



cutting through complexity

**A Guide to the Implications
of the Alternative Investment
Fund Managers Directive (AIFMD)
for Annual Reports of Alternative
Investment Funds (AIFs)**

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Alternative Investment Fund Managers Directive (AIFMD) for Annual Reports of AIFs



Introduction

The Alternative Investment Fund Managers Directive ("AIFMD" or "Directive")¹ is European Union ("EU") legislation aimed at increasing investor protection and reducing systematic risk by creating a harmonised EU framework for managers of alternative investment funds ("AIFMs") in the EU. AIFMD requires AIFMs to include various transparency disclosures in the Annual Reports of alternative investment funds ("AIFs") that they manage and/or market in the EU. The AIFMD is supplemented by the Level II Delegated Regulations² ("Level II Regs") issued by the European Commission. The AIFMD is required to be transposed into national EU Country law by each respective country. The Level II Regs apply directly in the various EU countries without a requirement for any local enactment.

The purpose of this document is to provide a summary of the implications of AIFMD for Annual Reports of AIFs. It is important to note that the application of the AIFMD requires the exercise of judgement in a number of areas. While we have summarised the requirements and highlighted what we believe to be the main areas of judgement to be considered by the preparers of Annual Reports of AIFs, entities will need to undertake their own review of the AIFMD, the Level II Regs, national transpositions and other guidance. In addition, the information contained in this document is of a general nature and is not intended to address the circumstances of any particular entity.

Article 22 and Article 23 of the AIFMD

AIFMD Chapter IV, Transparency Requirements, contains three Articles as follows:

- Article 22, Annual Report
- Article 23, Disclosure to Investors
- Article 24, Reporting Obligations to Competent Authorities

The relevant article for the preparation of Annual Reports of AIFs is Article 22. Article 22 requires disclosure of material changes referred to in Article 23. Articles 22 and 23 are supplemented by the Level II Regs 103-109, and this document is restricted to the consideration of these elements of the Directive and the Level II Regs. Article 24 does not require disclosure in the Annual Report but sets out similar transparency disclosures that need to be reported to EU regulators. Reporting submitted to any regulator based on Article 24 should therefore be reviewed and considered for consistency with the AIF's Annual Report ("the Annual Report") disclosures, as the AIF's Annual Report also needs to be submitted to EU regulators.

Articles 22 and 23 apply to AIFMs in respect of each EU AIF managed and each EU and Non-EU AIF marketed in the EU.

Article 22 of the Directive contains general principles relating to the preparation of the Annual Report, content and format requirements for the balance sheet and the income statement, requirements regarding a report on activities of the AIF during the year, disclosure of material changes in information previously provided to investors (under Article 23), and AIFM remuneration disclosures. It requires AIFMs to make available the Annual Report of the AIF to investors and any relevant Member State regulators no later than six months following the end of the AIF's financial year.

Article 23 deals with the requirement to make detailed disclosure to investors and potential investors. Certain disclosures are required before investors invest in the AIF and (in accordance with Article 22) when material changes occur. Other disclosures are required "periodically" or "regularly". Some of these disclosures may be included in the Annual Report.

Scope and Structure

This document will address the requirements of Article 22 and Article 23 of the AIFMD focusing on the following areas within the Annual Report:

- 1) (a) Report of the activities for the financial year (Article 22(2) (c));
 - (b) Material changes in items listed under Article 23 (Disclosures to Investors), periodic risk management disclosures as required by Article 23(4), and regular disclosure regarding leverage required by Article 23(5)
- 2) Remuneration disclosures (both qualitative and quantitative) for the financial year (Article 22(2) (e) and Article 22(2) (f));
- 3) Primary statements (Article 22(2) (a) and 22(2) (b)).

An AIF's Annual Report is an account of the entity's operations for the period and is typically made up of the audited financial statements ("the Financial Statements") and additional reports containing management's description of the entity's performance and activities. These additional reports can include some or all of the following: Directors' Report, Investment Managers' Report, Depositary Report, Schedule of Investments, Schedule of significant purchases and sales etc. Throughout this document, we have suggested whether the AIFMD disclosure requirements of Articles 22 and 23 might be included in the audited Financial Statements or elsewhere in the Annual Report.

The applicability of Articles 22 and 23 is dependent on the domicile of the AIFM, the domicile of the AIF and the marketing status of the AIF.

Not all requirements will be applicable to all situations. We therefore have included the table on page two to summarise the applicability of those particular articles.

¹ Directive 2011/61/EU was adopted in 2011. It is a "framework" Level 1 Directive which has been supplemented by delegated regulations.

² Commission Delegated Regulations (EU) No 231/2013, supplementing Directive 2011/61/EU

Applicability

Domiciles		Marketed in EU?	Does AIFMD apply?	Marketing regime	Requirements for AIF Annual Reports
AIFM	AIF				
EU	EU	YES	YES	EU passport	Articles 22 and 23 applicable to the first Annual Report after the authorisation date and all subsequent Annual Reports.
EU	EU	NO	YES	None	Articles 22 and 23 applicable for the first Annual Report after the authorisation date and all subsequent Annual Reports. Exemption may be possible under grandfathering if granted by the AIFM home Member State ³ .
EU	Non-EU	YES	YES	NPPRs ^{3,4} (2012 to 2018)	Articles 22 and 23 applicable for the first Annual Report after the authorisation date and all subsequent Annual Reports.
				EU passport (from mid 2015) ⁵	Articles 22 and 23 applicable for the first Annual Report after the authorisation date and all subsequent Annual Reports. (This EU marketing passport is currently not available).
EU	Non-EU	NO	YES	None	Articles 22 is not applicable as there is no EU marketing by the Non-EU fund. Consideration should be given to any material changes to the AIFM that impact the AIF. These would require disclosure in the AIFs Annual Report as per Article 23.
Non-EU	Non-EU	NO	NO	None	None.
Non-EU	Non-EU	YES	YES	NPPRs (2013 to 2018)	Articles 22 and 23 applicable when the AIFM has notified or registered with Member States. Member States may impose stricter rules in their NPPR.
				EU passport (from mid 2015) ⁵	Conditions need to be clarified once the passport is available. Articles 22 and 23 likely to be applicable for AIFs included in the passport. (This EU marketing passport is currently not available).
Non-EU	EU	YES	YES	NPPRs (2013 to at least 2015)	Comply with NPPR. Articles 22 and 23 applicable when the AIFM has notified or registered with Member State, Member States may impose stricter rules in their NPPR.
				EU passport (from mid 2015) ⁵	Conditions need to be clarified once the passport is available. Articles 22 and 23 likely to be applicable for AIFs included in the passport. (This EU marketing passport is currently not available).
Non-EU	EU	NO	YES	None	Comply with disclosure rules applicable in Home Member State ³ of the AIF. For instance, if AIF is Irish domiciled, it would need to comply with the Central Bank of Ireland AIF Rulebook.

