

We got everything under control! Basel III and the Post-Crisis Regulation of the Financial Sector

Banking, Finance and Capital Markets Law Commission

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1. The Implementation of the Basel III guidelines

1.1 Legislative Framework

In December 2010 the Basel Committee on Banking Supervision introduced the framework and rules to strengthen global capital and liquidity rules with the goal of promoting a more resilient banking sector (**Basel III**)¹. Already in 2009, the Council of the European Union set its goal to provide a single set of harmonized prudential rules which institutions throughout the EU must respect. This so-called European Single Rule Book will ensure uniform application of Basel III in all Member States. It will close regulatory loopholes and will thus contribute to a more effective functioning of the Single Market.² A new regulatory framework package implementing the Basel III rules has been adopted on EU level by the Council of the European Union and the European Parliament in form of a Regulation³ (**CRR**) and a Directive⁴ (**CRD IV**). The European Commission suggests removing national options and discretions from the CRD IV, and achieving full harmonization by allowing Member States to apply stricter requirements only where these are needed on financial stability grounds or because of a bank's specific risk profile.⁵

As in all EU member states, the CRR is also directly applicable in Finland with immediate effect and without any further implementation actions. The CRR entered into force as of 1 January 2014. The tightened capital adequacy rules shall enter into force step by step to be fully applied as of 1 January 2019. The CRD IV should have been implemented on national level by the end of 2013. Currently, however, the Act on Credit Institutions (9.2.2007/121, in Finnish *laki luottolaitostoiminnasta*) still regulates the capital requirements and other demands for the financial standing of the credit institutions in Finland. The Act on Credit Institutions is the implementation act of the now repealed Credit Institution Directive (2006/48/EC) and the Capital Adequacy Directive (2006/49/EC). Finland has taken actions to commence the implementation process in respect of the CRD IV and to amend its legislation in order to meet the new requirements.

¹ A compilation of documents that form the global regulatory framework for capital and liquidity is available at BIS (Bank for International Settlements) website <http://www.bis.org/bcbs/basel3/compilation.htm>.

² <http://www.eba.europa.eu/regulation-and-policy/single-rulebook>, visited 3 February 2014.

³ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 published in the Official Journal of the European Union L 176, volume 56, of 27th June 2013.

⁴ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC published in the Official Journal of the European Union L 176, volume 56, of 27th June 2013.

⁵ p. 8, European Commission - MEMO/13/690.

An overall legislative reform of the Act on Credit Institutions is in process, and a draft government bill⁶ (the **Draft Government Bill**) for the new act on credit institutions (the **New Credit Institution Act**) and other acts related thereto was recently circulated for comments, and according to the Draft Government Bill, the New Credit Institution Act is planned to come into force in summer 2014. The wording of the Draft Government Bill follows the reasoning and purpose of the CRD IV, which in short summary is to promote financial stability by mitigating the systemic financial risks inherent in the financial system by way of, for example, enhancement of the level and quality of regulatory capital of financial institutions, introduction of more stringent corporate governance requirements, and the introduction of new sanctioning powers and tools for regulators, national financial authorities and the European Securities Markets Authority.

As said, there has been a delay in the implementation of the Basel III guidelines. According to the Draft Government Bill, this is partially due to there having been a delay in the implementation of the Single Supervisory Mechanism⁷ (the **SSM**), which has affected the national legislative work. Thus, some delay is expected in the implementation process of the CRD IV in Finland. Naturally, if the current Act on Credit Institutions conflicts with the CRR, the provisions of the CRR shall prevail. On the date of this Questionnaire, the final version of the Draft Government Bill has not been given to the Finnish Parliament.

⁶ See Draft Government Bill 2013.

⁷ Regulation (EU) No 1024/2013 of the European Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions published in the Official Journal of the European Union L 287, volume 56 of 29th October 2013.

