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AIFMD

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Where does the Alternative Investment Fund Manager Directive (AIFMD) leave Jersey?

Background

After a lengthy period of consultation and drafting, the AIFMD finally came into force on 22 July this year and of course it will have an impact on fund managers and administrators both within and outside the EU (third countries) who are involved in funds that wish to market into the EU.

The positive outcome from the introduction of the new legislation is that fund managers now have clear direction on what is required to enable them to continue to market into the EU and are able to take the necessary steps to move forward.

How does the directive affect third countries?

Until at least 2018, fund managers with funds domiciled in third countries will be able to continue to take advantage of private placement regimes in EU Member States as long as they comply with certain transparency and disclosure requirements under the Directive.

These requirements are considered to be less onerous than those for full compliance with AIFMD but require individual cooperation agreements to be in place between the third country and each EU Member State into which a fund manager may wish to market.

From 2015 those third countries will have the possibility of benefiting from the passporting regime allowing them to operate AIFMD compliant fund structures marketed within the EU and, assuming everything continues to follow the planned timetable, after 2018 the private placement regimes will be replaced in full by passporting regimes available.

How does it affect Jersey?

As one of the premier offshore jurisdictions and leading the way in ensuring that it meets the highest of regulatory standards, Jersey is in a good position to meet the requirements of the Directive, as a third country so enabling service providers to be able to utilise the passporting regimes available.

Due to this strong regulatory framework it was only necessary to make small changes to the current regime to meet the demands of the Directive. This involved increasing the coverage of the oversight of the Jersey Financial Services Commission (JFSC) to include certain private and unregulated fund structures which were not directly regulated, due to the profile of the investors to whom they were to be promoted.

The introduction of a specific class of fund called an Alternative Investment Fund (AIF) means that the JFSC will have the required oversight over any fund that wishes to take advantage of the existing private placement regimes and, in the future, be compliant in full with AIFMD.

These changes allow Jersey to meet the standards set by the European Securities and Markets Authority and enabled the Jersey regulator to commence the process of signing the necessary cooperation agreements with the individual EU member states. Currently such agreements have been entered into with 27 of the EU/EAA member states.

Conclusion

Jersey retains its strong position as a domicile of choice for funds both investing and marketing into the EU which, coupled with the fact that the existing funds framework will remain for those structures which will not be marketed into the EU, means that Jersey will continue to be at the forefront when consideration is being given to the appropriate location and structure of new funds.

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