³ Home Member State: if the AIFM is not based in the EU it will have to apply for a Member State of Reference in order to have an EU regulator who will be able to provide and supervise the authorisation and the accompanying passports. The EU has issued guidance on how to apply for a Member State of Reference.

⁴ National Private Placement Regime (NPPR) allows AIFMs to market AIFs that are not allowed to be marketed under the AIFMD domestic marketing or passport regimes. To market under the NPPR, the AIFM must satisfy the conditions of the local country into which it wishes to market.

⁵ Current planned timing for the availability of this EU Passport for Non-EU entities. Further updates are expected from ESMA after their call for evidence "AIFMD passport and third country AIFMs". The third country conditions relate to:

- a) an appropriate cooperation arrangement being in place between the applicable countries,
- b) the third country where the Non-EU AIF/AIFM is established not being listed as a "non-cooperative country" by the Financial Action Task Force, and
- c) an appropriate tax information sharing agreement has been signed between the applicable countries.

It is important that AIFMs first assess to what extent AIFMD is applicable to their AIF Annual Report disclosures and whether the relevant transparency articles of the Directive are applicable. In addition, AIFMs also need to assess whether national regulators of countries into which it is marketing its AIF have adjusted or enhanced the reporting requirements of the Directive.

In general, EU AIFMs will have to disclose the requirements as stated in Article 22 for the first time in the first Annual Report published after the authorisation date, unless the AIFs can avail of the grandfathering provisions within the AIFMD⁶.

Furthermore, when an AIF is actively marketed into the EU, the disclosure rules within Article 22 and 23 will become applicable for the first time for the Annual Report published after registration/ notification of the AIF or authorisation of the AIFM.

The Position of Non-EU managers and Non-EU AIFs

For Non-EU managers the situation is slightly more complicated as these managers have to assess the extent to which their activities or those of their AIFs fall within the scope of the AIFMD, and to which funds it will apply, as well as considering the rules of the Member States into which they are marketing. If Non-EU managers are not marketing in EU countries, and are either relying on reverse solicitation⁷ or are solely relying on the National Private Placement Regime (NPPR) without an AIFMD notification or registration in certain Member States (where this is still an option), Articles 22 and 23 will only be applicable if the NPPR of the Member State prescribes this. Some Member States have included the transparency requirements of the Directive into their national rulebooks, and therefore AIFs either domiciled in their country or marketing into their country will fall within the scope of their national requirements. For example, Ireland now has an AIF Rulebook in place applying transparency requirements to Irish domiciled funds, and Germany requires AIFs marketing into Germany to comply with its Capital Investment Act and the specified investment information must be provided to (potential) investors.

For Non-EU managers that have notified or registered with Member States or will apply for the Non-EU passport (when available), Articles 22 and 23 will be applicable for the first Annual Report after notification/registration or the authorisation of a Non-EU passport. Close scrutiny of national rules is still necessary as Member States may impose additional requirements on AIFs marketing into their country using the notification/registration regime.

KPMG Comment:

It is important that the AIFM and those responsible for the Annual Report of the AIF consider if the AIF's Annual Report falls in scope of the AIFMD.

Where we see some jurisdictions allowing a deferral of a disclosure requirement until a later stage, this has been noted in the relevant section of this guidance document. However, an assessment of national regulation, where relevant, will need to take place to ensure that the deferral can be used. Specific attention needs to be paid to the remuneration disclosures. Non-EU AIFMs marketing into the EU will, as a general rule, need to disclose the requirements of Article 22 in the Annual Report for the first period ended after their notification or registration with an EU regulator. EU AIFMs may be able to defer the quantitative disclosures up to the end of the first full performance year after their authorisation date, as indicated by ESMA guidance⁸. EU AIFMs also need to review the guidance as provided by their home Member State when considering if they are able to defer remuneration disclosures. A number of fund associations in EU Member States have published further guidance regarding both the disclosure required in Annual Reports and the disclosure to investors in their Member States.

6 Grandfathering rules are detailed in Article 61 (3) and 61 (4) of the AIFMD. The rules exempt AIFM, that manages a closed ended AIF which will not make additional investments following the effective date of the AIFMD (in mid- 2013), or which is closed to further subscriptions and will expire in mid-2016 at the latest, from authorisation to manage its AIF. However Article 22 continues to apply in certain of these situations. European Securities and Markets Authority ("ESMA") issued specific guidance on funds that can be considered to be closed ended and could apply the grandfathering rules. (Regulatory Technical Standard as published in the Official Journal of the European Union on the 24 June 2014)

7 Active marketing, as per Article 4(1)(x) of the Directive, means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to investors domiciled or with a registered office in the EU. Reverse solicitation is considered to be a passive marketing activity and therefore is any activity that could not be construed as active marketing.


8 ESMA AIFMD Q&A/2014/1357.

Accounting Information and Audit Requirement

Article 22 (3) states that the accounting information given in the Annual Report shall be prepared in accordance with the accounting standards of the home Member State of the AIF or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF rules or instruments of incorporation.

In addition, Article 22 (3) states that the accounting information given in the Annual Report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 entitled “Statutory audits and Consolidated accounts”. By way of derogation from this point, Member States may permit AIFMs marketing Non-EU AIFs to subject the Annual Reports of those AIFs to an audit meeting international auditing standards in force in the country where the AIF has its registered office.

KPMG Comment:



The term “accounting information” is not defined in the AIFMD. The meaning of this term is of critical importance given the audit requirement in Article 22 (3). A possible interpretation is that “accounting information” refers to the specific disclosure requirements of accounting standards recognised or generally accepted in the jurisdiction in which the AIF is established. This interpretation would therefore exclude certain AIFMD disclosure requirements such as the detailed AIFMD remuneration disclosures from the audit requirement. However alternative interpretations are possible. The preparers of the AIFs Annual Report should consider this matter and have regard to national guidance. In addition, further developments in this area need to be monitored.

We do not believe that the reference in Article 22 (3) to “international auditing standards” in relation to Non-EU AIFs is a reference to International Standards on Auditing issued by the International Auditing and Assurance Standards Board (IAASB). As a consequence, other bodies of auditing standards which are applicable in the jurisdiction of AIF, such as US Generally Accepted Accounting Standard (“GAAS”) for Non-EU AIFs, are in our view not precluded by Article 22 (3).

Most Member States have permitted managers of Non-EU AIFs to have an audit which meets international auditing standards in force in the country of the AIF’s registered office. However, managers of Non-EU AIFs should consider the transposition of the Directive in each of the Member States into which they market regarding the audit requirement in Article 22(3).