1.2 Applicable Standards in Finland

1.2.1 Supervisory Authority

The Finnish Financial Supervisory Authority (the **FIN-FSA**, in Finnish *Finanssivalvonta*) is the authority responsible for the supervision of Finland's financial and insurance sectors. The entities supervised by the FIN-FSA include banks, insurance and pension companies as well as other companies operating in the insurance sector, investment firms, fund management companies and the Helsinki Stock Exchange.⁸ Its objectives and tasks are documented in the Act on the Financial Supervisory Authority (19.12.2008/878, in Finnish *laki finanssivalvonnasta*), which will be amended accordingly in connection with the reform of the Act on Credit Institutions.⁹ In accordance with the SSM, the licensing authority of banks and other credit institutions will transfer from the FIN-FSA to the ECB. The SSM entered into force in November 2013 and will establish a single supervisory mechanism in autumn 2014 after the transition period of 12 months has lapsed. The SSM is applied to the supervision of all eurozone credit institutions and of all credit institutions in the member states which have adhered to the single supervisory mechanism. In respect of these credit institutions, the direct supervision will be transferred to the ECB¹⁰, while the FIN-FSA will continue to exercise supervision at the national level in accordance with the SSM.

The FIN-FSA has the authority to give supplemental regulations and guidelines under the specific powers granted for the national financial supervisory authorities of the EU Member States under the CRR and the CRD IV. However, these powers are limited solely to certain issues specified in the CRR and the CRD IV.

Thus far the FIN-FSA has issued Regulations and Guidelines No 25/2013, which entered into force 1 January 2014 and provides guidelines for the interpretation of certain provisions of the Regulation. The FIN-FSA has stated that it shall make further amendments to its former regulations and guidelines in relation to, *inter alia*, issues relating to risk-weighting, corporate governance and compliance standards in accordance and within the powers granted to the national financial supervisors under the CRD IV. Any such FIN-FSA authority discretions and options are, however, subject to the SSM, meaning that the FIN-FSA and

⁸ http://www.finanssivalvonta.fi/en/About_us/Pages/Default.aspx, visited 3 February 2014.

⁹ The FFSA has on 9 December 2013 issued one compiled set of regulations and guidelines on the reporting of financial information in relation to the CRR (in Finnish *Määräykset ja ohjeet 20/2013*), (available at http://www.finanssivalvonta.fi/fi/Saantely/Maarayskokoelma/Uusi/Documents/20_2013.pdf, visited 3 February 2014).

¹⁰ In Finland this will include the direct supervision of Nordea Bank Finland Plc, Pohjola Bank plc and Danske Bank Plc. P. 14, Note: Comprehensive Assessment / October 2013, European Central Bank (available at http://www.suomenpankki.fi/fi/suomen_pankki/ajankohtaista/muut_uutiset/Documents/2013-10-13%20-%20Note%20FINAL.pdf?hl=ssm, visited 3 February 2014).

financial institutions are both bound by the technical standards introduced by the European Banking Authority and adopted by the European Commission.

1.2.2 Capital

The basic own funds requirement shall stay at 8% of risk-weighted assets, which is also in line with the current Act on Credit Institutions. The Act on Credit Institutions also includes a minimum capital requirement of five (5) million euros for all credit institutions operating under the Act. The general capital adequacy requirement of 4.5% common equity tier 1 (CET1) under the CRR is also applied as such in Finland. According to the Draft Government Bill, the New Credit Institution Act will also include direct reference provisions to Title III of the CRR.

1.2.3 Capital Conservation Buffer and Counter Cyclical Capital Buffer

According to the Draft Government Bill, Finland will implement the capital conservation buffer and the counter cyclical capital buffer by using certain flexibility provided under the CRR for the member states. The capital conservation buffer shall be 2.5% of risk-weighted assets (an additional amount of the highest quality of capital, CET1) and the counter cyclical capital buffer shall be set up to 2.5% of risk-weighted assets. The FIN-FSA shall have the power to determine the applicable counter cyclical capital buffer in accordance with the new act. In the Draft Government Bill, it is proposed that Finland would exploit the flexibility under the CDR IV so that the transitional provisions in respect of the capital conservation buffer and the counter cyclical capital buffer would be fully applied as of 1 January 2015, without the transition periods provided under the CDR IV. Pursuant to the Draft Government Bill, the New Credit Institution Act will also include direct reference provisions to the Articles 129 and 130 of the CRD IV.

