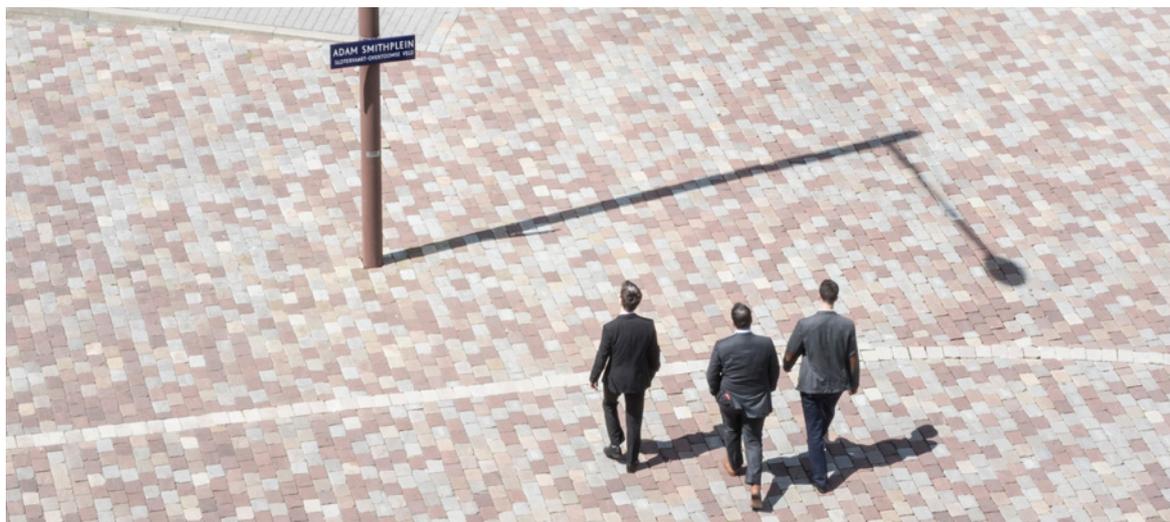


Amendments to the Dutch implementation of AIFMD



As from January 1, 2015 the DFSA is amended to reflect that:

- certain non-EU AIFMs can apply for an AIFMD license;
- licensed EU AIFMs may rely on the national private placement regime (NPPR) for the offering of certain interests;
- EU AIFMs may offer interests in EU AIFs to Dutch non-professional or retail investors.

Introduction

On November 19, 2014, Dutch parliament passed the Amendment Act Financial Markets 2015 (Wijzigingswet financiële markten; Amendment Act 2015). The Amendment Act 2015 purports to amend several laws regulating the financial markets, including the Dutch Financial Supervision Act (Wet op het financieel toezicht) or DFSA.

The provisions of the Amendment Act 2015 will be implemented in different phases. The following amendments take effect as from January 1, 2015 and are further described in this briefing.

Firstly, there are several further amendments to the NPPR set out in the DFSA. Secondly, the Amendment Act 2015 introduces the possibility for managers of alternative investment funds (AIFMs) established in the EU to offer interests in alternative investment funds (AIFs) based in the EU to non-professional or retail investors in the Netherlands.

National Private Placement Regime

Until the third-country passport regime under the Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers (AIFMD) becomes available, the Netherlands has opted to maintain a NPPR. Under the NPPR certain AIFMs are authorized to manage Dutch AIFs and/or offer interests in an AIF in the Netherlands without a license issued by the Dutch supervising authority, the AFM.

The scope of the NPPR is twofold. On the one hand the NPPR facilitates that, provided that certain conditions are met, non-EU AIFMs can continue to manage Dutch AIFs and/or offer interests in non-EU AIFs in the Netherlands. On the other hand the NPPR facilitates that EU AIFMs are entitled to offer interests in non-EU AIFs in the Netherlands, provided that certain conditions are met.