Reporting Obligations

The Annual Report should be made available to investors and to the competent authorities of the home Member State of the AIFM⁹, and, where applicable the home Member State of the AIF within 6 months of the end of the financial year. Non-EU AIFMs marketing into the EU using the notification/registration regime under the AIFMD, need to submit the AIF's Annual Report to each and every Member State where it has notified or registered with a regulator.

Where the AIF is required to publish an Annual Report in accordance with the Transparency Directive (Directive 2004/109/EC), which typically arises in the case of closed ended funds that have listed their shares on an EU regulated market, only such additional information referred to in Article 22 (2) (the content requirements for an Annual Report) needs to be provided to investors on request, either separately or as an additional part of the Annual Report. In the latter case, the Annual Report shall be made public no later than four months following the end of the financial year, as required by the Transparency Directive.

Article 103 of the Level II Regs states that all information provided in the Annual Report shall be presented in a manner that provides materially relevant, reliable, comparable and clear information. The recitals to the Level II Regs state that it is essential for investors to obtain the minimum information necessary with respect to particular AIFMs and AIFs and their structure in order to be able to make the right investment decision tailored to their needs and risk appetite, and that the information should be clear, reliable, readily understandable and clearly presented.

KPMG Comment:

The Annual Reporting obligations must be met in the Annual Report of the AIF. However certain disclosures required by Articles 22 and 23 relate to policies in place at the AIFM level, such as the remuneration disclosures and the risk management disclosures. As a consequence, the AIFM and those responsible for the Annual Reports of the AIF need to consider and agree a policy regarding compliance with the disclosure requirements of the AIFMD. Such a policy would include the following in respect of each of the individual disclosure items:

- The application of the requirement to the specific AIF
- The party responsible for drafting the disclosure
- The source of the underlying information
- The location of the disclosure, for example in the audited financial statements or elsewhere in the existing Annual Report, or in a new AIFM report included in the Annual Report.

For instance, certain information on risks and risk management that needs to be added to the Annual Report of the AIF, will be available at AIF level and can be provided by the AIF itself. However, information regarding the remuneration policy and professional liability of the AIFM are likely to be deemed not within the scope of the AIF's financial statements or the Directors' Report. Therefore such disclosures would need to be drafted and approved by the AIFM and need to be kept up to date by the AIFM and their service providers. The initial source of information for these disclosures could be the AIFM's authorisation application document and the regulatory business plan which most AIFMs have drafted as part of AIFMD implementation.

KPMG Comment:

Article 103 of the Level II Regs introduces broad qualitative requirements of all the information in the AIF's Annual Report. These requirements require the AIFM and those responsible for the Annual Report of the AIF to exercise judgement regarding the meanings of "materially relevant, reliable, comparable and clear". Further, these qualitative requirements apply to the entire Annual Report and not just to the specific disclosures mandated by Articles 22 and 23 of the AIFMD.

⁹ For EU AIFMs, the home Member State will be the relevant regulatory authority in its country of domicile. For a Non-EU AIFM, the "home" member state will be the approved member state of reference (MSR).

Exemption

The AIFMD creates a number of exemptions for managers and funds which would otherwise fall within the broad definitions contained in the AIFMD, including holding companies, institutions for occupational retirement provision / pension fund managers, employee participation and employee savings schemes, and securitisation special purpose entities.

In summary, the AIFMD will not apply to managers of:

- One or more AIFMs whose only investors are companies within the same group as the manager (provided that none of these investors itself is an AIF)
- “Small” AIFMs with aggregate total assets under management of
 - (a) Less than €100 million; or
 - (b) Less than €500 million for AIFMs that manage only unleveraged AIFs that do not grant investors redemption rights during a period of 5 years.

An amalgamation of criteria (a) and (b) above is prohibited

- Securitisation special purpose vehicles (SPVs).

Exempt AIFMs (i.e. AIFMs managing “assets under management” under the above prescribed thresholds), may also opt-in to the AIFMD, thereby availing of a passport for their AIFs, provided that they comply in full with the AIFMD’s provisions. The Level II Regs provide for the procedure to be followed by an AIFM when calculating its assets under management and the methodology to be used for specific categories of assets.

Report on the Activities of the Financial Year



Detailed Regulation:

Regulation	Details
Article 22 (2) (c) of AIFMD	The Annual Report of an AIF shall contain a report on the activities of the financial year.
Article 105 (1) of Level II Regs	<p>The report on activities of the financial year shall include at least:</p> <ul style="list-style-type: none"> a) An overview of the investment activities during the year or period and an overview of the AIF's portfolio at year end or period end b) An overview of the AIF's performance over the year or period c) Material changes in certain information (See Article 23 'Disclosure to Investors' below), if not already disclosed in the financial statements.
Article 105 (2) of Level II Regs	The report shall include a fair and balanced review of the activities and performance of the AIF, containing also a description of the principal risks and investment or economic uncertainties that the AIF might face.
Article 105 (3) of Level II Regs	To the extent necessary for an understanding of the AIF's investment activities or its performance, the analysis shall include both financial and non-financial key performance indicators relevant to the AIF. The information provided in the report shall be consistent with national rules where the AIF is established.
Article 105 (4) of Level II Regs	The information in the report on the activities of the financial year should form part of the directors or investment managers report in so far as this is usually presented alongside the financial statements of the AIF.

KPMG Comment:

Some of the required contents of the report on the AIF's activities for the reporting period may already be included in the Directors' and/or Investment Manager's Reports of the AIF, where these have been prepared. These reports could therefore be tailored to add supplementary information required by the AIFMD.

However, the report on the activities of the financial year may provide a number of challenges. Firstly, a Directors' Report is the report of the Board of the AIF. Certain disclosure requirements above (for example Article 105(1) of the Level II Regs) relate to procedures and policies at the AIFM level. Therefore the board of directors of the AIF and the AIFM need to decide upon the most suitable location for the disclosure of the material required by Article 105 in the Annual Report. As a practical matter, procedures to gather all information required between the parties involved and to keep it up to date will be needed.

Furthermore, the existing degree of reporting by directors/managers in AIFs Annual Reports varies considerably from country to country and by different fund types. Certain AIF Annual Reports currently do not contain a Directors' Report, including AIFs constituted as Trusts or offshore AIFs, where Directors' Reports are not required. Therefore certain Annual Reports will need to add significant enhancements to the level of information provided in order to be compliant with Article 105.