1.2.4 Leverage Ratio

Pursuant to the CRR the FIN-FSA is obligated to monitor the leverage ratio of the credit institutions (and the credit institutions have the obligation to submit such information) as part of the supervision of the capital adequacy directed to such institutions starting on 1 January 2014. The leverage ratio in the Basel III guidelines is 3%, where the leverage ratio is defined as tier 1 capital divided by a measure of non-risk weighted on and off-balance-sheet items. The CRR only includes obligations for the national financial supervision authorities to follow the leverage ratio levels and submit the results to the EBA. The leverage ratio measures are proposed to be taken as a step by step approach, where the data gathering has already to date been carried out by the national financial supervision authorities in accordance with the CDR IV and national legislation and regulations. The data gathering is followed by public disclosure as of 2015 and finally a report by the end of year 2016, including a legislative proposal to

introduce the leverage ratio as a binding measure as of 2018. Finland has decided to make all preparations for the leverage ratio to become a binding requirement in the near future. The credit institutions' obligation to submit information on, among other things, the leverage ratio would be set as of 1 January 2015. In practice this would mean that the required information would be disclosed for the first time in the annual report of 2015. Pursuant to the Draft Government Bill, the New Credit Institution Act will also include direct reference provisions to the Articles 429 and 430 of the CRR.

1.3 Systemically Important Financial Institutions

According to September-end 2013 data published by the FIN-FSA, the capital position of the Finnish banking and insurance sectors has remained good, i.e. the risk-bearing capacity was still good in all sectors. Finnish banks already fulfill the banking sector capital adequacy requirements that will gradually come into effect at the beginning of 2014.¹¹ Therefore, it is not expected that the Finnish banks would struggle to meet the Basel III requirements although somewhat lively debate has taken place regarding the increase of banking sector costs.¹² Furthermore, the banking sector is clearly bracing itself for tightening capital requirements.¹³

The CDR IV includes a mandatory systemic risk buffer of CET1 capital for institutions that are identified by the relevant authority, in Finland the FIN-FSA, on a consolidated basis as globally systemically important (G-SIFIs). The identification criteria and the allocation into categories of systemic importance are in conformity with the G-SIFI criteria agreed by the G-20. None of the systematically important financial institutions listed on the Financial Stability Board's updated lists¹⁴ are headquartered in Finland, although many of them operate in Finland. The globally systematically important institutions are, in practice, qualified on the international level, and therefore, no provisions on

¹¹ See FFSA Press Release 4.12.2013 – 11/2013.

¹² P. 17 of the appendix, FFSA Press Release 18.9.2013 – 9/2013.

¹³ See OP-Pohjola Group Central Cooperative stock exchange release 6.2.2014 on a public voluntary bid for Pohjola Bank plc shares.

¹⁴ Financial Stability Board, "Update of Group of Global Systemically Important Banks", dated 11 November 2013 (available at http://www.financialstabilityboard.org/publications/r_131111.pdf, visited 3 February 2014) and Financial Stability Board, "Global Systemically Important Insurers and the Policy Measures That Will Apply to Them", dated 18 July 2013 (available at http://www.financialstabilityboard.org/publications/r_130718.pdf, visited 3 February 2014).

