

BaFin's Authorization Procedure

Titus Flutgraf, WA 44

Overview



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- Legal Basis
 - Application
 - Mandatory Information
 - Key Issues
 - Contact Details

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- **secs. 17 to 25 German Investment Code ("KAGB"):**
asset management companies ("AMC") are subject to prior authorization before starting their business
 - **secs. 21 and 22 German Investment Code ("KAGB"):**
formal differentiation between UCITS-AMC (sec. 21 KAGB) and AIF-AMC (sec. 22 KAGB) while historically conditions to be met to acquire the authorization in fact differ little

-
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Application



- **in writing by post**

the majority of applications are prepared and filed by legal counsel, but this is not mandatory

- **time to process**

according to KAGB three months respectively six months once application is to be considered complete with respect to mandatory information

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Mandatory Information



for all applications concerning AMC:

- proof of sufficient funds
- data concerning directors
- data concerning relevant owners with major holdings and close links
- sustainable business plan
- articles of incorporation

Mandatory Information



additionally for applications for AIF-AMC:

- remuneration policy
- status quo on outsourcing
- pursued investment strategies
- where applicable information on master funds
- all fund rules
- status quo concerning depositaries
- prospectuses / information documents for investors

Mandatory Information



denial of authorization:

- insufficient funds
- not at least two directors that are fit and proper
- relevant owners with major holdings not reliable
- close links that obstruct proper supervision by BaFin
- administration or statutory seat outside Germany
- inability to provide organisational structure ensuring proper business conduct in accordance with stipulations in the KAGB
- limitation to mere administration and distribution functions without performing portfolio management and risk management

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sufficient funds:

- as means of proof current attestations by bank (concerning liquidity) and auditor (concerning equity requirements) are requested
- assessment is based on the business plan where no relevant annual report for a previous year is available; initial losses are to be taken into account

directors:

- detailed and current CVs
- declaration with respect to any involvement in legal proceedings concerning criminal or insolvency law
- excerpts from registers (business and criminal records – in Germany: Bundeszentralregister, Gewerbezentralregister)

personnel:

- sufficient staffing of the AMC
- is to be seen in the context of possible delegations and the requirement to avoid letter-box entities
- is subject to special scrutiny when manpower headcount of the AMC (FTE including directors) is single digit

relevant owners with major holdings:

- chart with ownership structure to visualize major holdings
– direct and indirect – and close links
- where relevant owners are legal persons their directors are in focus
- approach in line with holder control regulation (Inhaberkontrollverordnung), i.e. with respect to some indirect holdings within a group it may be unnecessary to file further documents

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Federal Financial Supervisory Authority

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Thank you very much for your attention!