The report on activities needs to present a fair and balanced review of the activities of the AIF with a description of the principal risks and investment or economic uncertainties that the AIF faces. AIFMs and those responsible for the financial statements of the AIF need to determine how much information is needed in order to provide this fair and balanced review. Further, they need to consider the meaning of "fair and balanced," in the context of reporting the performance of the AIF. In addition, they need to decide what "the principal risks and investment or economic uncertainties that the AIF might face" are. This would appear to preclude the very comprehensive list of all potential risks often found in prospectus documentation and require the AIFM and those responsible for the financial statements of the AIF to exercise judgement and discretion to determine only the principal risks and uncertainties. They also need to decide whether all this information should be in a publicly available section of the Annual Report, or whether it should be contained in a supplement to the Annual Report that will be made available to investors rather than the general public.

We would expect that the required content of the report on activities of the financial year of the AIF would typically be contained in the unaudited section of the Annual Report of the AIF.

Material Changes and Periodic Risk Management Disclosures

Article 22(2)(d) requires disclosure in the Annual Report of any material changes in the items specified in Article 23 (summarised below). This could be achieved as part of the Directors'/Investment Manager's report, or added to the risk disclosures of the Annual Report where relevant, or included as a separate AIFM report within the AIFs Annual Report.

Article 23 (1)(a)-(p) addresses disclosure requirements to be made to investors before they invest in an AIF. Only when there are material changes in these do they need to be addressed in the periodic Annual Report.

"Material Changes" in the information is defined in Article 106 of the Level II Regs and are those causing a substantial likelihood that a reasonable investor, becoming aware of such changes to the information, would reconsider its investment in the AIF, including because such information could impact an investor's ability to exercise its rights in relation to its investment, or otherwise prejudice the interests of one of more investors in the AIF.

KPMG Comment:

The threshold of "material changes" for determining what requires disclosure in the context of the matters set out in Article 23 (1)(a)-(p) below requires the exercise of significant judgement by the AIFM and those responsible for the Annual Report of the AIF. It is considered beneficial that the AIFMs should set out in the Annual Report how they have determined what is considered to be a material change. Some changes will be deemed to always constitute a material change, for instance the change of identity of the depositary, changes in certain policies and descriptions of any preferential treatment that has occurred during the financial year.

As per ESMA guidance (ESMA/2011/379) where relevant information has already been provided to investors, a reference to the medium in which or where such information is available, with a summary of any such changes is regarded as sufficient to meet the requirements of Article 22 (2)(d).

Detailed Regulation:

The following is the list of topics in relation to which material changes need to be disclosed in the Annual Report of the AIF.

Regulation	Details
Article 23(1) of AIFMD	AIFMs shall for each of the EU AIFs that they manage and for each of the AIFs that they market in the EU make available to AIF investors, in accordance with the AIF rules or instruments of incorporation, the following information before they invest in the AIF, as well as any material changes thereof:

Regulation	Details
Article 23(1) of AIFMD (continued)	<p>a) A description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying AIFs are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM is entitled to employ on behalf of the AIF</p> <p>b) A description of the procedures by which the AIF may change its investment strategy or investment policy, or both</p> <p>c) A description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgements in the territory where the AIF is established</p> <p>d) The identity of the AIFM, the AIF's depositary, auditor, and any other service providers and a description of their duties and the investors' rights</p> <p>e) A description of how the AIFM is complying with the requirements of Article 9(7) regarding professional liability</p> <p>Note; Article 9 is entitled 'Initial capital and own funds', with 9(7) dealing with the potential professional liability risks resulting from the activities of an AIFM. An internally managed AIF and an external AIFM shall either have (i) additional own funds which are appropriate to cover potential liability risks arising from professional negligence or (ii) hold a professional indemnity insurance against liability arising from professional negligence.</p>



Regulation	Details
Article 23(1) of AIFMD (continued)	<p>f) A description of any delegated management function as referred to in Annex I of the AIFMD by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations. Delegated functions can relate to any of the listed functions of AIFMs as included in Annex I of the Directive. However, portfolio management and risk management can not be delegated completely</p> <p>g) A description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Article 19 of the AIFMD</p> <p>h) A description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors</p> <p>i) A description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors</p> <p>j) A description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM</p> <p>k) The latest Annual Report referred to in Article 22</p> <p>l) The procedure and conditions for the issue and sale of units or shares</p> <p>m) The latest net asset value of the AIF or the latest market price of the unit or share of the AIF in accordance with Article 19 of the Directive</p> <p>n) Where available, the historical performance of the AIF</p>

Regulation	Details
Article 23(1) of AIFMD (continued)	<p>o) The identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist</p> <p>p) A description of how and when the information required under paragraphs 4 and 5 of Article 23 will be disclosed. (see below).</p>
Article 23(2) of AIFMD	The AIFM shall inform investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability. The AIFM shall also inform investors of any changes with respect to depositary liability without delay.

Detailed Regulation:

The following is the list of topics in relation to which periodic disclosure to investors are required.

Article 23(4) of AIFMD	<p>AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union, periodically disclose to investors:</p> <p>a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature</p> <p>b) any new arrangements for managing the liquidity of the AIF</p> <p>c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.</p> <p>Article 108 of the Level II Regs provides additional rules in relation to this (see below). In addition, Article 44 of the Level II Regs specifies that the risk limits of each AIF shall cover market, credit, liquidity, counterparty and operational risks.</p>
Article 108(1) Level II Regs	The information referred to in Article 23(4) of the AIFMD shall be presented in a clear and understandable way.
Article 108(2) Level II Regs	When disclosing the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature in accordance with Article 23(4)(a) of the AIFMD the AIFM shall:

Regulation	Details	Regulation	Details
Article 108(2) Level II Regs (continued)	<p>a) Provide an overview of any special arrangements in place including whether they relate to side pockets, gates or other similar arrangements, the valuation methodology applied to assets which are subject to such arrangements and how management and performance fees apply to these assets</p> <p>b) Disclose this information as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation, or at the same time as the prospectus and offering document and as a minimum at the same time as the Annual Report is made available.</p> <p>The percentage of the AIF's assets which are subject to special arrangements¹⁰ as defined in Article 1(5) of the Level II Regs shall be calculated as the net value of those assets subject to special arrangements divided by the net asset value of the AIF concerned.</p>	Article 108(4) Level II Regs	<p>The disclosure of the risk profile of the AIF in accordance with point (c) of Article 23(4) of AIFMD shall outline:</p> <p>a) Measures to assess the sensitivity of the AIF's portfolio to the most relevant risks to which the AIF is or could be exposed</p> <p>b) If risk limits set by the AIFM have been or are likely to be exceeded and where these risk limits have been exceeded a description of the circumstances and, the remedial measures taken.</p> <p>The information shall be disclosed as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation or at the same time as the prospectus and offering document and, at a minimum, at the same time as the Annual Report is made available.</p>
Article 108(3) Level II Regs	<p>For any new arrangements for managing the liquidity of the AIF in accordance with point (b) of Article 23(4) of the AIFMD, EU AIFMs shall:</p> <p>a) For each AIF that they manage which is not an unleveraged closed-ended AIF, notify to investors whenever they make changes to the liquidity management systems and procedures referred to in Article 16(1) of the AIFMD which are material in accordance with Article 106(1) of the Level II Regs</p> <p>b) Immediately notify investors where they activate gates, side pockets or similar special arrangements or where they decide to suspend redemptions</p> <p>c) Provide an overview of the changes to arrangements concerning liquidity, whether or not these are special arrangements as defined previously. Where relevant, the terms under which redemption is permitted and circumstances determining when management discretion applies shall be included. Also any voting or other restrictions exercisable, the length of any lock-up or any provision concerning 'first in line' or 'pro-rating' on gates and suspensions shall be included.</p>	Article 108(5) Level II Regs	<p>The risk management systems employed by the AIFM in accordance with point (c) of Article 23(4) of AIFMD shall outline the main features of the risk management systems employed by the AIFM to manage the risks to which each AIF it manages is or may be exposed. In the case of a change the disclosure shall include the information relating to the change and its anticipated impact on the AIF and its investors.</p> <p>The information shall be disclosed as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation or at the same time as the prospectus and offering document and, as a minimum at the same time as the Annual Report is made available or made public.</p>
		Article 23(5) of AIFMD	<p>AIFMs managing EU AIFs employing leverage or marketing in the EU AIFs employing leverage shall, for each such AIF disclose, on a regular basis:</p> <p>a) Any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement</p>

¹⁰ Special arrangement means an arrangement that arises as a direct consequence of the illiquid nature of the assets of an AIF which impacts the specific redemption rights of investors in a type of units or shares of the AIF and which is a bespoke or separate arrangement from the general redemption rights of investors



Regulation	Details
Article 23(5) of AIFMD	b) The total amount of leverage employed by that AIF.
Article 109(1) Level II Regs	The information referred to in Article 23(5) of the AIFMD shall be presented in a clear and understandable way.
Article 109(2) Level II Regs	<p>Information on changes to the maximum level of leverage calculated in accordance with the gross and commitment methods and any right of re-use of collateral or any guarantee under the leveraging arrangements shall be provided without undue delay and shall include:</p> <ul style="list-style-type: none"> a) The original and revised maximum level of leverage calculated in accordance with Articles 7 and 8 of the Level II Regs, whereby the level of leverage shall be calculated as the relevant exposure divided by the net asset value of the AIF b) The nature of the rights granted for the reuse of collateral c) The nature of guarantees granted d) Details of changes in any service providers which relate to one of the items above.
Article 109 (3) Level II Regs	Information on the total amount of leverage calculated in accordance with the gross and commitment methods employed by the AIF shall be disclosed as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation, or at the same time as the prospectus and offering document and at least at the same time as the Annual Report is made available.
Article 29(1)	<p>Member States shall require that when an AIF acquires, individually or jointly, control of a non-listed company pursuant to Article 26(1)¹¹, in conjunction with paragraph 5 of that Article, the AIFM managing such an AIF shall either:</p> <ul style="list-style-type: none"> a) request and use its best efforts to ensure that the Annual Report of the non-listed company drawn up in accordance with paragraph 2 is made available by the board of directors of the company to the employees' representatives or, where there are none, to the employees themselves within the period such Annual Report has to be drawn up in accordance with the national applicable law; or

Regulation	Details
Article 29(1) (continued)	b) for each such AIF include in the Annual Report provided for in Article 22 the information referred to in paragraph 2 relating to the relevant non-listed company.
Article 29(2)	<p>The additional information to be included in the Annual Report of the company or the AIF, in accordance with paragraph 1, shall include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the Annual Report. The report shall also give an indication of:</p> <ul style="list-style-type: none"> a) any important events that have occurred since the end of the financial year; b) the company's likely future development; and c) the information concerning acquisitions of own shares prescribed by Article 22(2) of Council Directive 77/91/EEC.
Article 29(3)	<p>The AIFM managing the relevant AIF shall either:</p> <ul style="list-style-type: none"> a) request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information referred to in point (b) of paragraph 1 relating to the company concerned to the employees' representatives of the company concerned or, where there are none, to the employees themselves within the period referred to in Article 22(1); or b) make available the information referred to in point (a) of paragraph 1 to the investors of the AIF, in so far as already available, within the period referred to in Article 22(1) and, in any event, no later than the date on which the Annual Report of the non-listed company is drawn up in accordance with the national applicable law.

¹¹ Article 26(1) states that AIFMs managing one or more AIFs where an AIF acquires, individually or jointly control, control for non listed companies shall mean more than 50% of the voting rights of companies, as well as that the percentage of voting rights which determines whether control has been acquired of an issuer shall be determined in accordance with the Takeover Directive (Directive 2004/25/EC), the AIFMD requests the application of the test of the Member State where the issuer has its registered office pursuant to that Directive.



KPMG Comment:

Policies and Procedures

The above requirements pose significant challenges for AIFMs and those responsible for the Annual Report of AIFs. These parties need to consider and agree policies and procedures to address the above requirements. Such policies and procedures would include:

- Assignment of responsibility for each of the above specific topics
- Consideration of how the concept of “material changes” is applied in respect of each AIF
- Establishment of a procedure to record material changes and draft appropriate disclosures
- Consideration of where the disclosure should be made within the Annual Report.

In addition, the interpretation of many of the requirements requires the exercise of judgement which will need to be considered when the policies are being agreed, and on an ongoing basis.

An AIFM should assess, based on its internal policies what constitutes delegation and should accordingly disclose the delegated functions in the prospectus and consistently in the Annual Report. The AIFM should also disclose the assessment of potential conflicts of interest with regard to the delegated functions, as addressed internally in the conflict of interest policy.

The AIFM will need to have a valuation policy in place covering the AIFs and the different assets the AIFs will invest in, and needs to disclose the applicable valuation method, as determined in the valuation policy. All assets need to be valued at least once a year.

Liquidity risk management and other risk notes should be consistent with the disclosures as previously made in the prospectus.

Location of disclosures

The location of disclosures required by the AIFMD in an AIF's Annual Report is a matter of judgement. It should be considered by the AIFM and those responsible for the financial statements of the AIF and also discussed with the auditors of the AIF. The disclosures will be located in either:

- The audited financial statements of the AIF
- The Investment Managers' Report, the Directors' Report, or other reports currently included in the AIF's Annual Report
- A new AIFM report.