defining them in detail are included in the Draft Government Bill. However, the Draft Government Bill includes a general provision, whereby the G-SIFIs are considered as credit institutions whose insolvency could jeopardize the stability of the global finance system. The capital requirement for the purposes of the G-SIFIs would be set on the basis of a six-category table, according to which the credit institutions will be classified by the FIN-FSA in accordance with the relevant standards. The lowest applicable capital surcharge regarding the G-SIFIs would be 1% and the highest 3.5% in accordance with the CDR IV. On the contrary, in the Draft Government Bill it is seen as necessary to define the other systemically important institutions (O-SIFIs) by using objective criteria in order to ensure sufficient predictability of law and to define the limits binding the FIN-FSA when exercising its discretion provided under the CDR IV. The definition has been drafted by negating the definition of a G-SIFI, i.e. an O-SIFI is a credit institution that is not a G-SIFI, but that could jeopardize the stability of the financial markets in Finland or in another member state. The applicable capital surcharge regarding the O-SIFIs would be 0–2% determined on the basis of a five-category table and other provisions included in the new act.¹⁵

The FIN-FSA issues both legally binding regulations and recommendatory guidelines on the capital requirements for both non- and systemically relevant financial institutions. As discussed above, following the introduction of the SSM, the ECB will carry out many of these supervisory tasks instead of the national financial supervisors. Following the implementation of the CRD IV, the technical standards of the ECB will gradually replace many of the existing FIN-FSA standards, including capital requirements for systematically relevant financial institutions.

According to the Draft Government Bill, there are currently three systemically relevant financial institutions in Finland that will be subject to the direct supervision of the European Central Bank (in accordance with Council Regulation (EU) No 1024/2013) on 4 November 2014. These three systemically relevant financial institutions are Danske Bank Plc, Nordea Bank Finland Plc and Pohjola Bank plc.¹⁶

¹⁵ P. 143-144, the Draft Government Bill.

¹⁶ P. 14, the Draft Government Bill.

2. Regulatory Framework for Managers of Alternative Investment Funds

2.1 Legislation Reform

The alternative investment fund managers directive¹⁷ (the **AIFM Directive**) applies to each alternative investment fund manager (hereafter referred to as the **AIFM** and an alternative investment fund as the **AIF**) that has its registered office in an EEA state or in a third country, if they manage an AIF located in EU. The only activities excluded as a matter of principle from the field of application of the AIFMD are those covered by the UCITS Directive 2009/65/EC (the **UCITS IV**)¹⁸. Finland has implemented the AIFM Directive by a new act on alternative investment managers that entered into force on 15 March 2014 (the **New Act**) which is based on a government bill for an act on alternative investment managers (94/2013) (the **Government Bill**). The New Act brings previously unregulated activities within the scope of financial market regulation and official supervision.¹⁹ Although the AIFM Directive provides alternative solutions and allows certain freedom of action for each EEA member state, Finland has decided not to include any stricter or more detailed requirements concerning the activities of AIFMs. Finland uses the wide range of rights of option, for example, in respect of the small sized managers' registration and the right to market AIF shares to non-professional investors.²⁰

Until now, there has been no similar legislation regulating the managers of alternative investment funds in Finland. Investment companies and general partnerships have remained largely untouched by financial regulation. The Mutual Funds Act (29.1.1999/48, in Finnish *sijoitusrahastolaki*) regulates activities carried out by management companies and custodians as well as the marketing of units in UCITS (= undertakings for collective investment in transferable securities) in accordance with the UCITS IV and non-UCITS to the public. The Act on Real Estate Investment Funds (19.12.1997/1173, in Finnish *kiinteistörahastolaki*) regulates real estate investment fund activity investing to real properties. The Act on Investment Services (14.12.2012/747, in Finnish *sijoituspalvelulaki*) on the other hand is thoroughly prepared legislation based on recent EU regulations (The Markets in Financial Instruments Directive (MiFID))²¹,

¹⁷ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

¹⁸ 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS IV).

¹⁹ Ministry of Finance Press Release 126/2013 The regulations required by the AIFM directive are also partially being implemented through eleven decrees of the Ministry of Finance and one government decree.

