

On Friday, 24 September 2021, the National Assembly of the Republic of Slovenia passed the amendment to the Alternative Investment Fund Managers Act (hereinafter: “**AIFMA-B**”), implementing into the Slovenian legal system *inter alia* the provisions of Directive (EU) 2019/1160 of the European parliament and of the Council of 20 June 2019, amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings (hereinafter: “**Directive 2019/1160**”), and Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (hereinafter: “**Regulation 2019/1156**”), introducing important changes in the management and the marketing of alternative investment funds (hereinafter: “**AIF**”). At the time of writing of this news piece, the [AIFMA-B](#) is not yet published in the Official Journal, hence the text of the adopted amendment corresponds to the document available on the website of the National Assembly.

Pre-marketing of AIF units

The AIFMA-B amendment introduces new rules regarding the pre-marketing of AIF units, defined in a new Article 34.a of AIFMA, as provision of information or communication, direct or indirect, on investment strategies or investment ideas, addressed to potential investors, domiciled or with a registered office in the Republic of Slovenia, with the principal purpose to test the interest of potential professional investors in an AIF which is not yet established, or in an AIF which is established, but not yet notified for marketing.

Detailed rules governing the pre-marketing of AIF units are laid down in a new Article 200.a of AIFMA, providing, *inter alia*, that AIF units may only be pre-marketed to professional investors and only under the conditions laid down in the AIFMA. AIF managers are prohibited by law from pre-marketing AIF units if the information given to the professional investors:

- (i) allows potential investors to commit to acquiring the units of a particular AIF based on the given information,
- (ii) amounts to information in documents needed to subscribe to units of AIF (irrespective of whether it is a final form or a draft), or
- (iii) amounts to information in a prospectus, constitutive document or similar document of a not-yet-established AIF.

If the AIF manager, in a pre-marketing phase of an AIF, transmits a draft prospectus or offering documents to potential investors, such documents may not contain sufficient information to allow professional investors to take an investment decision on their basis. It should be clearly stated in such a draft that it does not constitute an offer or an invitation to subscribe to the AIF units and that the information presented therein is incomplete and subject to change.

The AIF manager is to ensure that investors do not acquire AIF units through pre-marketing, and that pre-marketing is adequately documented. Any admission (subscription) of investors into an AIF, within 18 months after the pre-marketing of AIF units has begun, provided in the information within the context of pre-marketing, or an AIF established as a result of the pre-marketing, shall be considered to have the same result as marketing, and are consequently subject to the applicable notification procedures of AIF unit marketing, established in Articles 201 to 204 of AIFMA.

The AIFMA also provides the obligation to inform the Securities Market Agency (hereinafter: “SMA”), within two weeks after the pre-marketing has begun, on the commencement of the pre-marketing activities, and the possibility of transferring of pre-marketing activities to another person, which can only be an investment firm, credit institution, management company, AIF manager authorised for AIF management or a tied agent.

In addition to abovementioned provisions on pre-marketing of AIF units in Republic of Slovenia, the AIFMA, in relation to pre-marketing activities, also establishes rules regarding cross-border conduct of mentioned activities. That is possible on the basis of an adequate notification of intended AIF units pre-marketing through competent supervisory authority of its home member state. The rules on cross-border pre-marketing of AIF units are in essence similar to the above-mentioned rules regarding pre-marketing activities in Republic of Slovenia and are specified in a new Article 204.a (relating to pre-marketing activities of AIF units in other member states of EU by a Slovenian AIF manager) and 216.a of AIFMA (relating to pre-marketing activities of AIF units in Republic of Slovenia by a foreign AIF manager).

Novelties of AIF units marketing

In addition to the above-mentioned new legal construct of pre-marketing, the AIFMA-B amendment also enacts certain new rules related to marketing of AIF units.

