Frequently Asked Questions:

AIFMD II Proposals and the Impact on Fund Domiciliation Decisions

Jersey Finance

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In November 2021, as part of the broader package of measures within the Capital Markets Union, the European Commission finalised the draft amendment text in connection with the Alternative Investment Fund Managers Directive (AIFMD) in a set of amendments referred to as AIFMD II.

AIFMD II will now be presented to both the European Council and the European Parliament for their comments and a final text will be published in the EU Official Journal once this process is completed, with implementation required two years after that. We can therefore expect changes to take effect in 2024/25.

Which AIFMD II changes will impact Jersey?

Jersey is a 'third country' from a European Union perspective and provides excellent third country access to the EU's investors through National Private Placement Regimes (NPPR).

The changes relating to the NPPR regime concern new requirements for non-EU AIFMs to market EU or non-EU AIFs through NPPR and will be added under Article 42 AIFMD, as follows:

(i) the third country where the non-EU AIFM or the non-EU AIF is established is not listed on the EU list of non-cooperative jurisdictions for tax purposes,

(ii) the third country has signed a qualifying agreement on the exchange of information in tax matters with the Member State where the marketing takes place, and

(iii) the third country is not identified as a high-risk country according to the latest European laws against money laundering.

The same changes have been made to Art 36 (EU AIFMS marketing non-EU AIFs without a passport in the EU).

What is the impact on Jersey's fund industry?

Jersey's government is strongly committed to compliance with international standards and as a result there is no expected negative impact on Jersey. Taking each of the changes in turn:

(i) Jersey is recognized by the EU as a co-operative jurisdiction for tax purposes,

(ii) Jersey has signed a qualifying agreement on the exchange of information in tax matters with EU Member States, and

(iii) Jersey is not identified as a high-risk country according to the latest European laws against money laundering.

What about other fund jurisdictions?

EU (or 'onshore') jurisdictions such as Luxembourg: the change under the AIFMD II proposals is significant and have the likely consequence of adding further cost and complexity to establishing and running an AIFM in an EU jurisdiction where the full scope of the directive applies.

The reality is that few managers need blanket access to all EU Member States (European Commission 2018 figures show only 3% of fund managers market to 3 or more EU member states), meaning the NPPR route offers clear advantages. Importantly, the benefits of a Jersey manager can apply wherever the funds themselves are domiciled, be it in Jersey or elsewhere.

Other third-country jurisdictions: within the amendments to NPPR regime, there is the potential for significant impact on certain third countries which are, or might be, blacklisted for EU tax or AML purposes. The AIFMD II proposal introduces a new moving target within the NPPR eco-system, and this will increase the importance of choosing a fund domicile such as Jersey, with good credentials on complying with both international and EU tax and AML standards.