden and the Maitland Solution

Maitland has developed an end-to-end AIFMD compliant solution that will enable Fund Managers to navigate the regulatory landscape and concentrate on their core activities and strengths while providing them access to markets and products.

How Maitland can help

Maitland is in a position to remove a significant part of the AIFMD burden from alternative investment fund managers (AIF Managers) and the alternative investment funds (AIFs) that they manage and provide a fund vehicle in the form of a Luxembourg Specialised Investment Fund and thus provide investors and managers with a complete platform that will be compliant. This will in turn enable the AIF Manager to take advantage of the EU marketing passport and/or to promote the relevant AIF as one that meets the stringent AIFMD compliance requirements.

What does AIFMD compliance entail?

The AIFMD entered into force on 22 July 2013. It has been transposed into national law by 16 of the European Union (EU) and other EEA member states. The aim of the Directive is to create a comprehensive and effective regulatory and supervisory framework for alternative investment fund managers that carry on business within the EU.

If an EU fund manager finds itself subject to the Directive, the first thing that it will need to do, regardless of the extent of its compliance obligations, is to seek authorisation with the regulator in its EU home jurisdiction.

The final deadline for authorisation applications is 22 July 2014. The authorisation process is potentially lengthy and time consuming and involves, in general terms, the AIFM providing evidence that it is in a position to comply with the obligations to which it will be subject.

In particular it will be necessary to show the following:

- compliance with the minimum capital requirement of the greater of (a) EUR 125,000 which will be increased if the value of funds under management exceeds EUR 250 million and (b) one quarter of the preceding year's fixed overheads;
- additional own funds or an appropriate level of professional indemnity insurance and an organisational structure and governance framework that will ensure adequate monitoring and surveillance, including any delegated functions;
- sufficient operational substance, resources and systems to enable it to fulfill its AIFMD obligations, in particular regarding:
 - portfolio management;
 - risk management and the clear separation of that function from portfolio management;
 - liquidity management so as to ensure, inter alia, that the liquidity profile of each AIF's investments is aligned with the AIF's obligations to its investors regarding liquidity;
 - an appropriate policy for the valuation of the AIF's assets;
 - preparation of net asset value reports and other financial reports;
 - preparation of other reports and disclosures required to be provided to investors and regulatory authorities; and

- the day to day administrative and record keeping functions that are part and parcel of the management of a fund;
- the appointment of a depositary that is independent of the AIF and the AIF Manager; and
- the measures to be taken to avoid conflicts of interest as between the AIF Manager on the one hand and the AIF and the investors on the other.

Authorisation will bring with it the obligation to comply with the full range of obligations under the Directive save for the requirement to appoint a depositary and to file annual reports where a non-EU AIF is involved and there is no marketing in the EU. In other circumstances where authorisation is not required, the non-EU AIF Manager may still find itself subject to significant obligations regarding annual reporting, transparency and investor disclosure.

What benefits does AIFMD compliance bring?

Authorisation under the Directive brings with it the right to market the relevant EU AIF throughout the EU and also for the AIF Manager to manage AIFs that are set up in other EU countries.

The regimes allowing for private placement are gradually being phased out and may be removed altogether in 2018.

There is merit in accepting the reality that the private placement regimes may eventually no longer be available and therefore in operating under a single set of marketing rules for the whole of the EU.



Solutions. Considered.

In relation to non-EU AIF Managers where there may not be an immediate obligation to obtain authorisation, if as anticipated the EU marketing passport is introduced as from July 2015 it will be necessary for non-EU AIFs to be authorised under the Directive in order to avail themselves of that passport.

Status in Luxembourg

The Directive was adopted into Luxembourg domestic law in July 2013. MS Management Services S.A., a member of the Maitland group, has been authorised by the CSSF as an AIF Manager and provides AIFMD compliant management company services to AIFs.

Maitland's AIFMD compliant services

These services will include the following:

Completed authorisation process

By appointing Maitland as the AIF Manager for either existing or new AIFs, clients will not themselves need to go through the authorisation process or meet the regulatory capital requirements. They will thereby benefit from Maitland's approved organisational structure and governance framework.

Operational substance

Maitland will provide the operational substance, resources and processes and procedures required under the Directive, thus taking a significant operational and compliance burden away from clients.

Investment management services

Maitland will provide the required level of risk management while leaving clients with the ability to focus on their core activity of portfolio management.

Administration services

These services include:

- net asset value calculations and reporting;
- transfer agency function;
- preparation of audited financial statements; and
- corporate secretarial services

Reporting services

Maitland will provide the comprehensive reporting and disclosures required for investors and regulators.

Oversight of delegated functions

Maitland will oversee all delegated functions and ensure compliance and monitoring of key performance indicators.

Independence from the depositary

The depositary will be an independent third party entity with no organisational links to Maitland. At the same time a seamless flow and exchange of information for the depositary's duties and oversight functions will be established.

It is recognised that a non-EU AIF Manager does not currently require authorisation under the directive and therefore may not need all of these services.

However, its compliance obligations in relation to obligations regarding annual reporting, transparency and investor disclosure may nevertheless be significant. The services listed above can be tailored to assist such AIF Managers in meeting those specific compliance obligations.

SIF – Maitland's white labelled solution

A SIF is a regulated Luxembourg fund vehicle designed for sophisticated investors. Not being a UCITS, a SIF is an AIF.

The institution of the SIF, with its high degree of flexibility, has proven to be very successful and has done much to advance Luxembourg's already flourishing hedge fund, private equity and real estate fund industries.

Subject to certain risk diversification rules, a SIF may follow an unlimited range of investment styles, ranging from traditional to alternative. It may also invest across all asset classes, including real estate investments. Maitland has established a multi-compartment SIF platform. As an umbrella product, it will provide clients with the facility to set up their own sub fund on the platform. The sub fund can be named as desired by the client.

The governing body of the SIF includes professionals with several years' experience in the financial sector, as well as knowledge of alternative asset classes and experience on investment fund boards.

The SIF has appointed MS Management Services S.A. as its AIF Manager so as to ensure compliance under AIFMD. This will bring with it the EU passport to market and distribute to professional investors in the EU. It will also enable Maitland to provide the SIF with the necessary range of AIFMD compliant services described above, which will leave clients with the ability to focus on their core fund management activity. The SIF has appointed a depositary and auditor that are well established and regulated in Luxembourg with a global presence. Both are independent of Maitland.

Summary of benefits of the combined AIF Manager / SIF solution

By making use of Maitland's authorisation as an AIF Manager and of the Luxembourg SIF as their fund vehicle, clients will derive the following benefits:

- a largely completed authorisation process
- shorter time to market through the use of the sub fund component of the SIF
- a fully compliant and flexible fund and management structure
- an ability to distribute the fund throughout the EU without further authorisation
- an independent risk management function
- independent oversight and governance at the level of both the AIF and the AIF Manager
- transfer of the administrative burden to an established service provider
- a standardised set of fund documentation

In conclusion, the Maitland solution provides clients with an end-to-end package of services that will facilitate set-up, implementation, administration oversight and governance.

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