²⁰ Please see p. 2 of the Government Bill. .

²¹ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC .

in particular) and regulates any business in which investment services are offered.²² The AIFM Directive regulates the management and marketing of AIFs offered to professional investors, covering private equity, real estate, commodity and hedge fund investment and other corresponding mutual investment activities.

AIFs themselves are not regulated directly under the AIFM Directive or in the New Act. The definition of an AIF is very wide and basically covers any such collective investment that is not practiced in an investment fund according to the Mutual Fund Act. No particular distinction between different types of AIFMs is made. The main areas falling within the scope of regulation are special investment funds as well as real-estate and venture capital investments.²³ The legal form of the AIF is not, however, restricted; in any assessment, it is the activity practiced by the fund that is significant. An AIF is typically a limited liability company or a limited partnership (in Finnish *kommandiittiyhtiö*), but can also be a cooperative, a registered partnership or even constituted by a contractual arrangement. In this way, regulation is extended to cover a very wide range of collective investment activity. A number of undertakings, such as joint ventures, listed holding companies and family office vehicles, fall outside the area of application, however.²⁴ The application of the New Act is still in practice ambiguous and subject to interpretation. In order for the business to be able to prepare for the full effect of the AIFM Directive and the New Act by 22 July 2014, the New Act provides for an opportunity to file an application with the FIN-FSA for a binding decision on the application of the New Act.²⁵ At the moment in Finland, the existing type of an AIF is a special investment fund, the management of which is regulated in the Mutual Funds Act and is subject to an authorization process.²⁶ The character of a special investment fund may vary as it can be a hedge fund, a fund investing in real estate properties or in various financial instruments.²⁷ Fund management companies managing special investment funds, and which have

²² Certain amendments to the aforementioned acts and other relevant acts are proposed to be made pursuant to the Government Bill.

²³ Ministry of Finance Press Release 126/2013.

²⁴ P. 114, the Government Bill. In Finland the most common legal form of an AIF (or any fund for that matter) is a limited partnership (more popular from taxation point of view) or a limited liability company.

²⁵ Deadline for such applications is 22 April 2014.

²⁶ P. 59, the Government Bill.

²⁷ P. 9, the Government Bill. The name of the special investment fund must include the word “special investment fund” (in Finnish *erikoissijoitusrahasto*) and the FIN-FSA will approve the fund rules in connection with the authorization process of the management company in accordance with the Chapter 7 Sections 42 and 43 of the Investment Funds Act. The main rule is that a fund must have at least 50 unit holders and a minimum capital of EUR 2 million. This does not, however, apply to a special investment fund investing in real estate properties and real estate securities. According to the FIN-FSA’s website the decision on authorization is announced within six months of receipt of the application. Approval depends on the application being accompanied by all the required clarifications. In any case, a final decision on authorisation is always issued to credit institutions, investment firms, fund management companies and custodians within 12 months from receipt of the application.

authorization based on the Investment Funds Directive (85/611/EEC)²⁸ and the Mutual Funds Act, will have to apply for separate authorization to manage AIFs falling under the scope of application of the AIFM Directive.²⁹

2.2 Authorization Process and Registration

2.2.1 General Requirements

Pursuant to the AIFM Directive, each AIFM shall apply for authorization from the competent authorities of their home Member State, as no AIF shall be managed without a valid authorization unless one of the exceptions provided in the AIFM Directive is applicable. If an AIFM is registered in Finland, the FIN-FSA is the competent supervisory authority in respect of the regulations of the new act on alternative investment managers. The alternative investment fund manager must be authorized by the FIN-FSA or it must be registered with the FIN-FSA.³⁰ According to the New Act each AIFM must apply for an authorization from the FIN-FSA if the total assets of the alternative investment funds managed by it is (i) more than 100 million euros including any assets acquired through use of leverage or (ii) more than 500 million euros and the assets are unleveraged and no redemption rights are exercisable during a period of five (5) years following the date of initial investment in each alternative investment fund. Each AIFM managing portfolios of AIFs whose assets under management in total do not exceed the aforementioned thresholds is exempted from the authorization process, but is subject to registration with the FIN-FSA. According to the New Act the identification information of such an AIF subject to registration as well as identification information of all AIFs managed by it and the investment strategies thereof must be provided to the FIN-FSA in connection with the registration. It should be noted, however, that only the authorization enables the AIFM to manage and market AIFs to professional investors in EEA (the so-called passport).³¹ The FIN-FSA shall have supervised each authorized AIFM and an AIFM which has been registered with the FIN-FSA.

