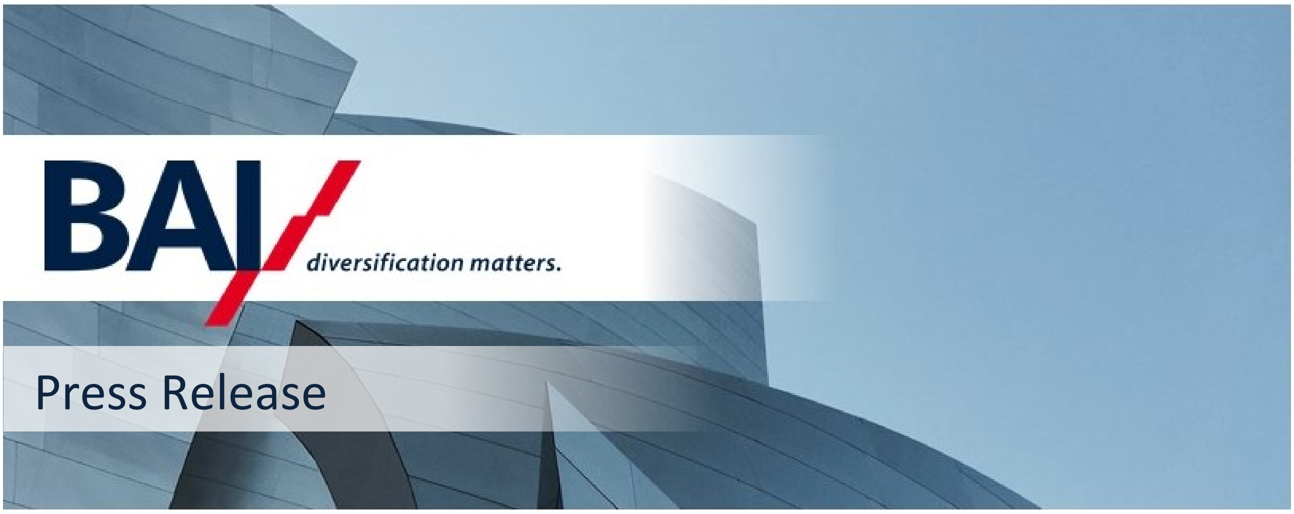

Fund Jurisdiction Act (Fondsstandortgesetz): Content does not do Justice to the Ambitious Name

- BAI welcomes the governmental initiative for funds as Germany has lost much of its attractiveness as a domicile for funds in recent years, particularly with respect to alternative investment funds.
- Many proposals fall short, in particular the isolated VAT reform for venture capital funds, which is also likely to be in breach of EU law.
- Genuine fund jurisdiction act requires a holistic approach that includes not only supervisory law but also investment tax law as well as investment regulations for investors.
- Regulations on pre-marketing place a burden on sales to institutional investors.
- BAI additionally calls for the introduction of digital fund shares.

Bonn, December 8, 2020. The **Bundesverband Alternative Investments e.V. (BAI)**, the central representative of the alternative investments industry in Germany, welcomes the Federal Government's initiative to make Germany more competitive as a fund domicile.

The draft bill presented by the Federal Ministry of Finance on 2 December initially proposes various amendments to the German Investment Act (KAGB), including the authorisation of new types of funds such as a contractual closed-ended special AIF or closed-ended master-feeder structures, but also the introduction of the new type of fund, open-ended infrastructure fund. In addition, communication with BaFin is to be switched to electronic formats as far as possible, which should create more flexibility for fund managers in particular in the event of changes in investment conditions. Furthermore, the implementation of an EU directive will include regulations for so-called pre-marketing. Outside the KAGB, an amendment to the German Value Added Tax Act is planned: The management fee in venture capital funds is to be exempted from VAT, as is already the case with open-ended funds.

BAI's managing director **Frank Dornseifer** comments on the submitted draft law as follows: " BAI has been advocating competitive framework conditions for the alternative investment industry and its investors for years. This is mainly about more flexibility in the organisational forms for alternative investment funds, a synchronisation of supervisory and tax law, and the coordination with investment-relevant regulations for investors, e.g. in insurance supervisory law. In our opinion, the fact that a law called the “Fondsstandortgesetz” is now being introduced is an important signal. However, the content of the legislative package appears to be more of a reparatory law, which is intended to rectify obvious omissions from the past".

From BAI's point of view, a programmatic and visionary draft would have been necessary now, especially in view of the fact that important parts of asset management have already migrated to other jurisdictions. Such a draft could show, virtually from a single source, how Germany as a location for funds is to be made competitive for the year 2025 and beyond. BAI also finds it incomprehensible that only two weeks of consultation are granted for the draft.

BAI managing director **Dornseifer** further states: "Unfortunately, the design also contains technical flaws which devalue the design. These include the isolated tax exemption for venture capital funds, which not only leaves it completely unclear which funds are to be covered in concrete terms, but also clearly violates EU (state aid) law. The whole thing becomes even more questionable when one considers that other funds, such as those financing German SMEs or infrastructure projects, are not to be covered by the VAT exemption. Politicians, in particular, are constantly complaining that these financing schemes need to be strengthened and expanded. And now this faux pas. I am also very critical of the regulations on so-called pre-marketing. This unnecessarily bureaucratises sales to institutional investors".

The BAI therefore sees an urgent need for adaptation not only of the draft, but also beyond it, such as the law on the introduction of electronic securities. Fund shares must also be included in the scope of application. Other jurisdictions are already much further along, while in Germany the discussion on this issue has just hit a dead end.

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The Bundesverband Alternative Investments e. V. (BAI) is the central interest group of the alternative investments industry in Germany. The federation understands itself as catalyst between professional German investors and recognized offerers of alternative Investments products world-wide. It is committed to ensuring that German institutional and professional investors are able to diversify their capital investments more easily and effectively with regard to alternative investments, in particular with a view to securing German old-age provision in the long term. The BAI promotes public awareness and understanding of alternative investments and is committed to scientific research. It conducts a dialogue with political decision-makers and the responsible supervisory authorities and cultivates exchanges with national and international organisations and associations. The association pursues the goal of achieving legal reforms and further legal education in the interests of its members and their investors and of creating attractive and internationally competitive framework conditions for investing in alternative investments. The circle of BAI members recruited from all areas of the professional alternative investment business has grown to 237 businesses.