NPPR Non-EU AIFMs as from January 1, 2015

In anticipation of the third-country regime, the NPPR will be extended with respect to AIFMs that (i) do not have their official seat in the Netherlands, (ii) do not have an AIFMD license issued by the AFM and have their official seat in a state, not being a member state, that is not a designated state within the meaning of section 2:66 DFSA (see Box); or (iii) have not designated the Netherlands as its member state of reference.

These AIFMs are eligible to apply for an AIFMD license with the AFM pending the implementation of the AIFMD third-country passport regime. An AIFM applying for a license with the AFM under this regime will have to comply with the license requirements as set out in the DFSA.

Furthermore, the AFM will only grant the AIFMD license, if:

- the state where the AIFM is established is not listed as a non-cooperative country and territory by the FATC;
- the AIFM shall have a legal representative in the Netherlands; and
- there is a cooperation agreement in place between the AFM, the supervising authority of the country where the AIFM is established and, if applicable in the case of the former only, the supervising authority of the country where the non-EU AIF is established.

It is important to note that the passport regime available for licensed EU AIFMs is not available for any non-EU AIFM that has obtained a license from the AFM pursuant to the regime described above.

Pre-AIFMD Designated States Regime

The pre-AIFMD designated states regime is expected to remain in place until July 2018; it being understood that as from July 22, 2013 the regime is no longer available for EU AIFMs with their seat in Ireland and Luxembourg. Under the designated states regime, a non-EU AIFM having its seat in a non-EU country designated by the Dutch Minister of Finance is authorized to manage a Dutch AIF and/or offer interests in an AIF in the Netherlands without a license issued by the AFM.

AIFMs having their official seat in Guernsey, Jersey and the United States of America (if subject to SEC supervision) may apply the designated states regime.

Non-EU AIFMs relying on the designated states regime must comply with a number of continuing obligations, including certain reporting obligations with respect to the AIFs under management, the asset stripping rules (if applicable) as well as the top-up rules for the retail regime.

Non-EU AIFMs relying on the designated states regime must also notify the AFM.

NPPR EU AIFMs

The Amendment Act 2015 clarifies the scope of the NPPR in relation to EU AIFMs managing an EU-feeder AIF.

After advance notification to the AFM, a licensed EU AIFM may rely on the NPPR for:

- the offering of interests in a non-EU AIF under its management; or

- an offering of interests in an EU feeder AIF investing in either a non-EU master AIF or in an EU master AIF which is not managed by a licensed EU AIFM,

provided that in each case,

- the interests are offered to qualified investors only;
- the state where the non-EU AIF is established is not listed as a non-cooperative country and territory by the FATC;
- there is a cooperation agreement in place between the authority supervising the licensed EU AIFM and the supervising authority of the country where the non-EU AIF is established; and
- the licensed EU AIFM has notified the AFM of its intention to make an offer as set out above and provided the AFM with a statement issued by the supervisory authority of its home Member State confirming that it is licensed within the meaning of the AIFM directive.

Offering to non-professional or retail investors in the Netherlands by EU AIFMs

Under the Amendment Act 2015, EU AIFMs are also authorized to manage Dutch AIFs offering to retail investors in the Netherlands and/or offer interests in an EU AIF under its management to retail investors in the Netherlands, provided that:

- the supervising authority of the EU AIFM has notified the AFM;
- the EU AIFM has notified the AFM of its intention to offer to retail investors; and
- the EU AIFM complies with the top-up retail requirements as set out in the DFSA applicable to the offering to Dutch retail investors.

This provision relates to EU AIFs only. Therefore, EU AIFMs relying on the NPPR for the offering of non-EU AIFs or non-EU AIFMs relying on the NPPR are not eligible to offer interests to Dutch retail investors. Non-EU AIFMs that rely on the designated states regime (see Box) may offer interests to Dutch retail investors, provided that they comply with the top-up retail requirements referred to above.

If you would like to discuss any of areas covered in this briefing, as well as any opportunities or implications for your business, please contact:

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