According to the New Act, an AIFM must be a legal person (limited liability company, limited partnership, cooperative or foundation) which manages AIF's in

²⁸ Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

²⁹ FFSA webpage http://www.finanssivalvonta.fi/en/regulation/international_projects/AIFMD/Pages/Default.aspx, visited 14 March 2014. If a Finnish or a foreign AIF has been marketed to professional investors before the New Act entered into force, this marketing could have been continued without a license only until 22 July 2014. However, a notification thereof must have been delivered to the FIN-FSA by 15 April 2014.

³⁰ Ministry of Finance Press Release 126/2013. It is advisable to apply for a license or register with the FIN-FSA in good time, but no later than on 22 July 2014. If the application has not been filed by this deadline, the activities must be ceased by that date at the latest.

³¹ Please see also 2.2.2.

the ordinary course of its business. AIFM activities require application for an authorization in accordance with the New Act as stated above. However, according to the New Act authorization can only be granted by the FIN-FSA to a limited liability company or, with certain restrictions³², to a European company whose main place of business is in Finland. The FIN-FSA shall grant authorization to a Finnish limited liability company whose line of business as registered with the Finnish Trade Register is managing of AIFs if, according to the information provided to the FIN-FSA, it can be assured that the requirements of law are fulfilled. Authorization shall be granted to a European company which has acquired a corresponding authorization in another EEA member state and is planning on becoming domiciled in Finland in accordance with the Council Regulation on a European company³³. It should be noted that an AIFM that is subject to registration with the FIN-FSA can act in any legal form.³⁴

Sufficient information on the AIFM must be provided to the FIN-FSA, including information on the ownership, the management and the auditors, the conduct of business, the remuneration policies and practices and the delegation of functions (outsourcing). In addition, the applicant must provide the FIN-FSA with information about the investment strategies, risk profiles and other characteristics of the AIF, information about the countries where the AIF (or the master AIF in case the AIF is a feeder) is established or will be established, the rules or instruments of incorporation (articles of association in respect of a Finnish company), the information on the arrangements made for appointment of the depositary, the information for the purposes of marketing AIF units by a feeder. In accordance with the New Act, the decision on the authorization shall be given by the FIN-FSA within three (3) months of the submission of a complete application including the necessary documents and clarifications needed for such a decision. The FIN-FSA may prolong this period for up to three (3) additional months, if it considers it necessary due to the specific circumstances of the case.

³² The FIN-FSA is obliged to hear the proper foreign EEA supervisory authority before granting authorization to an AIFM that is: 1) a subsidiary company to, an AIFM in an EEA member state, a foreign EEA mutual fund, a foreign EEA investment company, a foreign EEA credit institution or a foreign EEA insurance company; 2) a subsidiary company to the parent company of, an AIFM in an EEA member state, a foreign EEA mutual fund, a foreign EEA investment company, a foreign EEA credit institution or a foreign EEA insurance company; 3) a company, controlled by the same natural or juristic persons that control another AIFM in an EEA member state, a foreign EEA mutual fund, a foreign EEA investment company, a foreign EEA credit institution or a foreign EEA insurance company.

³³ Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE).

³⁴ P. 114, the Government Bill.

