

## AIFMs managing leveraged AIFs

40 An AIFM shall ensure and demonstrate that the leverage limits set by it for each AIF that it manages are appropriate, and that the AIF complies with such limits at all times.

## Limits on leverage

41 (1) The Authority must—

- (a) assess the risks arising out of the use of leverage by an AIF managed by an AIFM;
- (b) if required, impose the measures in subparagraph (2) on an AIFM, in order to ensure the stability and integrity of the financial system in Bermuda or the jurisdiction where an AIF is authorised or established, and to limit the extent to which the use of leverage by an AIF managed by an AIFM contributes to—
  - (i) the build-up of systemic risk in the financial system; or
  - (ii) the risks of disorderly markets.

(2) The measures referred to in subparagraph (1) (b) are—

- (a) to impose limits on the level of leverage that such an AIFM may employ; or
- (b) to impose other restrictions on the AIFM.

(3) The Authority may use its powers under sections 20 and 21 of the Act (restriction of licence and revocation of licence, respectively) to impose limits on leverage or other restrictions on an AIFM, but this subparagraph does not limit the powers of the Authority.

### *Obligations for AIFMs managing AIFs*

*which acquire control of non-listed companies or issuers*

## Ways of acquiring control of shares

42 (1) For the purposes of paragraphs 43 to 46, control of a non-listed company or issuer is acquired in one of the following ways—

- (a) one AIF acquires control individually;
- (b) two or more AIFs, managed by the same AIFM, acquire control jointly on the basis of an agreement aimed at acquiring such control; or
- (c) two or more AIFs, managed by two or more AIFMs, acquire control jointly on the basis of an agreement aimed at acquiring such control.

(2) Paragraphs 43 to 46 do not apply where the non-listed company or issuer is—

- (a) a small or medium-sized enterprise; or
- (b) a special purpose vehicle with the purpose of holding or administering real estate.

(3) In this paragraph, “small or medium-sized enterprise” means the category of micro, small and medium-sized enterprises (SMEs), made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding the equivalent of EUR 50 million or an annual balance sheet total not exceeding the equivalent of EUR 43 million.

## Notification of acquisition or disposal of major holdings and control of non-listed company

43 (1) When an AIF acquires, disposes of, or holds shares of a non-listed company, the AIFM managing the AIF must notify the Authority in writing of the proportion of voting rights of the non-listed company held by the AIF at any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

(2) When an AIF acquires control of a non-listed company, the AIFM managing the AIF must notify the following persons of such control—

- (a) the non-listed company;
- (b) the non-listed company's shareholders, of which the identities and addresses are available to the AIFM, or can be made available by the non-listed company or through a register to which AIFM has or can obtain access; and
- (c) the Authority.

(3) The notification required under subparagraphs (1) and (2) must contain the following additional information—

- (a) the resulting voting rights in the non-listed company acquired by the AIF;
- (b) the conditions subject to which control was acquired, information about the identity of the different shareholders involved, any person entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights

are effectively held; and

(c) the date on which control was acquired.

(4) The AIFM must—

- (a) in its notification to the non-listed company, request the governing body of the non-listed company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF and of the information in subparagraph (3); and
- (b) use its best efforts to ensure the governing body complies with its request.

(5) The notifications required under this paragraph by an AIFM must be made as soon as possible, and in any event no later than 14 days after the date on which the AIF reaches, exceeds or falls below the relevant threshold, or acquires control over the non-listed company.

## Disclosure in case of acquisition of control

44 (1) When an AIF acquires control of a non-listed company or an issuer in accordance with paragraph 43, the AIFM managing the AIF must make available the information in subparagraph (2) to—

- (a) the non-listed company or issuer;
- (b) the shareholders of the non-listed company or issuer of which the identities and addresses are available to the AIFM, or can be made available by the non-listed company or issuer or through a register to which the AIFM has or can obtain access; and
- (c) the Authority.

