

AIFMD 2.0 Overview

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The Loan Origination Regime

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Contents

03

Executive
Summary

13

Transitional
provisions

04

Where will I find
the changes?

15

Review

05

The Loan
Origination Regime

17

Simmons talking
points

Executive Summary

In **November 2023**, the European institutions reached a political agreement on the text of a new **Directive** to amend the existing AIFMD (the **Amending Directive**).

The Amending Directive was published in the Official Journal in **March 2024**. Its provisions will come into effect on **16 April 2026**.

The most difficult issue to resolve proved to be the development of a new framework for EU AIFMs that manage AIFs engaged in **loan originating activities**.

This Note sets out an overview of the key details of the loan origination regime that eventually emerged.

This note will be of interest to managers of dedicated credit funds but also to managers of other funds granting loans, including shareholder loans in the context of private equity transactions.

Please note that where we refer to articles of the AIFMD, we are referring to the articles as amended by the Amending Directive.





Where will I find the changes?

The elements which make up the loan origination regime are set out across a number of articles within the amended Level 1 text of the AIFMD, in particular:

<u>Article 4</u>	Definitions
<u>Article 15</u>	Risk management
<u>Article 16</u>	Liquidity management
<u>Article 23</u>	Disclosure to investors

In addition:

- “Originating loans on behalf of an AIF” will be added to Annex I as an activity that benefits from passporting rights, allowing lending to borrowers in any Member State
- some [Grandfathering measures](#) will apply under Article 61 and
- the appropriateness of the measures in Article 15 and Article 16 will be one of the matters on which the Commission has to report when it comes to conduct its review under [Article 69-a](#) (albeit this won’t be until **16 April 2029**, ie, five years after the Amending Directive entered into force).

Clicking on a link above will take you to the relevant section of the note.

The Loan Origination Regime

1. What is a 'loan originating AIF'? How is 'loan origination' defined?

A “loan-originating AIF” is defined in Article 4 as being an AIF:

- whose investment strategy is mainly to originate loans or
- where the notional value of the AIF's originated loans represents at least 50% of its net asset value.

Article 4 defines loan origination as:

“the granting of a loan directly by an AIF as the original lender or indirectly through a third party or special purpose vehicle, which originates a loan for or on behalf of the AIF, or for or on behalf of the AIFM in respect of the AIF, where the AIFM or AIF is involved in structuring the loan, or defining or pre-agreeing its characteristics, prior to gaining exposure to the loan.”

As a result, not all AIFs of EU AIFMs engaged in loan origination will meet the criteria of a “loan-originating AIF”.

This is important since:

- some of the new rules apply in respect of all AIFs of EU AIFMs engaged in loan origination activity
- while others (indicated in the relevant sections below) apply only in respect of the sub-set of “loan-originating AIFs” as defined.

A table setting out which rules apply and when is provided at the end of this note.



The Loan Origination Regime

2. What are the new obligations for funds engaging in loan origination?

(a) Risk management obligations (Article 15)

Policies and procedures

An AIFM must implement effective policies, procedures and processes for the granting of credit for **loan** originating activities.

Where an AIFM manages an AIF that engages in loan origination or in purchasing loans from third parties, that AIFM must also implement effective policies, procedures and processes to **assess the credit risk and to administer and monitor the AIF's credit portfolio**.

The policies, procedures and processes must be kept up to date and effective and must be reviewed regularly, at least annually.

These requirements do not apply to **shareholder loans**, where the notional value of such loans does not exceed in aggregate 150% of the AIF's capital.

A '**shareholder loan**' is defined as:

“a loan which is granted by an AIF to an undertaking in which it holds directly or indirectly at least 5% of the capital or voting rights, and which cannot be sold to third-parties independently of the capital instruments held by the AIF in the same undertaking.”

Given this definition it will likely be necessary to ensure that shareholder loans are stapled to the equity in order to benefit from the exemption.

The Loan Origination Regime

Risk management obligations (cont'd)

Concentration limits (financial sector)

The AIFM must ensure that the notional value of the loans originated to any single borrower by that AIF **does not exceed 20% (in aggregate)** of the AIF's capital where the borrower is:

- a financial undertaking as defined in Article 13(25) of [Solvency II](#)
- another AIF or
- a UCITS.

In such cases, the **20% investment limit** must

- **apply by the date specified in the AIF's constitutional documents or prospectus.** This date must "take account of the particular features and characteristics of the assets" to be invested in by the AIF and must be no later than 24 months from the date of the first subscription for units or shares of the AIF. (In "exceptional circumstances", though, the AIFM's home NCA can agree to extend this by up to a year, provided a duly justified investment plan has been submitted to it.)
- **cease to apply** once the AIFM starts to sell the AIF's assets in order to redeem units or shares as part of the AIF's liquidation
- **be temporarily suspended** where the AIF's capital is increased or reduced. However, a suspension must be as short as possible (taking due account of the interests of the investors) and be no longer than 12 months in any event.