In this respect, it is necessary to point out an updated definition of the term professional investor, as it derives from Article 31. of AIFMA. The AIFMA-B amendment has substantially changed Article 31. of AIFMA, which newly provides, that professional investors are (solely) persons, that are regarded as professional clients in accordance with the Market in Financial Instruments Act (hereinafter: “MFIA”). **The AIFMA-B amendment eliminated the possibility of marketing AIF units to persons that do not meet the requirements of MFIA for professional clients but undertake to invest at least EUR 150,000 in an AIF and sign a specific risk statement**, which has been prior to the amendment expressly allowed on the basis of the previously applicable Article 31. of AIFMA. Consequently, a number of potential investors in AIF units has been significantly reduced and the AIFMA-B amendment committed AIF managers with additional obligations, related to treatment of investors as professional clients under the MFIA. At this point we would also like to emphasise the obligation of AIF managers to establish proper internal procedures and policies regarding classification of clients as professional and non-professional investors, which has already been observed by [SMA](#), before the adoption of the AIFMA-B amendment, based on its findings in previous AIF managers supervisory procedures.

In addition, a change of the second paragraph of Article 199. of AIFMA (although in the first paragraph it limits AIF unit marketing to professional investors, as defined in Article 31. of AIFMA), which under certain conditions enables marketing of certain types of AIF units to non-professional investors, is linked to the above-mentioned change in definition of professional investor. That option is related to special investment fund units (SIF) and AIF from other member states, that hold a special authorisation for AIF unit marketing to non-professional investors, whilst, under the conditions laid down in new Article 199.a of AIFMA, allowing marketing of units of mentioned funds to persons, that are **eligible counterparties as defined in MFIA, and other natural and legal persons declaring in writing, that they are aware of the risks of the investment in AIF, and at the same time commit to the AIF manager, to invest at least EUR 50,000 in an AIF**. AIF units can also be marketed to other non-professional investors, when AIF meets the conditions laid down in the Investment Funds and Management Companies Act (hereinafter: “IFMCA”). The ninth chapter of IFMCA provides rules regarding so called public alternative investment funds (hereinafter: “PAIF”), that can be, based on the mentioned exception from Article 199.a of AIFMA, marketed also to non-professional investors.

The new Article 199.a of AIFMA provides some special organisation conditions regarding AIF unit marketing to non-professional investors. AIF manager must ensure, before beginning of AIF unit marketing, in each member state where intends to market AIF units to non-professional investors, all capacities needed for undisturbed:

- (i) processing of investors' subscription, payment, repurchase and redemption orders relating to the AIF units,
- (ii) providing investors with information on how orders can be made and how,
- (iii) facilitate the handling of information relating to the exercise of investors' rights,
- (iv) making the information and documents required pursuant to Articles 22 and 23 of AIFMA available to investors,
- (v) providing investors with information relevant to the tasks, and
- (vi) act as a contact point for communicating with the competent authorities.

AIF managers must align constitutional documents and marketing of existing AIF, with changed Article 199. of AIFMA and new Article 199.a of AIFMA, no later than three months after the AIFMA-B amendment enters into force, which will happen on the fifteenth day following the publication in the Official Journal of Republic of Slovenia.

Beside described rules regarding the AIF unit marketing, the AIFMA-B amendment also provides special rules in relation to de-notification of cross-border AIF unit marketing, specifying the conditions, under which de-notification is possible and procedural rules for de-notification. These rules can be found in new Article 208.a (relating to de-notification of AIF unit marketing in other EU member states, by a Slovenian AIF manager) and Article 217.a of AIFMA (relating to de-notification of AIF unit marketing in the Republic of Slovenia, by a foreign AIF manager). With this regard, we emphasise the new rule, which makes it impossible for the AIF manager who de-notificated AIF unit marketing to engage in pre-marketing of AIF units or AIF with similar investment strategies or investment ideas, for a period of 36 months from the date of de-notification.

Administrative sanctions

In the light of the foregoing we emphasise, that the AIFMA-B amendment also provides administrative sanctions relating to non-compliance with the new rules for pre-marketing and marketing of AIF units. Non-compliance with abovementioned rules makes it an infringement, with prescribed fines from EUR 5,000 to EUR 125,000 (for AIF manager) and from EUR 800 to EUR 4,100 for the responsible person of the manager. Irrespective of that, if the nature of the offences is particularly serious, the minor offence authority may impose a higher fine on the AIF manager or responsible person of the manager, namely, from EUR 41,000 to EUR 370,000 to AIF manager and from EUR 2,500 to EUR 12,000 to responsible person of the manager.

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