

Marketing of an alternative investment fund not established in a Member State and managed by a EU manager

Legal framework:

Act No. 240/2013 Coll., on Management Companies and Investment Funds, particularly Articles 98, 99, 241 to 244, 293 to 299, 311 to 315, 318 to 323, 461, 503, 504, 532 to 534, 549, 597, 598, 614, 618, 636 and 656.

Act No. 256/2004 Coll., on Capital Market Undertakings, as amended, particularly Articles 34 to 36m.

Decree of the Czech National Bank No. 247/2013 Coll., on Applications Pursuant to the Act on Management Companies and Investment Funds.

Introduction:

Marketing of an investment fund means a direct or an indirect offering of units or shares of an investment fund.

As a marketing of investment funds is not considered a situation, when an investor invests to the investment fund on its own initiative.

A concept of marketing in the following diagram includes both private placement and public marketing. The concept of public marketing does not include private placement.

In some situations marketing of investment funds may be considered as a public offer of securities pursuant to the Prospectus Directive. In that case requirements laid down in the Capital Market Undertakings Act are required to fulfil, besides requirements pursuant to the Act. It requires to publish a prospectus, having that prospectus previously approved by the Czech National Bank or another competent authority.

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In case of marketing of a qualified investors fund, it is necessary expressly inform the investors that only a qualified investor may invest in this fund.

Public marketing of a foreign non-UCITS fund is possible only if the manager is authorized pursuant to AIFMD and the Czech National Bank decides about equivalency of that fund with the non-UCITS fund having the Czech Republic as its home Member State.

When the “introduction of a passport” is mentioned in the following diagram, that introduction is bound to the date, which will be set in the delegated Act adopted by the European Commission on the basis of Article 67 (6) of Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers (see also Article 320 (2) (c) of the Act). The adoption of that delegated Act is presumed in 2015.

The so-called “national regime” is supposed to expire on the date, which will be set in the delegated Act adopted by the European Commission on the basis of Article 68 (6) of Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers (see also Article 316 (5) of the Act). Marketing in the “national regime” will not be possible after that day. The adoption of that Act is presumed in 2019.

When “additional conditions” are mentioned in the following diagram, these conditions are especially following:

- appropriate cooperation arrangements about an exchange of information are in place between the competent/ supervisory authorities (between the Czech National Bank, the competent authority of the state of a manager and the supervisory authority of the state, where an investment fund is established),
- the third country, where the investment fund is established, has signed an agreement with the Czech Republic and with each other Member State, in which units or shares of the investment fund are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters;
- the third country, where the investment fund is established, is not listed as a Non-Cooperative Country and Territory by FATF (see also relevant provisions of the Act as referenced).

The current legislation shall not apply until 22 July 2014 to the marketing of alternative investment fund that is subject to a current offer to the public in the Czech Republic from the date of the entry into force of the Act. That shall not prevent the marketing of these funds pursuant to the Act from the date of its entry into force.

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