

# Legal 500

## Country Comparative Guides 2025

### The Netherlands

### Alternative Investment Funds

### Contributor

Loyens & Loeff



#### Joep Ottervanger

Partner | [joep.ottervanger@loyensloeff.com](mailto:joep.ottervanger@loyensloeff.com)

#### Joyce Kerkvliet

Counsel | [joyce.kerkvliet@loyensloeff.com](mailto:joyce.kerkvliet@loyensloeff.com)

#### Erik Kastrop

Associate | [erik.kastrop@loyensloeff.com](mailto:erik.kastrop@loyensloeff.com)

#### Alena Krizova

Associate | [alena.krizova@loyensloeff.com](mailto:alena.krizova@loyensloeff.com)

This country-specific Q&A provides an overview of alternative investment funds laws and regulations applicable in The Netherlands.

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# The Netherlands: Alternative Investment Funds

## 1. What are the principal legal structures used for Alternative Investment Funds?

In the Netherlands, alternative investment funds within the meaning of article 4(1)(a) of Directive 2011/61/EU (the **AIFMD**, such alternative investment funds **AIFs** and managers of such AIFs, **AIFMs**) are generally structured in the form of a limited partnership (*commanditaire vennootschap*, **CV**), a co-operative (*coöperatie*, **Co-op**), a contractual fund for joint account (*fonds voor gemene rekening*, **FGR**), a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*, **BV**) or a public limited company (*naamloze vennootschap*, **NV**), or a combination thereof.

In addition, there are two separate tax fund regimes, being the fiscal investment institution (*fiscale beleggingsinstelling*, **FII**) and the exempted investment institution (*vrijgestelde beleggingsinstelling*, **VBI**). These regimes provide for an attractive tax treatment subject to certain requirements having been met.

## 2. Does a structure provide limited liability to the investors? If so, how is this achieved?

### CV

A CV is a limited partnership for the purpose of a durable co-operation between one or more managing (or general) partners (*beherend vennoten*), each with unlimited liability, and one or more limited partners (*commanditaire or stille vennoten*) who are not personally liable towards third parties for the obligations of the CV in excess of the amount they have contributed or have agreed to contribute to the CV, unless the names of the limited partners (or characteristic elements of their names) are used in the name of the CV or the limited partners engage in any act of management or control (*dad van beheer*) or are involved in any activities of the CV (even by virtue of a power of attorney).

### Co-op

Unless the articles of association provide otherwise, members of a Co-op are liable for deficits upon liquidation or bankruptcy. However, Dutch law allows for the liability of members to be limited or excluded. To indicate the level of liability of the members of a Co-op

the letters W.A. (*wettelijke aansprakelijkheid* unlimited liability), B.A. (*beperkte aansprakelijkheid* limited liability) or U.A. (*uitsluiting van aansprakelijkheid* excluded liability) respectively, must be added to the name of the Co-op.

Dutch Co-op fund vehicles are usually structured as a Co-op U.A., which means that an investor participating in such Co-op as a member is not liable for any deficit of the Co-op.

### BV/NV

A BV or NV is a legal entity with capital divided into one or more shares. A shareholder (i.e. the investor) of a BV or NV is, in principle, not personally liable for actions carried out in the name of the BV or NV and does not have to contribute to the losses of the BV or NV in excess of the amount to be paid up on its shares.

### FGR

An FGR is a contractual fund without legal personality, that is typically established by a manager and a custodian (titleholder, typically a bankruptcy proof entity).

The liability of a participant of an FGR is generally limited to the amount that such participant has committed to pay. This limitation of liability is achieved by virtue of the structure of the FGR which is a contractual arrangement *sui generis*, whereby the titleholder acts in its own name (but for the account of the participants) *vis-à-vis* third parties whilst each participant is contractually only liable towards the titleholder for an amount up to its commitment.

### General grounds for investor liability

In addition to the above, there are certain general Dutch law grounds that may affect the limited liability of an investor. These are generally exceptional and include, for instance, a tort (*onrechtmatige daad*) by an investor, the voluntary assumption of liability by an investor or circumstances where an investor qualifies as a policy (*beleidsbepaler*) maker or a co-policy (*medebeleidsbepaler*) maker of an AIF.

