

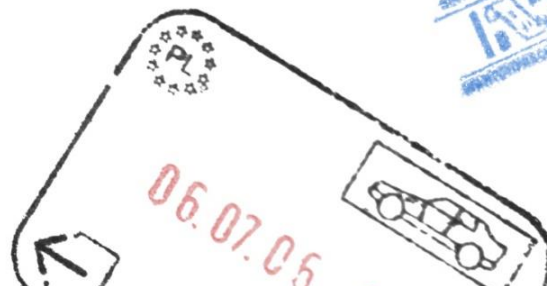
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# CMS Guide to Passporting – Rules on Marketing Alternative Investment Funds in Europe

November 2019



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The purpose of this guide is to provide a broad overview of the key elements of passporting regulations applicable to EEA AIFs in the countries covered in this guide. The guide makes no claims as to completeness and does not constitute legal advice. In the case of AIFMs based in Non-EEA (third country) jurisdictions wishing to market their funds in the EEA, you are referred to our '**CMS Guide to Private Placement of Funds**'.

Entities marketing a passported EEA AIF may additionally need to comply with licence requirements and these requirements are not covered in the guide. The information contained herein is no substitute for specific legal advice. If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact or persons mentioned in this guide.

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# Introduction

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The EU Commission promoted passporting rights as one of the key benefits for hedge, private equity, real estate and other alternative investment fund managers authorised under the Alternative Investment Fund Managers Directive (“AIFMD”).

However, we are now experiencing impediments to the passporting rights as certain domestic regulators are imposing ‘border controls’, and fund managers need to pay fees and comply with various other requirements in order to market their funds cross-border.

The diversity of the domestic rules makes it challenging for AIFMD authorised managers to assess the costs and various other requirements for penetrating the EU market. This guide provides a road map, which will hopefully assist managers in understanding the costs and other requirements under AIFMD, other EU directives and domestic regulations.

We are grateful to the numerous contributors to this guide. If you would like more information about passporting within the AIFMD framework, you are welcome to get in touch with us or – with regard to particular jurisdictions – the relevant contributor firms (contacts detailed on pages 41 - 44).

Amanda Howard, André Lebrecht and Daniel Voigt.

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The information contained in this Guide is for general purposes only and does not purport to constitute legal or professional advice from CMS or any other firm and as a consequence may not be relied upon.

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# Greece

## 1. EEA AIFMs

Law 4209 / 2013 (effective from 21 November 2013, except for some interim provisions that have different effective dates) implemented the AIFMD.

In addition, Law 4209 / 2013 designates the Hellenic Capital Market Commission (“**HCMC**”) as the competent national authority to carry out the implementation of the AIFMD in Greece and to assume supervisory duties with regard to AIFM activity.

Law 4209 / 2013 does not regulate the activities of AIFs but rather those of AIFMs. As per the provisions of the AIFMD, it introduces the principle of one AIFM per AIF. In particular, the scope of Law 4209 / 2013 covers the following AIFMs: (i) All Alternative Investment Funds Management Sociétés Anonymes (“**AIFMSAs**”) i.e., Greek AIFMs managing one or more AIFs; (ii) EU or Non-EU AIFMs which manage one or more Greek AIFs; and (iii) EU or non-EU AIFMs which market one or more AIFs in Greece.

Law 4209 / 2013 distinguishes the activities of management and marketing of AIFs to professional investors. A further distinction is made on the basis of the entity undertaking the management and / or marketing (i.e. whether it is an AIFMSA, an EU AIFM or a Non-EU AIFM) as well as on the basis of the AIFs which are managed and / or marketed (i.e. depending on whether it is an EU AIF or a Non-EU AIF). AIFMSAs are allowed to manage EU and Non-EU AIFs under certain conditions. Marketing of EU AIFs in Greece by AIFMSAs is also allowed under certain conditions. Marketing in other EU States requires the prior notification of the competent supervisory authority of the relevant EU State by the HCMC. EU AIFMs duly authorised by the competent supervisory authority of their home State are allowed to manage AIFs established in Greece. Marketing of EU AIFs by EU AIFMs in Greece is allowed following receipt by the HCMC of the relevant notification from the competent supervisory authority of the home State.

## 2. Third country AIFMs

Non-EU AIFMs are not allowed under Law 4209 / 2013 (until the enactment of a relevant delegated act by the European Commission) to manage or market any AIFs (EU or Non-EU) in Greece. Marketing of Non-EU AIFs in Greece without a passport is currently (until the enactment of a relevant delegated act by the European Commission) allowed only to AIFMSAs under certain conditions. Marketing of Non-EU AIFs in Greece with a passport will be allowed once the European Commission has adopted the delegated Act referred to under Article 68(6) of AIFMD, and from the date disclosed therein. Also, Greece opted not to implement Article 42 of AIFMD which provides the conditions for Non-EU AIFMs to make offerings to professional investors within an EU State without a passport via private placement.

## 3. Fees

Greece does not charge an application fee for inward AIFMD passport notifications. In particular, an EU AIFM planning to market any AIFs in Greece must obtain a passport from the Regulator of their country of establishment. They also need to file a notification to the HCMC but no notification fees are charged. On the contrary, Greek AIFMs pay fees for passport notifications, namely:

- A Greek AIFM planning to market an EU AIF in Greece must file a prior notification to the HCMC. The notification fees are EUR 1,000, plus a 2.4% stamp duty per AIF.
- A Greek AIFM planning to market any AIFs abroad must file a prior notification to the HCMC. The notification fees are EUR 100, plus a 2.4% stamp duty per AIF and per country of intended marketing. Greek AIFMs also pay an annual contribution fee of EUR 1,000, plus a 2.4% stamp duty to the HCMC.
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