Press Release

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Fund Commentary: Finance Ministry's Draft Bill for Second Future Financing Act Opens up Fresh Perspectives for Renewable Energy Investments

- Eliminating existing legal uncertainties and disadvantages for investors
- Special real estate assets could contribute substantially to the energy transition

The ministerial draft bill for a Second Law on the Financing of Future-Securing Investments (Second Future Financing Act or ZuFinG II) opens up new perspectives for the fund industry as well as for private and institutional investors in Germany in regard to investments in renewable energies, particularly in the context of launching, or investing in, real estate funds. At the same time, the passage of a law that resembles this draft bill would eliminate certain material hurdles to investments in this segment.

Camille Dufieux, Managing Director of INTREAL, said: "In practical terms, the occupancy and operation of real properties and the operation of facilities exploiting renewable energies are closely linked. For example, large roof surfaces of logistics warehouses but also of retail, office and residential buildings lend themselves to the installation of photovoltaic systems. So, it makes perfect sense to invest in buildings equipped with such systems, but regulatory and fiscal hurdles have so far hampered investments of this type. Current legal uncertainties have caused such systems to be realised primarily as operator models, but these generate no added value in the form of attractive returns for their investors. By contrast, the provisions envisioned by the new draft bill would offer new ways to use renewable energies as serious investment opportunities and would thereby contribute more significantly to the energy transition in the context of investing in special real estate assets."

Michael Schneider, Managing Director at INTREAL, had this to say: "Taking a holistic approach by opening up both the Capital Investment Act (KAGB) and the Investment Tax Act (InvStG) for renewable energy investments would be a welcome paradigmatic shift that is advocated by many fund industry insiders and by their industry body, the BVI Federal Association for Investment and Asset Management."

Dovetailing Tax Provisions with Regulatory Parameters

As far as the regulatory side of this issue goes, the focus is primarily on the acquisition of assets that are used for the management of renewable energies. The ministerial draft bill for the ZuFinG II law submitted by the Federal Ministry of Finance intends to expand the catalogue of permitted activities of real estate special funds to include the management of renewable energies. The term "management" is defined as the "generation, conversion, transportation and storage of energy" in this context.

The idea behind the draft bill's intention to synchronise tax legislation with regulatory legislation is to enable investment funds to hold ownership interests of up to 100 percent in companies whose business purpose is the management of renewable energies. Moreover, the law would permit investment funds to acquire the relevant assets directly, in parallel with regulatory law. On the fund level, all earnings from the generation of renewable energies would be subject to corporate income tax and trade tax.

One material change concerns the cap on earnings from active entrepreneurial management, which has so far been limited to five percent of the annual total income of an investment fund by Art. 26, No. 7a, Investment Tax Act (InvStG), and whose transgression can cause a fund to lose its status as an institutional fund. In this regard, the ministerial draft bill provides that earnings from the management of renewable energies that are associable with the letting and leasing of real estate shall no longer be taken into account when reviewing a fund's adherence to the above limit. Accordingly, these earnings will probably be permitted to contribute a higher share to the fund income without jeopardising its status as institutional fund. This arrangement is supposed to apply even if the fund earnings at issue come from equity investments in relevant companies or funds. However, the new law will make all earnings from active entrepreneurial management subject to corporate income tax in future.

"Irrespective of the corporate income tax liability, the planned new regulations are a step in the right direction from the fund industry's point of view because they create consistency of the law for important issues while granting funds more room for manoeuvre in regard to their investments," as Camille Dufieux summarised.

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About INTREAL

As a third-party AIFM, INTREAL concentrates exclusively on the business of launching and managing regulated real estate funds on behalf of third parties under the German Capital Investment Act (KAGB). The platform lets clients take advantage of every service an AIF management company (KVG) provides without having to form one of their own. Options include the launching of open-ended and closed-end real estate funds or the outsourcing of AIFM back offices to INTREAL. Employing 528 staff, the INTREAL Group offers long-term real estate know-how along with detailed and highly professional fund management expertise.

In Luxembourg, the largest investment fund centre in Europe, INTREAL is represented by its subsidiary, INTREAL Luxembourg. INTREAL Luxembourg is an independent AIFM and central administrator for Luxembourg-domiciled real estate funds and real-estate-related asset classes such as infrastructure or private debt for German and international clients.

Through its subsidiaries, INTREAL Solutions and REAX Advisory, the company makes its comprehensive real estate fund experience available to other market players within the scope of best-practice consultancy. INTREAL Solutions provides consulting services in the IT sector, whereas REAX Advisory acts as management consulting firm, helping to organise processes and structures more efficiently, to cut costs, to manage risks or to develop and implement ESG strategies.

INTREAL collaborates with a large number of third-party fund partners to administrate 308 investment funds with a combined investment volume of c. 66.1 billion euros (all figures as of mid-year 2024).

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