

# Client Brief

CAPITAL MARKETS | ROMANIA

APRIL 2015

## THE NEW LAW ON ALTERNATIVE INVESTMENT FUND MANAGERS

On 18 March 2015, the Romanian Parliament passed the law on alternative investment fund managers ("**AIFM law**")<sup>1</sup>, which transposes EU Directive 2011/61 on Alternative Investment Fund Managers ("**AIFMD**")<sup>2</sup> into Romanian legislation.

The AIFM law was promulgated on 10 April 2015 by the Romanian President and is pending publication with the Official Gazette. The AIFM law will enter into force within 30 days as of its publication with the Official Gazette.

The AIFM law sets forth the legal framework for the authorisation, on-going operation and transparency of the managers of alternative investment funds ("**AIFMs**"), which manage and/or market in Romania participation titles of alternative investment funds ("**AIFs**").

### ❖ Scope of the AIFM law and definitions of "AIFs" and "AIFMs"

The AIFM law applies to (i) Romanian AIFMs which manage one or more EU or non-EU AIFs, (ii) non-EU AIFMs for which Romania is Member State of reference, (iii) EU AIFMs which market in Romania participation titles of one or more EU AIFs, (iv) EU AIFMs which manage one or more Romanian AIFs, (v) EU AIFMs which market in Romania participation titles of one or more non-EU AIFs and (vi) non-EU AIFMs which market in Romania participation titles of one or more AIFs.

For the purposes of the above, it shall be of no significance: (a) whether the AIF belongs to the open-ended or closed-ended type; (b) whether the AIF is constituted under the law of contract, under trust law, under statute, or has any other legal form; (c) the legal structure of the AIFM.

The AIFM law does not apply to certain types of entities, such as institutions for occupational retirement provision, pension funds (as regulated under Romanian law), pension systems which are not integrated in the public system, in so far as they do not manage AIFs, supranational institutions (such as the European Central Bank, the European Investment Bank etc.) and similar international organisations, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest or the National Bank of Romania.

<sup>1</sup>According to the available information on the Romanian Chamber of Deputies' website, the AIFM law, once published with the Official Gazette, will be Law no. 74/2015.

<sup>2</sup>EU Directive 2011/61 of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

Moreover, the AIFM law does not apply to AIFMs in so far as they manage AIFs whose only investors are the AIFMs themselves or their parent undertakings, their subsidiaries or other subsidiaries of their parent undertaking and where those investors are not themselves AIFs.

The AIFM law defines Romanian AIFs, EU AIFs and non-EU AIFs.

Romanian AIFs cover all collective investment undertakings, other than the undertakings for collective investments in transferable securities (in Romanian "AOPCs"), that raise capital from at least two investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors.

Under the AIFM law, the concept of Romanian AIFs covers both AOPCs that fall within the scope of the Capital Market Act<sup>3</sup> in accordance with article 114 paragraph (1) and article 115 paragraph (1) thereof, as well as AOPCs which are outside the scope of the Capital Market Act in accordance with article 115 paragraph (2) thereof<sup>4</sup>.

Under the AIFM law, AIFMs cover legal persons the regular business of which is managing one or more AIFs.

Each AIF managed in accordance with the AIFM law shall have a single AIFM, which may be either (i) an external manager, which is the legal person appointed by the AIF or on behalf of the AIF and which, through this appointment, is responsible for managing the AIF or (ii) where the AIF – investment company has the legal form of a joint stock company, and where the AIF's governing body chooses not to appoint an external AIFM, the AIF itself, which shall then be authorised as AIFM.

#### ❖ The rules for the authorisation / registration of Romanian AIFMs with the FSA

As a general rule, in order to manage one or several AIFs, AIFMs must be authorised in accordance with the AIFM law.

In order to be authorised by the FSA, Romanian AIFM's initial capital must be of at least (i) EUR 125,000, in case of AIFMs appointed as external managers of AIFs - investment funds or investment companies and (ii) EUR 300,000, in case of AIFMs which are internally managed AIFs – investment companies.

The main activities an AIFM may perform when managing an AIF are *portfolio management* and *risk management*. Other functions AIFMs may additionally perform in the course of the collective management of an AIF are: (i) *administration* (such as: legal and fund management accounting services; customer enquiries; valuation and pricing, including tax returns; regulatory compliance monitoring; maintaining a unit-/shareholder register; distribution of income; units/shares issues and redemptions; contract settlements, including certificate dispatch; record keeping); (ii) *marketing* and (iii) *activities related to the assets of AIFs*.

---

<sup>3</sup> Law no. 297/2004 on capital markets.

<sup>4</sup> According to the Capital Market Act, AOPCs may be set up as investment funds or investment companies.