2.2.2 Professional Investors and Retail Investors

One of the goals of the Government Bill is to clarify the division of regulating professional and non-professional investors. The implementing process of the AIFM Directive does not diminish the rights of retail investors in respect of investing in various units of collective investment vehicles as long as such vehicles are covered by the Securities Markets Act (14.12.2012/746, in Finnish *arvopaperimarkkinalaki*), the Act on Real Estate Investment Funds and the Mutual Funds Act. Retail investors may continue investing in shares in listed private equity companies, real estate investment companies and real estate funds as well as in special investment funds directed to retail investors and the ongoing legislation reform will not affect such retail investing activities. On the contrary, any special investment fund directed to professional investors would be subject to the new AIFM legislation.³⁵ The FIN-FSA must also be provided with information on the measures taken to prevent marketing to non-professional clients.

In principle, shares and units of AIF's may only be marketed to non-professional investors, if (i) the manager of such fund has acquired an authorization from the FIN-FSA or (ii) the manager has registered with the FIN-FSA, there is a specific reason for accepting such marketing and the FIN-FSA has given its consent thereto. The legal form of such an AIF shall be either enacted in law, organized as a legal person familiar to retail investors or organized as a special investment fund. In addition, when marketing shares or units of AIF's to non-professional investors a so-called key brochure must be filed with the FIN-FSA, as such brochures are used by non-professional investors for assessing the investment and comparing it to investment funds under the Mutual Funds Act. When marketing AIFs to consumers, consumer protection law must be complied with.³⁶ An EEA AIFM's right to market an AIF in Finland is similar to a Finnish AIFM's right.³⁷ According to the New Act an AIFM has the right to decide whether it will market the funds to professional investors only, to non-professional investors only or to both investor groups.

³⁵ P. 88, the Government Bill.

³⁶ P. 92, the Government Bill.

³⁷ Please see section 5 under 2.3.1 below. The FIN-FSA may grant exceptions on the requirements, key brochure

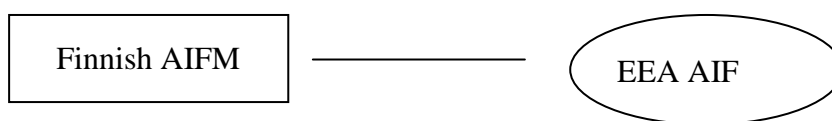
2.3 EEA and Third Countries

2.3.1 Managing and Marketing in EEA Member States

The AIFM Directive includes regulations whereby an AIFM may market its AIFs in all EEA member states after having acquired an authorization in one EEA member state and after having complied with the notification process in accordance with the AIFM Directive.³⁸ Therefore, Finland will not impose any additional requirements if an AIFM established in another EEA member state has acquired the authorization in that EEA member state, but shall regard such manager as an authorized manager in Finland who may manage AIFs either directly or by establishing a branch (provided that the AIFM is authorized to manage that type of AIFs).

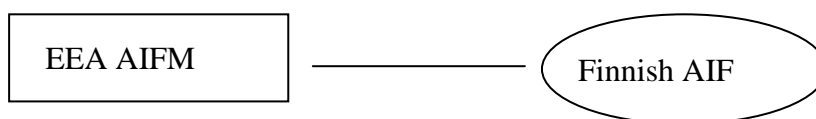
The following illustrates the different situations where an EEA authorization holder (an authorization granted in an EEA member state) may manage or market, as applicable, AIFs in another EEA member state as well as actions to be taken according to the Finnish legislation:

1. Right to **manage** an AIF established in another EEA member state



- A notification to the FIN-FSA of each AIF in accordance with the New Act
- May start its operation once the FIN-FSA has given its notice

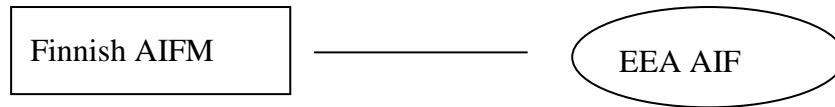
2. An EEA AIFM's right to **manage** an AIF in Finland



- No need to establish a subsidiary or a branch
- Notice from the authority of the AIFM's EEA home member state

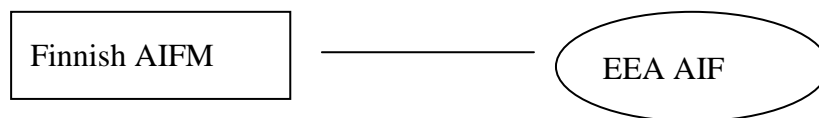
³⁸ P. 20, the Government Bill.

