

MEMO
REGARDING AIFMD IMPLEMENTATION PLAN – REVOCATION OF FTIML AND
APPOINTMENT OF FTIS BEGINNING WITH 1 APRIL 2016

Short presentation of EU’s Alternative Investment Fund Managers Directive

On 8 June 2011, the European Parliament and the Council enacted Directive 2011/61/EU 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 (“**AIFMD**” or the “**Directive**”).

Although the Directive refers to ‘alternative investment funds’ (“**AIFs**”), in fact its scope potentially covers all EU funds other than retail funds regulated under the UCITS Directive.

In essence, the Directive’s focus is on aligning the entities managing AIFs: “*the scope of this Directive should be limited to entities managing AIFs as a regular business – regardless of whether the AIF is of an open-ended or a closed-ended type, whatever the legal form of the AIF, and whether or not the AIF is listed – which raise capital from a number of investors with a view to investing that capital for the benefit of those investors in accordance with a defined investment policy*”¹.

The Directive imposes formalized organizational requirements and operating conditions for Alternative Investment Fund’s Managers (“**AIFM**”) governing bodies, senior management and supervisory functions. Within these organizational obligations, there is a requirement to establish, implement and maintain adequate internal control mechanisms, with permanent requirements in four specific areas (i.e. portfolio management, risk management, compliance and internal audit). The delegation provisions under AIFMD explicitly permit the AIFM to delegate portfolio management or risk management, but not both.

In addition, the Directive imposes new requirements on AIFMs for reporting (both to regulators and investors) and disclosure, in respect of itself and each of its AIFs.

The Directive was implemented in Romania through Law no. 74/2015, and targeted fund managers have to comply with its provisions until the end of May 2016.

Applicability of AIFMD to Fondul Proprietatea

One of the key concepts provided by the Directive and ESMA Guidelines, which defines whether a fund qualifies as an AIF is that it engages in “raising capital”. The main question in this respect is when this qualification should be applicable, whether at the prospective AIF’s establishment, or at the moment when the AIFMD was implemented into national law.

In our view, the raising capital criterion should be analysed only at the implementation moment, and from this perspective, exemption should be the case for Fondul Proprietatea (“**the Fund**”) – due to the fact that at the moment, the Fund cannot implement any share capital increases due to the State’s unpaid share capital contributions (as per Article 92 (3) of Companies’ Law no. 31/1990).

However, based on the discussions had so far with the Financial Supervisory Authority (“**FSA**”), it is extremely unlikely that the Fund will be exempted, and thus the fund manager will have to comply with the AIFMD and related domestic implementation regulations.

¹ Point 6 of the Directive’s Preamble.

As said, the most important provision to accommodate relates to its AIFM, which must be an entity authorized as such either in a EU Member State or a local entity authorized as such in Romania. Currently, the Fund is managed by Franklin Templeton Investment Management Limited (“FTIML”), through its Bucharest Branch.

FTIML provides services across Europe under the Markets in Financial Instruments Directive (“MiFID”), servicing the Fund under passport provisions, but there is a controversial restriction in the AIFMD stating that an AIFM can no longer use a MiFID passport to provide MiFID services outside its home state.

FTIML has a vast number of European clients to whom it is legally bound to continue providing MiFID services across Europe, so FTIML would be in breach of AIFMD if it will apply for an AIFM licence.

Therefore, in order to achieve AIFMD compliance, an intragroup reorganization process is envisaged whereby the AIFM function will be taken by another Franklin Templeton entity authorized as an AIFM in Luxemburg, namely Franklin Templeton International Services S.À R.L (“FTIS”). FTIS is already an AIFM for several European alternative funds, having in this respect adequate experience in this type of management.

Not constraint by MiFID regulations, FTIS would be appointed AIFM of the Fund (carrying out its services based on passport provisions) and subsequently delegate some of its portfolio and administrative functions to FTIML.

FTIS will maintain liability for its overall management over the Fund, but actual day-to-day activities will be performed by FTIML, as before.

The said AIFMD implementation plan is envisaged to unfold as follows.