(2) The information referred to in subparagraph (1) is—

- (a) the identity of the AIFM which either individually or in agreement with other AIFMs manages the AIF or AIFs that have acquired control;
- (b) the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF or AIFs, and the non-listed company, or the issuer, as applicable;
- (c) the specific safeguards to ensure that any agreement between the AIFM, the AIF or AIFs, the non-listed company and the issuer, as applicable, is concluded at arm's length; and
- (d) the policy for external and internal communication relating to the non-listed company or issuer, in particular as regards employees of the non-listed company or issuer.

(3) The AIFM must—

- (a) in its notification to the non-listed company or issuer, request the governing body of the non-listed company or issuer to give the employees' representatives, or where there are none, the employees themselves, without undue delay the information in subparagraph (2); and
- (b) use its best efforts to ensure that the governing body complies with its request.

## Additional disclosure when control is acquired of non-listed company

45 (1) When an AIF acquires control of a non-listed company, the AIFM managing the AIF, must ensure that within a period of 28 days starting on the day on which control is acquired, the AIF, or the AIFM acting on behalf of the AIF, discloses its intentions with regard to the matters in subparagraph (2) to—

- (a) the non-listed company; and
- (b) the shareholders of the non-listed company of which the identities and addresses are available to the AIFM, or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.

(2) The matters referred to in subparagraph (1) are the future business of the non-listed company and the likely repercussions on employment by the non-listed company, including any material change in the conditions of employment.

(3) The AIFM must—

- (a) request that the governing body of the non-listed company notify the employees' representatives or, where there are none, the employees themselves, without undue delay, about the AIF's intentions with regard to the matters referred to in subparagraph

(2); and

(b) use its best efforts to ensure the governing body complies with its request.

(4) When an AIF acquires control of a non-listed company, the AIFM managing the AIF must provide the Authority and the AIF's investors with information on the financing of the acquisition.

## Annual report of AIFs exercising control of non-listed companies

46 (1) When an AIF acquires control of a non-listed company, the AIFM managing the AIF must, in addition to the information prescribed in paragraph 38, include in the AIF's annual report information prescribed in subparagraph (3) relating to the non-listed company.

(2) An AIFM shall use its best efforts to ensure that—

- (a) the annual report of the non-listed company contains the information in subparagraph (3); and
- (b) the report is made available by the governing body of the non-listed company to the employees' representatives or, where there are none, the employees themselves within the period in which the annual report must be prepared.

(3) The information referred to in subparagraph (1) is—

- (a) a fair review of the development of the non-listed company's business representing the situation at the end of the period covered by the annual report;
- (b) any important events that have occurred since the end of the financial year;
- (c) the non-listed company's likely future development; and
- (d) in relation to the non-listed company's acquisition or disposal of its own shares—
  - (i) the reasons for acquisitions made during the financial year;
  - (ii) the number and nominal value or, in the absence of a nominal value, the accountable part of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;
  - (iii) in the case of acquisition or disposal for a value, the consideration for the shares; and
  - (iv) the number and nominal value or, in the absence of a nominal value, the accountable part of all the shares acquired and held by the non-listed company and the proportion of the subscribed capital which they represent.

(4) If the information in subparagraph (3) is included in the non-listed company's annual report, the AIFM must make the information available to the investors of the AIF, in so far as it is already available, within six months following the end of the financial year of the AIF, and in any event, no later than the date on which the annual report of the non-listed company must be prepared in accordance with the law applicable in the jurisdiction in which the non-listed company has its registered office.

(5) If the information in subparagraph (3) is included in the AIF's annual report, the AIFM must request and use its best efforts to ensure that the governing body of the non-listed company makes that information available to employees' representatives of the non-listed company or, where there are none, to the employees themselves, no later than six months following the end of the financial year of the AIF.

## Asset stripping

47 (1) When an AIF acquires control of a non-listed company or an issuer, for a period of 24 months following the acquisition of control, the AIFM managing the AIF—

- (a) must not facilitate, support or instruct any distribution, capital reduction, share redemption or acquisition by the non-listed company or issuer of its own shares;
- (b) in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing body of the non-listed company or issuer, must not vote in favour of a distribution, capital reduction, share redemption or acquisition by the non-listed company or issuer of its own shares; and
- (c) in any event, must use its best efforts to prevent distributions, capital reductions share redemptions or the acquisition by the non-listed company or issuer of its own