## 3. Is there a market preference and/or most

## preferred structure? Does it depend on asset class or investment strategy?

Private equity funds (including PERE funds) are generally structured as a CV or a Co-op. Hedge funds, debt funds, and liquid (open-ended) equity funds are often structured as an FGR or an NV that applies the FII tax regime (see under 1 above). Core real estate funds are commonly structured as an FGR or CV, while real estate funds with an active strategy are typically structured as a Co-op. Funds are frequently established as master-feeder structures, combining different vehicles to accommodate varying investor types, strategies, or regulatory considerations.

## 4. Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity vs. hedge)) and, if so, how?

Yes, AIFMs of open-ended AIFs are subject to stricter rules given the liquidity risks that such funds pose. AIFMs that rely on to the Small Managers Regime (see under 12 below) and that manage open-ended AIFs are subject to lower AuM Thresholds in order to be able to use an exemption from the AIFMD license requirement (see under 12 below) and licensed AIFMs managing open-ended AIFs are subject to additional rules regarding liquidity and risk management. In addition, AIFs that apply the FII tax regime are subject to certain restrictions such as borrowing limitations.

## 5. Are there any limits on the manager's ability to restrict redemptions? What factors determine the degree of liquidity that a manager offers investors of an Alternative Investment Fund?

This will depend on the fund terms which will describe the possibility to redeem (if any), the redemption intervals and the ability of the AIFM to suspend redemptions. However, an AIFM cannot exclude the right of a limited partner in a CV to request a judge to rescind the limited partnership agreement in respect of itself for serious cause (*gewichtige redenen*) nor can an AIFM prohibit an investor in a Co-op to withdraw from a cooperative on the basis of an arrangement that exceeds what is permitted pursuant to the articles of association of the Co-op and applicable law. In practice these provisions do not pose an issue for a typical closed-ended private equity fund.

## 6. What are potential tools that a manager may use to manage illiquidity risks regarding the portfolio of its Alternative Investment Fund?

All general tools are available to AIFMs of liquid AIFs to manage illiquidity risks, including the maintenance of cash reserves, applying redemption facilities (i.e. debt financing), redemption gates, in-kind distributions, matching of sale and purchase requests and redemption of interests following the sale of underlying assets as well as the use of side-pockets. A licensed AIFM managing AIFs that are open-ended or leveraged should implement a liquidity management policy.

## 7. Are there any restrictions on transfers of investors' interests?

As from 1 January 2025 a CV in principle became a per-se tax-transparent entity from a Dutch tax perspective and the unanimous consent requirement for transfers and issuances of interests in a CV, which was a prerequisite for such tax transparent status until that time, is therefore no longer required.

An FGR that qualifies as an AIF can be organised either as a tax-transparent entity (a "closed" FGR) or as a tax-opaque entity (an "open" FGR). An FGR that qualifies as an AIF is considered a closed FGR only if the participations in the FGR are not transferable other than to the FGR itself by way of redemption. If this requirement is not met such FGR AIF will be considered to be open and hence a tax-opaque entity.

Co-ops that are used as principal fund vehicles may be eligible for an exemption of Dutch dividend withholding tax. AIFMs that seek confirmation by means of an advance tax ruling from the Dutch tax authorities that the Co-op fund vehicle is eligible for such exemption of Dutch dividend withholding tax are required to state in the articles of association and/or member's agreement of the Co-op that a transfer of a membership interest in the Co-op is subject to the approval of all members.

Finally, interests in AIFs which from a regulatory perspective are only offered to non-professional investors for a countervalue of more than EUR 100,000, or to professional investors, can only be transferred to investors which meet such requirements.

## 8. Are there any other limitations on a manager's ability to manage its funds (e.g., diversification

## requirements)?

AIFs that do not qualify as an FII or VBI (see under 1. above) and do not apply a specific EU fund label (EuVECA, EuSEF or ELTIF), are not subject to mandatory product requirements (such as diversification requirements). However, the license authorisation of a licensed AIFM may restrict the AIFM in its ability to manage certain types of funds. For instance, an AIFM that holds a licence for managing AIFs investing in financial instruments is not allowed to manage an AIF that invests in real estate without first applying for an extension of the scope of its licence.

## 9. What is the local tax treatment of (a) resident, (b) non-resident, (c) pension fund and (d) sovereign wealth fund investors (or any other common investor type) in Alternative Investment Funds? Does the tax status or preference of investors or the tax treatment of the target investments primarily dictate the structure of the Alternative Investment Fund?

