

AIFMD - ESMA recommends extension of marketing passport

Directive 2011/ 61/EU on Alternative Investment Fund Managers (AIFMD) had to be implemented by EU Member States by 22 July 2013. AIFMD is supplemented by a delegated regulation (AIFMD Regulation). AIFMD regulates the activities of Alternative Investment Fund Managers (AIFMs) and their Alternative Investment Funds (AIFs). AIFMD has been implemented in Ireland by the European Union (Alternative Investment Fund Managers) Regulations 2013.

Overview

Although AIFMD is a European Directive primarily aimed at regulating EU AIFMs, it also captures Non EU AIFMs managing and/or marketing EU AIFs and Non EU AIFs and EU AIFMs managing / and or marketing Non EU AIFs. The European and Securities Markets Authority (ESMA), has published a [press release, advice and opinion](#) on the extension of the AIFMD passport.

Jersey, Guernsey and Switzerland

Whilst the AIFMD currently only provides a passport to EU AIFMs managing or marketing EU AIFs, the European and Securities Markets Authority (ESMA) recommended on 30 July 2015 that the AIFMD passport be extended to Jersey, Guernsey and Switzerland. This recommendation remains to be approved by the European Commission, Parliament and Council and until that date any marketing remains on the basis of the existing private placement regimes which may be phased out from 2018. ESMA has suggested that these institutions consider waiting until ESMA has delivered similar assessment of additional non-EU countries, by early next year potentially, before any passport extension would become effective.

Hong Kong, Singapore and the United States of America (USA)

ESMA's recommendation followed their assessment of six "third (i.e. non-EU) countries", for obstacles to the extension of the passport to these jurisdictions, in accordance with the rules set out in Article 35 and 37 to 41 of the AIFMD. No definitive view has been reached on the remainder three jurisdictions assessed; Hong Kong, Singapore and the United States of America (USA), owing to, "*concerns related to competition, regulatory issues and a lack of sufficient evidence to properly assess the relevant criteria*". ESMA has indicated that a view will be reached on these jurisdictions "as soon as practicable". Regarding non-EU jurisdictions without supervisory cooperation arrangements in place for the purposes of AIFMD, ESMA continues to seek MoU agreement, with the relevant regulators.

Private Placement regimes

Non-EU Alternative Investment Fund Managers (Non EU AIFMs) must continue to market funds to EU professional investors via EU National Private Placement regimes (NPPRs) until such time as the Commission, Parliament and Council activate provision 67(5) and (6) of the AIFMD extending the passport through a Delegated Act.

KEY CONTACTS



Brian McDermott
Partner
+353 1 649 2307
bmcdermott@algoodbody.com



Michael Barr
Partner
+353 1 649 2327
mbarr@algoodbody.com



Mary McKenna
Partner
+353 1 649 2344
mmckenna@algoodbody.com



Niamh Ryan
Partner
+44 20 73 820 820
nryan@algoodbody.com



Elaine Keane
Partner
+353 1 649 2544
elkeane@algoodbody.com



Stephen Carson
Partner
+353 1 649 2317
scarson@algoodbody.com

The contents of this note are necessarily expressed in broad terms and limited to general information rather than detailed analyses or legal advice. Specialist professional advice should always be obtained to address legal and other issues arising in specific contexts.

© A&L Goodbody July 2015