- Termination of FTIML’s current mandate: the Fund revokes FTIML from its current position of sole director and fund manager of the Fund (last day of mandate shall be 31 March 2016); the termination shall occur by mutual consent, by signing an addendum to the current Investment Management Agreement as of 29 April 2014;
- FTIS is appointed Fund Manager & Sole Director of the Fund: subsequent to the termination under point above, the Fund appoints FTIS as its sole director and fund manager under AIFMD and local implementation regulations, and executes a new investment management agreement in order to reach AIFMD compliance (FTIS’ mandate will commence on 1 April 2016);
- Delegation of activities: the Board of Nominees approves the delegation of certain portfolio management and administrative activities from FTIS to FTIML.

In the Fund Manager’s opinion, the structure above is necessary to reach AIFMD compliance and represents the most efficient and cost effective way to reach this.

In light of the above, we hereby submit for the shareholders’ approval the following AIFMD implementation plan.

In case the item 5.1. of the OGM agenda is approved by the shareholders, the approval of the replacement of Franklin Templeton Investment Management Limited United Kingdom Bucharest Branch with another group entity in view of complying with the Directive 2011/61/EU on

Alternative Investment Fund Managers and the related national implementation laws and regulations, as well as the waiver of any selection procedure as the change is made to comply with legal requirements as follows.

Revocation, starting with **1 April 2016**, 00:00 am (last day of mandate being 31 March 2016), of Franklin Templeton Investment Management Limited United Kingdom Bucharest Branch from the position of sole director and fund manager of Fondul Proprietatea SA, and termination of the Investment Management Agreement signed between Franklin Templeton Investment Management Limited United Kingdom Bucharest Branch and Fondul Proprietatea SA as a result of the mutual consent of the both parties. The approval of the Addendum no. 5 to the Investment Management Agreement dated 29 April 2014 between FONDUL PROPRIETATEA S.A. and FRANKLIN TEMPLETON INVESTMENT MANAGEMENT LIMITED as proposed by Franklin Templeton Investment Management Limited United Kingdom Bucharest Branch. If the shareholders vote in favour of this point, the Chairman of the Board of Nominees is empowered to sign the Addendum no. 5 (as described in the supporting materials) to the Investment Management Agreement with the Sole Administrator on behalf of Fondul Proprietatea S.A.. Addendum no. 5 will be effective subject to its prior endorsement by the FSA, where required by applicable law or regulation.

The approval of termination is effective and conditional upon (i) the approval of the appointment of FRANKLIN TEMPLETON INTERNATIONAL SERVICES S.À R.L., as sole director and fund manager by the shareholders of Fondul Proprietatea and (ii) FRANKLIN TEMPLETON INTERNATIONAL SERVICES S.À R.L. accepting its mandate and being dully authorized by all competent authorities to perform its duties as sole director, fund manager and external Alternative Investment Fund Manager starting with 1 April 2016.

Appointment of FRANKLIN TEMPLETON INTERNATIONAL SERVICES S.À R.L., a société à responsabilité limitée, qualifying as an alternative investment fund manager under Article 101-1 of the Luxembourg Act of 17 December 2010 concerning undertakings for collective investment, as amended from time to time, whose registered office is located at 8A rue Albert Borschette, L-1246 Luxembourg and registered with the Luxembourg Register of Commerce and Companies under number B 36.979, **as the alternative investment fund manager of Fondul Proprietatea SA and as the sole director of Fondul Proprietatea SA, for a mandate of two years starting with 1 April 2016.** The list containing data regarding FRANKLIN TEMPLETON INTERNATIONAL SERVICES S.À R.L. (including name, headquarters, professional qualification, the evidence that it is authorized as an alternative investment fund manager) is published on the internet webpage of Fondul Proprietatea SA and is available at the registered office and may be consulted and completed by shareholders in accordance with the law. The approval and the execution of the Management Agreement (as described in the supporting materials) between FRANKLIN TEMPLETON INTERNATIONAL SERVICES S.À R.L. and Fondul Proprietatea SA, as negotiated between FRANKLIN TEMPLETON INTERNATIONAL SERVICES S.À R.L. and the Board of Nominees, and the empowerment of the Chairman of the Board of Nominees to execute it on behalf of Fondul Proprietatea SA. The Management Agreement shall be effective from 1 April 2016.

**Franklin Templeton Investment Management Ltd. United Kingdom Bucharest Branch,
acting as Sole Administrator on behalf of FONDUL PROPRIETATEA S.A.**

**Oana Valentina Truta
Legal representative**