Dutch tax residents (entities and individuals) are subject to income tax in the Netherlands with respect to their worldwide net income, whilst non-Dutch residents (entities and individuals) are subject only to income tax in the Netherlands with respect to certain Dutch sources (including a permanent establishment or real estate located in the Netherlands).

Subject to certain conditions, pension funds may be entitled to a full exemption from Dutch corporate income tax and a full exemption or refund of Dutch dividend withholding tax. Other tax exempt (governmental) bodies (EU and non-EU) might also be entitled to a full exemption or refund of Dutch dividend withholding tax with respect to qualifying portfolio investments in Dutch (fund) entities.

The legal structure of an AIF strongly depends on the nature of its investments (see under 3 above). Most AIFs are structured in a way that pursues tax neutrality, i.e. taxes are to be levied at investment level and at investor level, but not at the level of the fund. Further, various structures provide for the possibility to make distributions free from withholding tax.

## 10. What rights do investors typically have and what restrictions are investors typically subject to with respect to the management or operations

## of the Alternative Investment Fund?

Generally, pursuant to the AIFMD, the AIFM itself is responsible for performing the portfolio and risk management tasks on behalf of an AIF. In addition, as set forth under 2 above, the involvement of investors in management tasks may trigger liability risks. Consequently, investors typically have limited rights with respect to the management and operation of the Fund (albeit that investors can typically vote on the removal of the AIFM, an extension of the term of the AIF, or the approval of the annual accounts and often certain other reserved matters). Some of the investors typically also have a representative on the fund's investor advisory committee through which they can exercise certain approval and/or consultation rights.

## 11. Where customization of Alternative Investment Funds is required by investors, what types of legal structures are most commonly used?

All Dutch legal forms commonly used for AIFs (i.e., CV, Co-op, BV/NV, and FGR) can generally be tailored to accommodate specific investor requirements.

Co-ops and BVs/NVs, as corporate entities, are subject to mandatory Dutch corporate law, which imposes certain structural requirements. By contrast, the CV and FGR are contractual in nature and not governed by mandatory corporate law, offering greater flexibility for bespoke arrangements.

## 12. Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Yes, in principle the manager/ AIFM of an AIF (or the AIF itself in case managed internally) is required to be licensed. In principle, AIFMs that are active in the Netherlands fall within the scope of the AIFMD and the Dutch implementation thereof in the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*, or **AFS**) and the rules and regulations promulgated thereunder.

Pursuant to article 2:65 AFS, it is prohibited for an AIFM to manage an AIF or to market interest in an AIF in the Netherlands without having obtained a licence from the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*, **AFM**). This is different if an exemption to the licence requirement is available, such as a licensed EU AIFM using its passport or an AIFM making

use of the Small Managers Regime (as further set out below) or another exemption or exception applies.

There is an exception from the above-mentioned licence obligation for smaller Dutch AIFMs that can make use of the so-called "registration regime" (**Small Managers Regime**) of section 2:66a of the AFS. In order to be able to make use of this exemption, each of the following conditions must be met by the AIFM:

- the AIFM manages directly – or through an undertaking with which it is linked through common management, common control or a qualified holding – portfolios of AIFs whose assets under management (**AuM**) in total do not exceed:
  - a. EUR 100 million; or
  - b. EUR 500 million if all the AIFs managed by the AIFM are unleveraged and there are no redemption or repayment rights exercisable with respect to interests in the AIFs for a period of five years following the date of the acquisition of the interests in the respective AIFs (the limits under a) and b) above: the **AuM Thresholds**); and
- interests in each AIF managed by the AIFM may only be marketed:
  - a. to professional investors within the meaning of section 1:1 of the AFS;
  - b. to fewer than 150 persons; or
  - c. for a countervalue of at least EUR 100,000 per investor (the restrictions under a), b) and c): the **Placement Restrictions**).

It is only possible to use one Placement Restriction for each AIF (i.e. it is not possible to combine them). The AFM clarified that the following conditions should be met, in order to make use of the Placement Restriction set forth under paragraph c) above:

- the amount of the capital commitment per investor is at least EUR 100,000 (exclusive of costs);
- the first amount called under the commitment per investor must be at least EUR 100,000; and
- the amount of committed capital may never fall below EUR 100,000.