The decision will be influenced by the existing content of the AIF's Annual Report, and by the accounting framework used in the preparation of the AIF's financial statements. For instance, certain AIFs will have Investment Managers' Reports, Directors' Reports and Schedules of Investments already in their Annual Report (in comparison to certain Non-EU AIFs which are less likely to already publish such material.) Furthermore, financial statements prepared under International Financial Reporting Standard (“IFRS”) are likely to already include disclosures regarding financial risks and risk management as required by IFRS 7, whereas such

disclosures may be more limited in financial statements prepared under other accounting frameworks such as US GAAP. We do however note that paragraph 125 of the preamble to the Level II Regs indicates a preference to disclose the material changes noted in Article 22(2)(d) within the financial statements.

The following risks as set out by Article 44 of the Level II Regs should be disclosed in line with the requirement of Article 108(5):

- Market risks
- Credit risks
- Liquidity risks
- Counterparty risks
- Operational risks.

The first four risks are generally already addressed in IFRS compliant financial statements. The KPMG International Financial Reporting Standards (“IFRS”) publication “Guide to annual financial statements – Illustrative disclosures for investments funds” (available at - kpmg.ie/ifrs) may provide helpful general guidance to AIFs regardless of the GAAP used.

Risk Limits

An additional issue requiring consideration is the requirement to disclose information regarding breaches of risk limits. The nature and extent of disclosures regarding each breach will need to be considered. A proportional approach to disclosures of breaches is not explicitly considered in the Directive but may need consideration in certain cases for practical reasons. Therefore some degree of aggregation and summarisation may in some situations be considered appropriate. Further, the meaning of a “likely” breach is, in our opinion, unclear. This matter will therefore need to be carefully considered by those responsible for the Annual Reports of the AIFs.

Controlling influence disclosure

When an AIF, for instance a fund with a private equity strategy, acquires control¹¹ of an EU non-listed company, this acquisition transaction will be subject to the AIFMD disclosure and anti “asset stripping” rules in Articles 26 to 30. In such circumstances, the AIFM must ensure that either the Annual Report of the non-listed company includes the disclosure requirements of Article 29 of the Directive, or the Annual Report of the AIF includes the disclosure requirements of Article 29 of the Directive. This includes, inter alia, a fair review of the company's activities, any important events that have occurred since the end of the financial year, and the company's likely future developments.

This obligation does not arise if the Annual Report of the non-listed company already contains this information. If this information is included in the non-listed company's Annual Report, the AIFM must make this information available to the AIF's investors within six months following the end of the AIF's financial year and in any event no later than the date on which the non-listed company's Annual Report must be drawn up.

Remuneration Disclosures

Summary

Possibly the most commented upon change in relation to the AIFMD disclosures relates to the provision of information on the AIFM's remuneration to its staff and other beneficiaries in the Annual Reports of the AIFs it manages.

The AIFMD provides that each EU AIFM must have remuneration policies and practices for prescribed categories of staff. The EU AIFM must determine the remuneration policies and practices in accordance with the detailed list of principles set out in Annex II "remuneration policy"¹² to the AIFMD and Article 107 of the Level II Regs. Annex II describes that when AIFMs are establishing their remuneration policy, a number of principles should be regarded, such as consistency of the remuneration policy with effective risk management, annual review of the policy, assessment of the requirements regarding the performance related amount assessment and deferral of the variable performance. The Annual Report disclosure requirements applicable to the related AIFs are set out below.

Regulation	Details
Article 22(2)(e) of AIFMD	The Annual Report of the AIF shall contain the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, the number of beneficiaries, and, where relevant, carried interest paid by the AIF.
Article 22(2)(f) of AIFMD	The Annual Report of the AIF shall contain the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.
Article 107(1) Level II Regs	When information required by Article 22(2)(e) of AIFMD is given, it shall be specified whether or not the total remuneration relates to any of the following: <ul style="list-style-type: none"> a) The total remuneration of the entire staff of the AIFM, indicating the number of beneficiaries b) The total remuneration of those staff of the AIFM who are fully or partly involved in the activities of the AIF, indicating the number of beneficiaries c) The proportion of the total remuneration of the staff of the AIFM attributable to the AIF, indicating the number of beneficiaries.
Article 107(2) Level II Regs	Where relevant, the total remuneration for the financial year shall also mention the carried interest ¹³ paid in the AIF.



Regulation	Details
Article 107(3) Level II Regs	Where information is disclosed at the level of the AIFM, an allocation or breakdown shall be provided in relation to each AIF, insofar as this information exists or is readily available. As part of this disclosure, a description of how the allocation or breakdown has been provided shall be included.
Article 107(4) Level II Regs	AIFMs shall provide general information relating to the financial and non-financial criteria of the remuneration policies and practices for relevant categories of staff to enable investors to assess the incentives created. In accordance with the principles set out in Annex II of the Directive, AIFMs shall disclose at least the information necessary to provide an understanding of the risk profile of the AIF and the measures it adopts to avoid or manage conflicts of interest.

KPMG Comment: Quantitative Disclosures

The UK Financial Conduct Authority ('FCA') has provided general guidance on its AIFM Remuneration Code (SYSC 19B). As further guidance to the ESMA Questions and Answers⁸ on the application of the AIFMD section on remuneration, the FCA included a guideline that AIFMs may consider "omitting" remuneration disclosures when there is insufficient reliable information. In practice this will mean that AIFMs may not be required to apply the disclosure requirements in full until the financial year ending after the first full performance period that follows the AIFM's date of authorisation. This rule has generally been taken as a guideline across the EU. This results in the general view to date that the financial statements of AIFs with EU AIFMs need not include the financial quantitative information regarding remuneration until after their first full financial performance year post AIFM authorisation.

To illustrate, for an EU AIFM who has been authorised during 2014, and whose AIF financial statement year end is 31 December 2014, disclosure of the quantitative information can be deferred until the 2015 Annual Report of the AIF. Therefore the remuneration disclosure as included in the 2014 AIF Annual Report will only include general information relating to the financial and non-financial criteria of the remuneration policies and practices for relevant categories of staff to enable investors to assess the incentives created.

We note that this area is still evolving and specific guidance relating to this matter as issued by national authorities should be reviewed.¹⁴

¹² Solely for the purposes of the guidelines and Annex II to the AIFMD, remuneration consists of: (i) all forms of payments or benefits paid by the AIFM; (ii) any amount paid by the AIF itself, including carried interest; and (iii) any transfer of units or shares of the AIF, in exchange for professional services rendered by the AIFM identified staff.

¹³ Carried interest as defined in Article 4.1.d in the Directive: a share in the profit of the AIF accrued to the AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF.