The Loan Origination Regime

Risk management obligations (cont'd)

Leverage limits

Note: These provisions apply only to ‘**Loan-originating AIFs**’

The AIFM must ensure that the AIF’s leverage is no more than:

- **175%** where the AIF is open-ended (as defined in Article 1(2) of [Delegated Regulation EU 694/2014](#)) or
- **300%** where it is closed-ended (as defined in Article 1(3) of [Delegated Regulation EU 694/2014](#)).

An **AIF’s leverage** is to be expressed as the ratio between:

- the AIF’s exposure (calculated in accordance with the commitment method under the AIFMD Level 2 [Delegated Regulation](#)) and
- its NAV.

Borrowing arrangements which are fully covered by contractual capital commitments from investors in the AIF can be excluded when calculating the ratio.

Where an AIF infringes these limits and does so outside the AIFM’s control, the AIFM must take measures to rectify the position “within an appropriate period of time” taking due account of the interests of the investors.

These requirements do **not** apply to an AIF where its lending activities consist solely of **originating shareholder loans**, so long as the notional value of those loans does not exceed 150% (in aggregate) of the AIF’s capital.

The Loan Origination Regime

Risk management obligations (cont'd)

Risk retention

An AIFM must ensure that an AIF which it manages **retains 5% of the notional value of each loan it has originated** and subsequently transferred to third parties.

This amount must be retained as follows:

- **loans with a maturity of up to eight years:** until maturity
- **loans granted to consumers:** until maturity
- **all other loans:** for at least eight years

Exemptions from the risk retention requirement are available where:

- the AIFM starts to sell the AIF's assets to redeem units or shares as part of the AIF's liquidation
- the disposal is necessary to comply with restrictive measures imposed by regulations "based on Article 215 of the **TFEU** or with product requirements"
- the sale of the loan is necessary for the AIFM to be able to implement the AIF's investment strategy in the best interests of the AIF's investors
- the sale of the loan is due to a deterioration in the risk associated with the loan (detected by the AIFM as part of its due diligence and risk management process) and the purchaser is informed of that deterioration when buying the loan.

The AIFM must justify that it meets the relevant exception if requested to do so by its home NCA.



The Loan Origination Regime

Risk management obligations (cont'd)

Prohibition on granting loans to certain related parties

The AIFM must ensure that an AIF does not grant loans to:

- the AIFM or its staff
- the depositary or its delegates
- the delegates of the AIFM and the staff of the delegates
- an entity in the same group as the AIFM (except where that entity is a financial undertaking that exclusively finances borrowers not covered in one of the first three bullet points).

Note that any Member State may prohibit AIFs that originate loans from:

- granting loans to consumers (as defined by Article 3(a) of the [Consumer Credit Directive](#)) in its territory and
- servicing credits granted to such consumers in its territory.

Other relevant provisions

Proceeds of loans

Where an AIF originates a loan, the proceeds of the loan (less any allowable administration fees) must be attributed to the AIF in full. All costs and expenses linked to the administration of the loan must be clearly disclosed in accordance with the Article 23 AIFMD investor disclosures.

No originate to distribute

An AIFM is prohibited from managing an AIF that engages (directly or indirectly) in loan origination where the AIF's investment strategy (in whole or in part) is to originate loans with the sole purpose of transferring those loans or exposures to third parties.

The Loan Origination Regime

(b) Liquidity management obligations (Article 16)

When can a 'loan originating AIF' be open-ended?

Note: These provisions apply only to '**Loan-originating AIFs**'

An AIFM must ensure that any loan originating AIF that it manages is **closed-ended**.

A loan originating AIF may be **open-ended** only where the AIFM can demonstrate to its (the AIFM's) home NCA that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy.

The Amending Directive required ESMA to develop draft Level 2 regulatory technical standards (**RTS**) to determine the requirements with which a loan originating AIF must comply **in order to be open-ended**.

The mandate provided that these should include:

- a sound liquidity management system
- the availability of liquid assets
- stress testing and
- a redemption policy appropriate to the AIF's liquidity profile.

and should take account of :

- the underlying loan exposures
- the average repayment time of the loans and
- the overall granularity and composition of the AIF's portfolios.

ESMA submitted draft RTS to the Commission in its [Final Report](#), which was published on **21 October 2025**. Our summary of the Final Report is [here](#).

Ordinarily, the Commission would have three months (extendable by an additional month) in which to decide whether or not to adopt the RTS.

However, the RTS on LOFs appear on a list of **non-essential Level 2 acts** which the Commission has [announced](#) it will not adopt before **1 October 2027** at the earliest.

(See item 45 on the list contained in the [annex](#) to the Commission's letter.)