A Dutch AIFM that meets the AuM Thresholds and the Placement Restrictions and wants to make use of the Small Managers Regime needs to register itself and the AIF it manages/intends to market with the AFM, by submitting a registration form (including, *inter alia*, an overview of the AuM and a description of the investment strategy). The AFM charges EUR 4,400 for a registration. After review and acceptance of the registration form by the AFM, the AIFM and the AIFs managed by it will be

included in the public register of the AFM kept on its website. If the AIFM meets the conditions of the Small Managers Regime, it can start marketing after the registration is submitted to the AFM; there is no waiting period. If the AIFM wishes to raise a new AIF after registering itself, it should register the AIF two weeks prior to the commencement of the marketing on the AIF. If the AIFM exceeds the AuM Thresholds (and is expected to continue to do so for a period of at least three months thereafter) or does not comply with the Placement Restrictions, the AIFM must apply for a licence from the AFM within 30 calendar days.

Exemptions to the general licence requirement are also available for non-Dutch AIFMs in (*inter alia*) the following instances:

- when an EU sub threshold AIFM registers with the AFM under the Small Managers Regime, provided that interests in the AIF are offered to professional investors only;
- when a licensed EEA AIFM uses a passport; and
- when a non-EEA AIFM manages a Dutch AIF or markets units in an AIF in the Netherlands under the Dutch implementation of the national private placement regime of article 42 AIFMD.

### 13. Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

When an AIFM wishes to manage an AIF under a EuVECA, EuSEF or ELTIF label specific approval is required from the AFM for the application of such label for such AIF. Reference is made to our answer under 12 above.

### 14. Does the Alternative Investment Fund require a manager or advisor to be domiciled in the same jurisdiction as the Alternative Investment Fund itself?

This is in principle not the case. Reference is made to our answer under 18 below.

### 15. Are there local residence or other local qualification or substance requirements for the Alternative Investment Fund and/or the manager and/or the advisor to the fund?

Dutch law entities that are non-transparent from a Dutch



tax perspective, like the Co-op, BV, NV and open FGR are deemed to be a Dutch tax resident by virtue of their Dutch domicile. Nevertheless, in an international tax environment also the place of effective management of the entity may be of relevance. The Dutch concept of the place of effective management is very similar to the international (OECD driven) standards, predominantly focussed on the place where the management exercises its executive tasks. Further, subject to certain strict conditions, Dutch tax law stipulates that AIFs are deemed to be effectively managed in their country of establishment.

## 16. What service providers are required by applicable law and regulation?

Licensed AIFMs must appoint a depositary for the AIFs they manage. In principle, in the Netherlands such depositary is subject to a licence requirement (a depositary generally holds a licence as a trust office, investment firm or credit institution), unless a specific exemption to the licence requirement is available. If an AIF managed by a licensed AIFM does not have legal personality, the legal ownership of the AuM must be held by a separate legal entity whose sole object according to the articles of association is holding the legal ownership of the assets of one or more AIFs (and if there is a real risk that the assets of a particular AIF will provide insufficient recourse, such separate legal entity may only hold the assets for one AIF).

## 17. Are local resident directors / trustees required?

Generally speaking, no specific requirements for Dutch resident trustees or directors apply to AIFs. Reference is made to our answer under 15 above.

## 18. What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

An AIFM authorised in another EEA Member State in accordance with article 6 sub 1 of the AIFMD may manage a Dutch AIF in the Netherlands on a cross-border basis with a passport, provided that the procedure of article 33 AIFMD is followed, which, in summary, entails certain documentation and information being provided to the home Member State regulator of the AIFM.

Sub-threshold EU AIFMs from another country than the Netherlands may manage or market AIFs to professional

investors in the Netherlands provided that a registration process with the Dutch regulator is followed.

A non-EEA AIFM may manage a Dutch AIF on a cross-border basis if an appropriate co-operation arrangement is in place between the supervisory authority of the non-EEA country where the AIFM is established and the AFM. In addition, a notification should be filed with the AFM, including an attestation of the home country supervisor of the non-EEA AIFM. It is a prerequisite that the non-EEA country where the AIFM is established is not listed as a non-co-operative country for the purposes of the Financial Action Task Force (FATF). Such non-EEA AIFM must comply with certain reporting, disclosure and transparency requirements relating to the annual report, disclosures to investors (both initially and on an ongoing basis), disclosures relating to sustainability pursuant to Regulation (EU) 2019/2088 (SFDR), reporting obligations to regulatory authorities and, where relevant, transparency and asset stripping requirements relating to investments in portfolio companies. In this event, interests in the relevant AIFs may only be offered to qualified investors (*gekwalficeerde beleggers*) within the meaning of the AFS.

