

OVERVIEW

No. RADAR

5177

Responsible level

Germany

Competent authority

BaFin – Federal Financial Supervisory Authority

Standard designation

Regulation on notifications and the submission of documents pursuant to Section 36 of the Capital Investment Code

Title of Standard 

Regulation on notifications and the submission of documents pursuant to section 36 of the Capital Investment Code

Abbreviation (standard)

KAGB Outsourcing Notification Ordinance

Short Title 

Abbreviation (standard)

KAGBAuslAnzV

Abbreviation 

KAGBAuslAnzV

Implementation status of the standard

published

Industry relevance

Banking industry

category

01. Banking and banking supervisory law

Document type

Regulation

Management Summary

With the *Financial Market Integrity Strengthening Act (FISG, dataset 4501)* Among other things, the regulations on the notification of significant outsourcing in Section 36 of the Capital Investment Code (KAGB) were revised. The aim of the revision is to improve transparency regarding outsourced matters, tasks, and functions through detailed notification requirements.

This Regulation specifies the notification obligations of capital management companies with regard to

Detailed information about the outsourcing and the service providers. The content of the advertisement is explained in detail and illustrated with standard examples. Furthermore, the technical requirements for submitting the advertisements are specified.

The requirement to report all outsourcing arrangements existing at the time the regulation came into force has been removed. Instead of a planned requirement applicable to all companies, BaFin has opted for a survey of a selection of supervised companies.

Management Summary

The *Act on strengthening the integrity of the financial market (FISG, data set 4501)* revised, among other things, the provisions on the notification of material outsourcing in s. 36 of the German Investment Code

(Kapitalanlagegesetzbuch, KAGB). The revisions aims to improve the transparency of the outsourced matters, tasks and functions by means of the detailed notification obligations.

The present regulation specifies the notification obligations of the investment management companies with regard to detailed information about the outsourcing and the service providers. The contents of the notification are explained in detail and illustrated with standard examples. In addition, the technical requirements for the submission of notifications are specified.

The regulation on the notification of all outsourcings existing at the time of the entry into force of the regulation has been deleted. Instead of a planned obligation applicable to all companies, BaFin has opted for a query of a selection of supervised companies.

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Main content

Regulation on notifications and the submission of documents pursuant to Section 36 of the Capital Investment Code

1. Scope (Section 1 KAGBAuslAnzV)

The regulation applies to notifications of agreements on the outsourcing and sub-outsourcing of functions from an asset management company to another company. These notifications must be made before the agreements enter into force.

2. Submission procedure (Section 2 KAGBAuslAnzV)

The notification of outsourcing and sub-outsourcing, along with the submission of the required documents, is submitted electronically. For this purpose, the Federal Institute has provided electronic submission channels on its website, which require registration for initial use. Upon receipt of registration, the access code required for the process will be assigned. Any changes to the registration information must be reported immediately.

3. Data formats (Section 3 KAGBAuslAnzV)

The formats to be used for electronic data submission are published on the Federal Institute's website.

4. Company identification (Section 4 KAGBAuslAnzV)

The asset management companies identify themselves to the Federal Institute and use

a permanent identifier. In this regard, the respective BaFin ID and, for example, the Legal Entity Identifier (LEI code) are used.

5. Rejection of data (Section 5 KAGBAuslAnzV)

Data records that deviate from the formats prescribed in Section 3 or that do not contain company identifiers in accordance with Section 4 will be rejected by immediate electronic notification and deemed not to have been received. These notifications are available via the communication process.

6. Notifications pursuant to Section 36 paragraph 2 and 6 sentence 1 number 2 and sentence 2 of the Capital Investment

Code (outsourcing and sub-outsourcing) (Section 6 KAGBAuslAnzV)

Section 6 lists, by way of example, the information relevant for the supervisory assessment of outsourcing or sub-outsourcing. The list is essentially similar to the requirements of *Second BaFin Regulation amending the ZAG-Anzeigenverordnung (data set 5183)*.

(a) If an outsourcing or sub-outsourcing is intended, the minimum information relevant for the supervisory assessment must be submitted without delay, which must include, among other things:

- Reference number for each outsourcing and sub-outsourcing agreement, including details of terms and notice periods;
- Designation of the tasks to be outsourced by category and information on the transmission and processing of personal data;
- Information on the existence of partial or total outsourcing;
- Information about the contractor, its parent company, the country in which the service is provided and the location where the data is located;
- Outsourcing or sub-outsourcing to cloud providers;
- Date and key findings of the company's last internal risk assessment related to the outsourcing or sub-outsourcing;
- Information on the approval of the outsourcing or sub-outsourcing decision and the law applicable to the outsourcing or sub-outsourcing agreement;
- any audit of the outsourcing or sub-outsourcing company that has been carried out and/or is planned;
- special additional information in the case of outsourcing to subcontractors;
- Assessment of the consequences of a failure of an outsourcing company, including possible reintegration and indication of alternative solutions (replacement);
- Information on any time-critical business transactions, the outsourcing budget or costs;
- special additional information in the case of outsourcing by UCITS/AIF management companies in relation to a foreign supervisory authority.

b) The outsourcing company shall also confirm and describe, on the occasion of an outsourcing or sub-outsourcing notification, the fulfilment of the requirements of Section 36 Paragraph 1 Sentence 1, Paragraphs 3, 6, 7, 8

and 10 KAGB.

c) Any significant changes after the conclusion of the contract with the outsourcing company that could impact the business activities of the asset management company must be reported to the Federal Financial Supervisory Authority immediately. These include, among other things, significant contractual amendments and supplementary agreements, differing findings from renewed risk assessments, further sub-outsourcing, terminations, and takeovers of the outsourcing company by third parties (see source for details).

If the capital management company notifies significant changes to an outsourcing arrangement that already existed at the time this Regulation came into force, the data referred to in paragraph 1 must also be notified.

e) Notifications of changes to outsourcing must be marked as such.

CATEGORIZATION

Keywords

AIF management company, notification of intent, notification, failure of an outsourcing company, outsourcing, provision of notifications, data format, submission procedure, submission channel, replacement, continuation of business activities, management company, UCITS management company, personal data, reference number, risk assessment, sub-outsourcing, company identifier, material change, time-critical business transactions, access identifier, rejection

Legal and information bases

- Second Ordinance Amending the ZAG Advertising Ordinance (data set 5183)
- Act to Strengthen Financial Market Integrity (Financial Market Integrity Strengthening Act, FISG) (data set 4501)
- Capital Investment Code (KAGB)

Related Standards

- Act on strengthening the integrity of the financial market (Financial Market Integrity Act, FISG) (Dataset 4501)
- German Investment Code (Kapitalanlagegesetzbuch, KAGB)

Target group – credit institutions

No

Target group – financial services institutions

No

Target group – Other companies in the financial sector

Yes

Target group – payment institutions

No

Target group – insurance companies

No

Target group – supplement

Comments 

Statement by (date)

Implementation status Explanation

Status – Further Details 

Date of entry into force/publication

November 29, 2022

Entry into force estimated?

No

Date of first application

November 29, 2022

Application appreciated?

No

Date Standard repealed

Remark (Entry into force/Publication)

The regulation will enter into force on the day following its publication (publication on 28 November 2022).

Comments 

The regulation shall enter into force on the day following that of its promulgation (promulgation on November 28, 2022).

Sources

The sources are not shown in this working paper.