¹⁴ See in particular Q1075 in "AIFMD Questions and Answers" 11th Edition issued by the Central Bank of Ireland.

KPMG Comment:**Delegation of Functions per Annex I of the AIFMD**

EU AIFMs will need to assess the delegation structures in place and disclose the remuneration paid to any staff who are fully or partly involved in the activities of the AIF through a service level agreement. EU AIFMs will also need to assess the potential scope for disclosure of any delegates involved in a risk or portfolio management position, who can significantly change the risk profile of the AIF.

Non-EU AIFMs will need to apply Article 22 of the AIFMD and Article 107 of the Level II Regs, however, as the organisational requirements of the AIFMD regarding ANNEX II and the content of remuneration policies do not apply to them, their disclosure will only include the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff. Non-EU AIFMs are not required to assess delegation structures and to apply remuneration rules to their delegates, as these AIFMs do not need to be compliant with these remuneration policy rules.

European Securities and Markets Authority

ESMA's Guidelines include additional remuneration disclosure requirements, based on Commission Recommendation 2009/384/EC on remuneration policies in the financial services sector. These disclosures go beyond those contained in the Directive and include information on decision-making procedures and criteria for pay and bonuses. AIFMs must assess the extent to which this information is relevant to them, and in this regard proportionality can be applied in considering whether the information should be disclosed, as well as whether it should be disclosed in the AIF's Annual Report or will be published in a separate AIFM statement.

The application of proportionality, and how it has been applied, needs to be disclosed. In our experience the general understanding regarding these additional remuneration disclosures is that they will be disclosed at AIFM level.

Illustrative Format for Quantitative Disclosures

The following table shows an example presentation of the remuneration made to persons employed by the AIFM during the year, analysed by category.

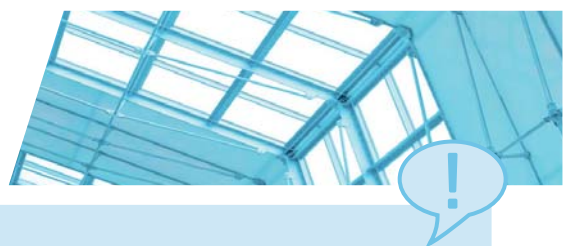
To meet the disclosure requirement, the remuneration expense of the AIFM attributable to each AIF will need to be determined. The method for allocation is not specified in the AIFMD although further guidance as to how it should be specified is given in Article 107 of the Level II Regs. The three options to specify the total amount of remuneration relate to either all staff, staff involved in the activities of the AIF or staff attributed to the AIF. The attribution of staff and their remuneration could be accomplished in a number of ways including the use of average NAV of the AIFs over the financial year to apportion the total remuneration paid by the AIFM to each AIF under management. In our opinion, the allocation method should match as much as possible the procedures used by the AIFM in allocating costs to its AIFs in order to have a consistent and appropriate approach to the calculation. Gathering this information, possibly from external sources such as other group companies who have dedicated certain staff members to work for the AIFM, is going to require time and effort, as well as consistent allocation methods within those external parties.

For the purposes of this sample disclosure, a breakdown of members of staff of the AIFM whose actions have a material impact on the risk profile of the AIFM has been provided.

The AIFM will need to consider what categories of staff exist within the AIFM (and who could be considered to constitute identified staff), the individuals who should be assigned to each category, and their respective impact on the risk profile of the AIF and disclose this appropriately:

- a) Senior management could extend to members of the governing body of the AIFM such as directors, CEO, partners and senior management.
- b) Other identified staff could include:
 - i. Members of staff (other than senior management) with a responsibility for risk management, compliance, internal audit and other similar control functions.
 - ii. Members of staff involved in portfolio management, whose professional activities either individually or as part of a team/unit/department can have a material influence on the AIFM's risk profile or an AIF it manages, including individuals who can enter into contracts/positions and whose total remuneration takes them into the same remuneration bracket as senior managers and risk takers. Each AIFM must consider and define what constitutes "material influence".
 - iii. Other staff responsible for heading the IT department, administration, marketing and human resources.



**KPMG Comment:**

	31-Dec-15 ¹⁵	31-Dec-15	31-Dec-15	31-Dec-15	31-Dec-15
	Number of Beneficiaries	Total remuneration paid	Fixed remuneration paid	Variable remuneration paid	Carried interest paid by the AIF
		EUR	EUR	EUR	EUR
Total remuneration paid by the AIFM during the financial year	X	X	X	X	X
Remuneration paid to employees of the AIFM who have a material impact on the risk profile of the AIF ¹⁵					
Senior management (including executives)	X	X			
Risk takers and other identified staff	X	X			
Allocation of total remuneration of the employees of the AIFM to the AIF ¹⁶					
Senior management (including executives)		X			
Other risk takers and other identified staff		X			

The table above is not extracted or derived from the Directive, Level II Regs, ESMA guidance or other authoritative announcements. It is a KPMG illustrative table only.

Qualitative Disclosures

To date, in our experience the interpretation of “General information” as required by Article 107(4) of Level II Regs has been taken to mean a brief summary and high-level disclosures. Such disclosures generally include a reference to the type of goals and objectives that are considered when rewarding compensation, and the way bonus pools are reviewed and allocated. Independent departments such as legal & compliance, internal audit and risk management functions may be mentioned separately in order to clarify that there is an appropriate mix of qualitative and quantitative criteria which are applied in assessing individual performance of these control functions. Where firms have a remuneration committee, the activities of this committee are briefly explained.

AIFMD Article 107(4) also includes the requirement to disclose the information necessary to provide an understanding of the risk profile of the AIF and the measures it adopts to avoid or manage conflicts of interest. This judgemental area requires interpretation by the AIFM and the AIF.

A key point arises in relation to remuneration disclosures, which is that the required remuneration disclosures in the Annual Report of the AIF are not obtainable from the books and records of the AIF. Rather, this information is maintained by the AIFM or indeed possibly by its delegates. Those responsible for the Annual Report of the AIF, and the AIFM will need to consider and agree policies and procedures in relation to determining the required disclosures and sharing the relevant information.

We would expect that both the qualitative and quantitative disclosures of remuneration should typically form part of the Annual Report of the AIF, outside of the audited financial statements.

¹⁵ The allocation of the remuneration paid to employees of the AIFM to the Fund (the “AIF”) during the financial year is determined based on the method as determined by the AIFM. This assessment and method needs to be disclosed separately.

¹⁶ To meet the requirements of Article(22)(2)(f) of the AIFMD.