Non-Dutch AIFMs or advisors that provide investment advice to Dutch AIFs or Dutch AIFMs may be required to have a license pursuant to MiFID II (2014/65/EU) unless an exemption is available.

## 19. What are the common enforcement risks that managers face with respect to the management of their Alternative Investment Funds?

The AFM may impose sanctions such as fines, incremental penalties and the publication thereof in case of a violation of the AIFMD as implemented in the Netherlands.

## 20. What is the typical level of management fee paid? Does it vary by asset type?

When it comes to management fees the Dutch market is generally in line with the international market. The typical management fee levels for private equity funds range from 1.75% to 2.25% of the aggregate capital commitments during the investment period and on invested capital thereafter. For fund-of-funds, the management fees are typically lower and for other strategies (e.g. real estate, mortgage receivables, etc.) the typical level of fees is dependent on the strategy (for instance core or opportunistic). In addition to that, continuation vehicles typically charge lower management

fees. Co-investment funds would typically charge no or reduced management fees.

**21. Is a performance fee or carried interest typical? If so, does it commonly include a "high water mark", "hurdle", "water-fall", "preferred return" or other condition? If so, please explain.**

Yes, most fund agreements provide for a performance fee or carried interest model. For liquid strategies/open-ended funds a high-water mark or otherwise benchmark performance fee model is more common. Illiquid strategies such as private equity strategies generally provide for a carried interest model with a hurdle, commonly ranging from 5% to 8% (where we see most private equity funds provide for an 8% hurdle). Although the 80/20 carry split is the most common model in the Netherlands, a ratchet model with premium carried rates at higher IRR/MOIC thresholds has gained more territory over the past years.

**22. Are fee discounts / fee rebates or other economic benefits for initial investors typical in raising assets for new fund launches?**

First closing management fee discounts are sometimes applied for initial investors.

**23. Are management fee "break-points" offered based on investment size?**

Yes, some funds indeed offer lower management fee rates for investors that make a commitment that exceeds a certain threshold.

**24. Are first loss programs used as a source of capital (i.e., a managed account into which the manager contributes approximately 10-20% of the account balance and the remainder is furnished by the investor)?**

No, first loss programs are not widely applied in the Netherlands.

**25. What are the typical terms of a seeding / acceleration program?**

What terms are typical is to a large extent dependent on the nature of the seeding / acceleration program deployed (whether it comes as a seeding program only or

has a comprehensive accelerator course allowing potential portfolio investments to further develop, etc.). The Dutch Ministry of Economic Affairs and Climate Policy does provide for a Seed Capital scheme that market participants commonly apply for. This scheme has attractive terms that enhance the returns for the other investors. There are various tenders within the Seed Capital scheme under which funding can be obtained, with each having their own specific requirements in relation to, for instance, the term of the investment period and the amount of management costs.

**26. What industry trends have recently developed regarding management fees and incentive/performance fees or carried interest? In particular, are there industry norms between primary funds and secondary funds?**

The market seems to have been cooling down to some extent. However, even though fundraising periods may take a bit longer, fundraisings in the private equity, infra and private debt space continue at quite a steady pace. For real estate funds the fund-raising climate has been more difficult. Until now, said market developments did not result in any significant changes in respect of management and/or performance fees when compared to the past few years. We also noticed a fair number of managers that have been struggling recently to dispose of all of the assets towards the end of their funds' lifetimes. To tackle these issues, managers are looking increasingly for alternative liquidity options, such as continuation vehicles or NAV financing.

**27. What restrictions are there on marketing Alternative Investment Funds?**

A Dutch licensed AIFM is in principle only authorised to offer the interests in the AIF it manages to professional investors within the meaning of the AFS and non-professional investors who invest more than EUR 100,000. However, if the AIFM complies with the "retail top-up regime", the AIFM may also offer interests to non-professional investors in the Netherlands who invest less than EUR 100,000.

