

## Legal Update

# AIFMD II Published in Official Journal

The final text of the update to the Alternative Investment Fund Managers Directive (“AIFMD II”) was published in the Official Journal of the European Union on 26th March 2023. This revised and consolidated directive will enter into force on 15th April 2024. Its rules will take effect two years later (16<sup>th</sup> April 2026).

### Changes Made

The primary amendments to the original AIFMD regime include the following:

- A full new regulatory regime for loan origination funds.
- Changes to liquidity risk management requirements for open ended AIFs.
- The potential for EU AIFs to appoint a depositary from other EU Member States.
- Amendments to the rules relating to the delegation of portfolio management activity to entities in third countries.
- Fuller disclosure requirements for transparency and investor protection.

### Level II

The text now published comprises the “level 1” of the revised directive, there is also a requirement for additional provisions under “Level 2”. The key areas where ESMA will provide additional detail in this regard include the following:

- Further liquidity rules for open ended loan origination AIFs;
- Regulatory powers to end fund suspensions.

### Grandfathering

While the new rules will not become fully effective until April 2026, existing funds that fall under the

new loan origination regime have an additional three years to comply (i.e. April 2029). However, there will be some restrictions on loan funds currently in the process of fund raising in this regard.

### Other Actions

ESMA will produce a report by the end of 2025 on AIF costs and charges to further examine “undue costs”, prohibited under Level 2 of the original AIFMD. They will also prepare a report on the delegation substance rules by 2029 as well as a broader review of the AIFMD.

### How Clerkin Lynch can Help

The Asset Management team at Clerkin Lynch LLP can assist in advising on the launch and ongoing operation of AIFs and other funds in Ireland. The team has specific experience with a wide variety of fund types, including loan origination funds, as well as experience at structuring European versions of offshore vehicles to comply with the AIFMD and take advantage of European marketing passport opportunities. Contact us for more information or to discuss a proposed fund.



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