3. Right to **market** an AIF established in another EEA member state **in Finland**



- A notification to the FIN-FSA of each AIF in accordance with the New Act
- When marketing to non-professionals, specific regulations (e.g. a so-called key brochure) in the New Act as well as the consumer protection law must be complied with

4. Right to **market** an AIF established in another EEA member state **in other EEA member states**



- A notification in English to the FIN-FSA of each AIF in accordance with the new act on AIFMs

5. An EEA AIFM's right to **market** an AIF **in Finland**



- No need to establish a subsidiary or a branch
- Notice from the authority of the AIFM's EEA home member state
- When marketing is directed to professional investors only, the FIN-FSA shall be provided with information on how the marketing to non-professionals is prevented

2.3.2 Third Countries

In principle, an AIFM that has acquired an authorization in Finland has the right to manage an AIF established in a third country provided that appropriate cooperation arrangements are in place between the FIN-FSA and the supervisory authorities of such third country. This does not include the right to market such an AIF in an EEA member state. Further, an AIFM that has acquired an authorization

in Finland may market AIFs established in a third country to professional investors in Finland upon a written notification to the FIN-FSA in accordance with the New Act.

In contrast, AIFMs established in third countries are subject to stricter rules. Such managers may not manage AIFs in Finland nor may they market such funds to non-professional investors without authorization by the FIN-FSA as described above in section 2.2. The only thing that would be possible under the New Act for these kinds of managers established in third countries is to market AIFs (established in an EEA member state or a third country) to professional investors in Finland upon a written notification to the FIN-FSA in accordance with Chapter 20 of the New Act. The professional investors remain free, however, to choose the object of their investments also in third countries. If the professional investors contact the fund manager in respect of a prospective investment in such a fund, then this will not be considered as marketing or offering AIFs in Finland and, thus, the New Act will not apply. It should be noted that the regulations concerning third countries are subject to long transition periods, which depend on the implementation actions of the Commission. The regulations regarding marketing of AIFs established in third countries may be subject to amendments in the near future due to the Commission possibly using its delegated powers under the AIFM Directive. Neither the AIFM Directive nor Finnish legislation prohibits investments in AIFs located in third countries, as the new rules only apply to managing and marketing such funds. These kinds of funds mainly involve special investment funds investing in developing countries such as in Russia, China and India. Finnish employee pension insurance companies, in particular, hold significant investments in these markets, and it is considered vital for such institutional investors to be able to spread their risks and continue investing in these kinds of markets.³⁹

³⁹ P. 87, Government Bill.

2.4 Leveraged Alternative Investment Funds

Each AIFM shall set reasonable limits of leverage for each AIF managed by it and demonstrate that those limits are complied with at all times. The Act on Real Estate Investment Funds (19.12.1997/1173, in Finnish *kiinteistörahastolaki*) includes regulations on the borrowing of an AIF, which shall not be affected by the New Act. According to the Government Bill, Finnish legislation would in many respects correspond to the regulations of the AIFM Directive and the intention is to ensure that the FIN-FSA has sufficient information available when administering its tasks of assessing and preventing possible market disturbances.⁴⁰ Hence, according to the New Act the Finnish rules on the limits of leverage as well as obligation to disclose information are similar to the ones adapted in the AIFM Directive.

⁴⁰ P. 162 – 163, Government Bill.

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