An AIFM authorised in another EEA Member State in accordance with article 6 sub 1 of the AIFMD may offer the interests in an AIF in the Netherlands to professional investors on a cross-border basis with a passport, provided that the procedure of article 32 AIFMD is followed. In addition, such AIFMs may market interests to non-professional investors who invest more than EUR

100,000, or to non-professional investors in the Netherlands who invest less than EUR 100,000 whilst complying with the "retail top-up regime", provided that a notification has been made to the AFM in addition to the article 32 AIFMD procedure.

A non-EEA AIFM may offer interests in a EEA or non-EEA AIF to qualified investors in the Netherlands if such AIFM complies with certain reporting, disclosure and transparency requirements relating to the annual report, disclosures to investors (both initially and on an ongoing basis), disclosures relating to sustainability pursuant to SFDR, reporting obligations to regulatory authorities and, where relevant, transparency and asset stripping requirements relating to investments in portfolio companies, and if appropriate co-operation arrangements are in place between the AFM and the supervisory authority of the non-EEA country in which the AIFM is established. In addition, a notification should be filed with the AFM, including an attestation of the home country supervisor of the non-EEA AIFM. Furthermore, the non-EEA country where the AIFM is established should not be listed as a non-co-operative country for the purposes of the FATF.

Certain specific marketing restrictions apply with respect to AIFs which are marketed under the EuVECA, EuSEF or ELTIF label.

With respect to interests offered to non-professional investors in the Netherlands a key information document prepared in accordance with the requirements of the PRIIPS Regulation needs to be provided to such non-professional investors.

For marketing restrictions under the Small Managers Regime, reference is made to our answer under 12 above.

## 28. Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

For licensed AIFMs and AIFMs marketing an AIF with an EuVECA-label (as further set out under 29 below), the concept of pre-marketing is defined as follows:

*"pre-marketing" means provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing, in that Member State where the potential*

*investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment"*

Authorised AIFMs and AIFMs marketing an AIF with an EuVECA label may engage in pre-marketing, except where the information presented to potential investors:

- is sufficient to allow investors to commit to acquiring units or shares of a particular AIF;
- amounts to subscription forms or similar documents whether in a draft or a final form; or
- amounts to constitutional documents, a prospectus or offering documents of a not-yet-established AIF in a final form.

Where a draft prospectus or offering documents are provided, they shall not contain information sufficient to allow investors to take an investment decision and shall clearly state that:

- they do not constitute an offer or an invitation to subscribe to units or shares of an AIF; and
- the information presented therein should not be relied upon because it is incomplete and may be subject to change.

For AIFMs that rely on the Small Managers Regime and do not market an AIF with an EuVECA-label, the determination whether an action constitutes "pre-marketing" is based on the Dutch legal definition of marketing (as set out below).

- Making a direct or indirect, sufficient defined proposal to, as counterparty, enter into an agreement regarding units in an AIF; or
- directly or indirectly requesting or obtaining funds or other goods for the purposes of participation in an AIF.

## 29. Can Alternative Investment Funds be marketed to retail investors?

With respect to licensed AIFMs, as the authorisation pursuant to the AIFMD is, in principle, limited to professional investors, AIFMs who intend to offer interest in the AIF they manage to non-professional investors (retail) in the Netherlands should comply with the so-called retail top-up. The licence for these authorised AIFMs should specifically include the retail top-up. The authorised AIFM with a retail top-up will have to meet all requirements that apply for authorised AIFMs under the fully licensed regime. In addition, the retail top-up regime, *inter alia*, requires the manager to comply with certain



additional compliance, information and reporting requirements. However, the manager is not required to comply with the requirements under the retail top-up regime if interests are offered to non-professional investors for a countervalue of more than EUR 100,000 per investor.

AIFMs benefiting from the Small Managers Regime may offer their interest to retail investors in the Netherlands, provided that they do not offer their interest to more than 150 persons or if such retail investors agree to participate for a countervalue of at least EUR 100,000 payable at once.

Finally, an AIFM that manages an AIF for which it has obtained an EuVECA-label or EuSEF-label can market interests in such AIF to retail investors in the Netherlands, provided these investors subscribe for at least EUR 100,000. If an AIFM manages an AIF for which it has obtained an ELTIF-label it may market interests in such AIF to retail investors in the Netherlands in accordance with the ELTIF regime.