The Loan Origination Regime

(c) Disclosure to investors (Article 23)

An AIFM must periodically disclose **the composition of an AIF's originated loan portfolio** to investors in respect of:

- each EU AIF that it manages and
- each AIF (EU or non-EU) that it markets in the EU.

Transitional Provisions

The Amending Directive formally 'entered into force' on **15 April 2024**.

The new measures will start to apply on **16 April 2026**, by which date Member States must have transposed the new measures into their national law.

The timing of a number of transitional provisions included under **Article 61** is worked out from the **date of entry into force** of the Amending Directive, including the following:

- An AIFM which manages an AIF which was **constituted before 15 April 2024** (a **pre-existing AIF**) will be deemed to comply with the following provisions until **16 April 2029**:
 - the notional value of the loans originated by an AIF to any single borrower (see 'Concentration limits (financial sector)', above)
 - the circumstances in which an AIF may be open-ended or closed-ended.

Where the pre-existing AIF had **not raised additional capital** after **15 April 2024**, the AIFM will be deemed compliant with the above provisions indefinitely.

- Until **16 April 2029**, where the notional value of the loans originated by an AIF to any single borrower (the **concentration limit**) or the leverage of an AIF (the **leverage limit**) is:
 - **above the concentration limit (20%) or the leverage limit (175% or 300%)**, the AIFM must not increase that value or that leverage
 - **below the concentration limit (20%) or the leverage limit (175% or 300%)**, the AIFM must not increase the value or leverage above those limits.



Transitional Provisions

Where an AIF was in existence and originated loans, before 15 April 2024 the following provisions do not apply in respect of those loans:

- policies and procedures for the granting of credit
- the prohibition to grant loans to related persons or entities
- AIFs that engage directly or indirectly in loan origination and whose investment strategy or part of whose investment strategy is to originate loans, with the sole purpose of transferring those loans or exposures to third parties
- the requirements on the allocation of proceeds and the costs and expenses disclosures
- the 5% loan origination retention requirement.

Review

The Commission, with input from ESMA, will **review the functioning** of a number of the rules in the Directive and the experience acquired in applying them.

That review will include an assessment of

“the appropriateness of the requirements applicable to AIFMs managing AIFs which originate loans”.

The review isn't due to commence until **16 April 2029**, (ie, **5 years after entry into force** of the Amending Directive) and such reviews are often the subject of delay.





Application of the Loan Origination Regime

	Loan- originating AIFs only	Loan origination but <u>not</u> a loan- originating AIF	Exclusions for AIFs that make shareholder loans only	Transitional Relief		
				Funds closed by Q1 2024	Funds established by Q1 2024	Loans made before Q1 2024
Policies and procedures	✓	✓	Yes			All time
Concentration limits (financial sector)	✓	✓		All time	Q1 2029	
Leverage limits • closed-ended: 300% • open-ended: 175%	✓	✗	Yes	All time	Q1 2029	
Risk retention requirements	✓	✓				All time
Related party loans prohibition	✓	✓				All time
‘Originate to distribute’ prohibition	✓	✓				All time
Restrictions on open- ended structures	✓	✗		All time		
Periodic disclosure of composition of AIF’s originated loan portfolio to investors	✓	✓				

Simmons Talking Points

- The **loan origination regime** is the most significant change to AIFMD, including as a result of:
 - the introduction of the lending passport
 - leverage limits and restrictions on open-ended structures for AIFs with significant loan origination activity
 - new requirements and restrictions for other AIFs which originate loans
- The loan origination regime **will only apply** where an **EU full-scope AIFM** manages an **AIF that is engaged in the activity of loan origination**, with further additional requirements only applying when an AIF is significantly involved in loan origination.
- There is the welcome flexibility that a loan originating AIF may be **either closed-ended or open-ended**. However, the hard leverage limits of no more than **300%** (for closed-ended) and **175%** (for open-ended) funds are arbitrary and it remains to be seen how the industry will adapt to these limits in practice.
- Although the **5% “skin in the game”** risk retention requirement is consistent with other EU legislation, it is the first time it has been applied to simple lending.

Simmons Talking Points

- **National implementation** will need to be monitored carefully given that AIFMD 2 (like AIFMD 1) is an EU Directive that needs to be implemented into national law (with potential divergences) as well as because Member States **may retain their own national product frameworks** or go beyond the rules set out in the EU text (gold-plating).
- The loan origination regime **does not apply to non-EU managers of AIFs that originate loans in the EU**. Therefore, the implementation of AIFMD 2 in certain Member States may lead to a less favourable regulatory position for such managers





Where can I find more information?

See the other notes in our **Overview of AIFMD 2.0** series:

- **How AIFMD 2.0 applies to non-EU AIFMs**
- **Authorisation of an AIFM and delegation**
- **Liquidity Management Tools**
- **Depositaries**

These are available online [here](#) – or ask your usual contact at Simmons & Simmons for a copy

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