As an exception to the authorisation rule, in line with the AIFMD, a lighter regime is in place for the following types of AIFMs, which are not subject to full authorisation, but to registration with the FSA, and must provide to the FSA the relevant information including *inter alia* information on the investment strategies, the main instruments in which they are trading, the principal exposures and the most important concentrations of the AIFs they manage:

- Romanian AIFMs which, either directly or indirectly, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million, and
- Romanian AIFMs which, either directly or indirectly, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

In line with the AIFMD, such smaller AIFMs, for which only registration with the FSA is required, do not benefit from the rights granted under the AIFM law (*e.g.* passporting rights), but are allowed to be treated as AIFMs, subject to the opt-in procedure provided for by the AIFM law.

Within 12 months of the date the AIFM law enters into force, managers of all Romanian AOPCs are required to file for the authorisation by, or registration with, the FSA, in accordance with the above, it being specified that the AIFM will not be required to obtain an authorisation, to the extent in the case of an AIFM managing a close-ended AIF (i) no additional investments will be made after the date the AIFM law enters into force, or (ii) the subscription period for its investors has lapsed before the date the AIFM law enters into force.

#### ❖ **Operating conditions and transparency requirements for AIFMs**

The AIFM law takes over the principles set forth under the AIFMD in relation to the operating conditions and transparency requirements for AIFMs.

AIFMs must permanently comply with prudential rules and apply adequate policies in their activity. Furthermore, AIFMs shall, (i) functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management, (ii) for each AIF that they manage, which is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF, and (iii) ensure that a single depositary (a credit institution or an investment firm) is appointed for each AIF they manage.

In order to ensure transparency, AIFMs are required to make available to investors annual reports for each financial year and mandatory information on the investment strategy and objectives of the AIF. Furthermore, AIFMs shall report on a regular basis to the FSA information on the principal markets and instruments in which they trade on behalf of the AIFs they manage.

❖ **The rights of EU AIFMs to market and manage EU AIFs in the EU<sup>5</sup> and specific rules in relation to third countries<sup>6</sup>**

Subject to notifying the FSA and complying with the conditions set forth under the AIFM law, a Romanian AIFM may market participation titles of any EU AIF that it manages to professional investors located in Romania, as well as to professional investors located in other Member States. Conversely, an AIFM established in another Member State intending to market participation titles of any EU AIF that it manages to professional investors located in Romania may do so as of the date the competent authorities of the home Member State of the AIFM notifies the FSA in this respect.

A Romanian AIFM may, either directly or by establishing a branch, manage EU AIFs established in another Member State, provided that the respective AIFM is authorised to manage that type of AIF, as of the date the FSA confirms to the Romanian AIFM that all required information was communicated by the FSA to the competent authorities of the host Member State. Conversely, an EU AIFM intending to manage a Romanian AIF, either directly or by setting up a branch, may perform this activity, as of the date the FSA receives the relevant notification from the competent authority in the home Member State of the AIFM.

The AIFM law also sets forth specific rules regarding EU AIFMs intending to manage non-EU AIFs and/or market within or outside the EU participation titles of non-EU AIFs.

Furthermore, non-EU AIFMs intending to manage EU AIFs and/or market within the EU participation titles of AIFs with a passport should comply with a specific authorisation procedure and certain specific requirements concerning the third country of the non-EU AIFM and, as appropriate, the third country of the non-EU AIF should be satisfied.

\* \* \*

If you are interested in receiving further information on this topic, please do not hesitate to contact us.

You can also find this legal update in the News section of our website: [www.leroylaw.ro](http://www.leroylaw.ro)

**DISCLAIMER:** This free electronic publication is edited by the law firm Leroy si Asociații and is intended to provide non-exhaustive, general legal information. This publication should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein. Leroy si Asociații shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of this information.

<sup>5</sup> Member States of the European Economic Area are assimilated for the purposes of the AIFM law to Member States of the European Union.

<sup>6</sup> Third country states are defined by the AIFM law as non-EU or non-EEA states.

## Contact

LEROY ȘI ASOCIAȚII SCA  
10-12 Maior Gh. Șonțu  
Str. 011448 Bucharest  
tel. +40 (21) 223 03 10  
fax: +40 (21) 223 03 42  
[www.leroylaw.ro](http://www.leroylaw.ro)

**BRUNO LEROY**  
Partner

[bruno.leroy@leroylaw.ro](mailto:bruno.leroy@leroylaw.ro)



**ANDREEA TOMA**  
Partner

[andreea.toma@leroylaw.ro](mailto:andreea.toma@leroylaw.ro)



**CRISTINA TOGAN**  
Managing Associate

[cristina.togan@leroylaw.ro](mailto:cristina.togan@leroylaw.ro)



**RALUCA CIOCARLAN**  
Senior Associate

[raluca.ciocarlan@leroylaw.ro](mailto:raluca.ciocarlan@leroylaw.ro)