### **30. Does your jurisdiction have a particular form of Alternative Investment Fund be that can be marketed to retail investors (e.g. a Long-Term Investment Fund or Non-UCITS Retail Scheme)?**

No, whether an AIF can be marketed to retail investors is not dependent on the chosen legal form (e.g. a CV, Co-op, BV/NV or FGR), be it that some legal forms are less practical for marketing to a large number of investors due to practical reasons (such as requirement that a transfer of shares in a BV must be in the form of a deed executed before a Dutch civil law notary). Reference is further made to our answer under 29.

### **31. What are the minimum investor qualification requirements for an Alternative Investment Fund? Does this vary by asset class (e.g. hedge vs. private equity)?**

Reference is made to our answers under 29 and 12 above.

### **32. Are there additional restrictions on marketing to government entities or similar investors (e.g. sovereign wealth funds) or pension funds or insurance company investors?**

Not that we are aware of. However, when marketing to

government-related and institutional investors like sovereign wealth funds, pension funds, and insurance companies additional regulatory, tax and strategic considerations may apply. For example, capital adequacy rules which shape the risk profile and liquidity preferences of investments made by these types of investors.

### **33. Are there any restrictions on the use of intermediaries to assist in the fundraising process?**

Whether or not there are restrictions on the use of intermediaries for the fundraising process depends on the agreements entered into with such intermediaries and the tasks performed by the intermediaries. For instance, depending on the relationship, the Dutch rules on outsourcing of tasks to be performed by the AIFM itself pursuant to Annex I of the AIFMD may be applicable. If such intermediary performs certain regulated activities in its role as intermediary, for instance as a placement agent or broker, the intermediary itself may be required to have for instance a license pursuant to MiFID II (2014/65/EU). Whether or not these rules apply should be assessed on a case-by-case basis.

Additionally, if pre-marketing is done through an intermediary, Directive 2019/1160/EU requires that such intermediary is either authorised as an investment firm in accordance with MiFID II, as a credit institution in accordance with Directive 2013/36/EU, as a UCITS management company in accordance with Directive 2009/65/EC, as an AIFM in accordance with Directive 2011/61/EU, or acts as a tied agent in accordance with Directive 2014/65/EU.

### **34. Is the use of "side letters" restricted?**

AIFMs are, in principle, permitted to enter into side letters with investors, and such arrangements are common practice in the Dutch funds market. Dutch fund agreements often include a "most favoured nation" (MFN) clause, which entitles investors to review the side letters granted to other investors and, in certain cases, to elect to benefit from specific provisions. This election right is typically restricted, for example, to provisions negotiated by investors with capital commitments equal to or lower than that of the electing investor. In addition, licensed AIFMs must comply with Article 23(1)(j) AIFMD, which requires disclosure of any preferential treatment granted to investors to the other investors in the fund.

**35. Are there any disclosure requirements with respect to side letters?**

Reference is made to our answer under 34 above.

**36. What are the most common side letter terms? What industry trends have recently developed regarding side letter terms?**

In our experience, the most common side letter provisions relate to information and confidentiality rights, appointment of members to the investor advisory

committee, acknowledgment of co investment interests, investor-specific reporting requirements, excuse rights, and various regulatory or tax-driven provisions.

We observe a growing trend towards more elaborate excuse rights and an increased focus on ESG reporting.

More generally, the volume of investor side letter requests has increased substantially. To manage these efficiently, many AIFMs are aligning and standardising their side letter procedures, allowing them to address investor concerns while controlling operational complexity and compliance costs.

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**Contributors**

**Joep Ottervanger**  
Partner

[joep.ottervanger@loyensloeff.com](mailto:joep.ottervanger@loyensloeff.com)



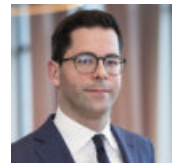
**Joyce Kerkvliet**  
Counsel

[joyce.kerkvliet@loyensloeff.com](mailto:joyce.kerkvliet@loyensloeff.com)



**Erik Kastrop**  
Associate

[erik.kastrop@loyensloeff.com](mailto:erik.kastrop@loyensloeff.com)



**Alena Krizova**  
Associate

[alena.krizova@loyensloeff.com](mailto:alena.krizova@loyensloeff.com)