**KPMG Comment:****Carried interest**

In respect of carried interest¹³, ESMA considers that any payment made directly by the AIF to Identified Staff which consists of a pro-rata return on any investment made by those staff members into the AIF will not represent remuneration within the meaning of the AIFMD. However, in order for these returns to be considered as exempt from the remuneration requirements set out in the AIFMD the investment by the individual needs to consist of actual disbursements made by the individual. For this purpose, loans given by the AIFM to individual employees will not be considered as investment for the purpose of this exemption unless the loan has been reimbursed by the time the return is paid.

Interestingly, ESMA also considers that carried interest arrangements whereby a return of capital and a hurdle rate to the investors is required before carried interest payments flow through to employees, and the payments made to the individuals are subject to clawback arrangements until liquidation of the AIF, will comply with risk alignment requirements specified in the AIFMD. While this clarification is helpful for private equity carried interest participants, it is not clear why the requirement to have a clawback provision to comply with the risk alignment requirements is considered necessary. Many carried interest arrangements do not currently have a clawback provision in place.

Balance Sheet/Statement of Assets and Liabilities and Income and Expenditure Account



Detailed Regulation:

Regulation	Details
Article 22(2) of AIFMD	Articles 22(2)(a) and 22(2)(b) require that an Annual Report shall contain at least a balance sheet or statement of assets and liabilities and an income and expenditure account for the financial year.
Article 104(1) Level II Regs	<p>The balance sheet or a statement of assets and liabilities shall contain at least the following elements and underlying line items:</p> <p>Assets: comprising the resources controlled by the AIF as a result of past events and from which future economic benefits are expected to flow to the AIF. Assets shall be sub-classified according to the following line items:</p> <ul style="list-style-type: none"> a) Investments including, but not limited to, debt and equity securities, real estate and property and derivatives b) Cash and cash equivalents including, but not limited to, cash-in-hand, demand deposits and qualifying short-term liquid investments c) Receivables including, but not limited to, amounts receivable in relation to dividends and interest, investments sold, amounts due from brokers and 'prepayments', including, but not limited to, amounts paid in advance in relation to expenses of the AIF. <p>Liabilities: Comprising present obligations of the AIF arising from past events, the settlement of which is expected to result in an outflow from the AIF of resources embodying economic benefits. Liabilities shall be sub-classified according to the following line items:</p> <ul style="list-style-type: none"> a) Payables including, but not limited to, amounts payable in relation to the purchase of investments or redemption of units or shares in the AIF and amounts due to brokers and 'accrued expenses', including, but not limited to, liabilities for management fees,

Regulation	Details
Article 104(1) Level II Regs (continued)	<p>advisory fees, performance fees, interest and other expenses incurred in the course of operations of the AIF;</p> <ul style="list-style-type: none"> b) Borrowings including, but not limited to, amounts payable to banks and other counterparties; c) Other liabilities including, but not limited to, amounts due to counterparties for collateral on return of securities loaned, deferred income and dividends and distributions payable; <p>Net Assets: Representing the residual interest in the assets of the AIF after deducting all its liabilities</p>
Article 104(2) Level II Regs	<p>The income and expenditure account for the financial year shall contain at least the following elements and underlying line items:</p> <p>Income: Representing any increases in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in net assets other than those relating to contributions from investors. Income shall be sub-classified according to the following line items:</p> <ul style="list-style-type: none"> a) Investment income – which can be further sub-classified as follows: <ul style="list-style-type: none"> - Dividend income relating to dividends on equity investments to which the AIF is entitled - Interest income relating to interest on debt investments and on cash to which the AIF is entitled - Rental income relating to rental income from property investments to which the AIF is entitled b) Realised gain on investments representing gains on the disposal of investments c) Unrealised gain on investments representing gains on the revaluation of investments d) Other income including but not limited to, fee income from securities loaned and from miscellaneous sources.

Regulation	Details
Article 104(2) Level II Regs (continued)	<p>Expenses: Representing decreases in economic benefits during the accounting period in the form of outflows or depletions of assets or incurrences of liabilities that result in decreases in net assets, other than those relating to distributions to investors. Expenses shall, be sub-classified according to the following line items:</p> <ul style="list-style-type: none"> a) Investment advisory or management fees representing contractual fees due to the advisor or AIFM b) Other expenses including but not limited to, administration fees, professional fees, custodian fees and interest. Individual items, if material in nature, should be disclosed separately c) Realised loss on investments representing loss on the disposal of investments d) Unrealised loss on investments representing loss on the revaluation of investments. <p>Net income or expenditure, representing the excess of income over expenditure over income, as applicable</p>
Article 104(3) Level II Regs	The layout, nomenclature and terminology of line items shall be consistent with the accounting standards applicable to or the rules adopted by the AIF, and shall comply with legislation applicable where the AIF is established. The line items required by AIFMD/Level II Regs as specified above may be amended or extended to ensure compliance with this requirement.
Article 104(4) Level II Regs	Additional line items, headings and subtotals shall be presented when such presentation is relevant to the understanding of an AIF's financial position in the balance sheet or statement of assets and liabilities or an AIF's financial performance in the content and format of the income and expenditure account. Where relevant, additional information shall be presented in the notes to the financial statements. The purpose of the notes shall be to provide narrative descriptions or disaggregation of items presented in the primary statements and information about items that do not qualify for recognition in these statements.

Regulation	Details
Article 104(5) Level II Regs	Each material class of similar items shall be presented separately. Individual items, if material, shall be disclosed. Materiality shall be assessed under the requirements of the accounting framework adopted.
Article 104(6) Level II Regs	The presentation and classification of items in the balance sheet or statement of assets and liabilities shall be retained from one reporting or accounting period to the next unless it is apparent that another presentation or classification would be more appropriate, as when a shift in the investment strategy leads to different trading patterns, or because an accounting standard has required a change in presentation.

KPMG Comment:

AIFMs and those responsible for the preparation of the Annual Report of the AIF will need to assess whether the AIF's current presentation and classification of items complies with the descriptions of the headings per the AIFMD and the related Level II Regs.

Article 104 specifies separate income and expenditure account line items for realised gains and unrealised gains under the "income" heading and realised losses and unrealised losses under the "expense" heading. Under IFRS, there is no requirement to disclose an analysis of gains and losses on financial instruments accounted for at fair value through profit or loss between realised and unrealised portions, other than for certain instruments categorised into Level 3 of the fair value hierarchy.

In our opinion, and as recommended by a number of industry bodies (Irish Funds Industry Association, Association of the Luxembourg Fund Industry, Investment Management Association), a reasonable approach to this apparent conflict is to rely on the content of Article 104(3) to retain the IFRS layout on the face of the income statement but include the additional detail, specifically including the breakdown into realised gains, unrealised gains, realised losses and unrealised losses, prominently within the note disclosures to the Financial Statements.

Contact us

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