



The EU Directive on AIFM – What now for Guernsey?

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The European Union Commission draft Directive on Alternative Investment Fund Managers

Guernsey's investment fund industry is paying close attention to developments with respect to the draft EU Directive on Alternative Investment Fund Managers (AIFM).

The imposition of a trade barrier is not a desirable outcome of the intention to ensure that fund managers are appropriately regulated. For this reason, and because of the adverse reaction from the investment management community not just in the UK but in a number of other EU member states and significant trading partners such as the US, we in Guernsey, along with many other commentators, believe that it is unlikely to come into force in its current form.

However if it is implemented in its current form, which is a worst case scenario, what are the options open to Guernsey?

Guernsey is a well regulated jurisdiction with nothing to fear from compliance with this legislation.

One option is therefore to be patient, ensure compliance with the requirements of the legislation, and in the meantime lobby for equivalent status to be achieved as soon as possible to enable Guernsey investment funds to continue to attract EU investors.

Of course the island's investment fund community doesn't survive entirely on funds distributed to EU investors. If the EU is determined to prevent small jurisdictions competing fairly with the EU, then Guernsey could become the fund domicile of choice for promoters to attract non EU investors.

Promoters from the US, Switzerland, South Africa, and the Middle East are already active in Guernsey, setting up investment funds for distribution to investors who are not necessarily resident in the EU.

The island is becoming increasingly popular as a domicile of choice for the administration and custody of non-Guernsey schemes, many more of which will be forced to move from within the EU if the Directive comes into force, which is one potential silver lining to the EU's latest cloud.

The Directive currently doesn't capture investment managers who have less than 100 million Euros under management, or 500 million Euros where funds have a lock-in period of five years or more and no leverage.

Again Guernsey is an excellent place for new fund promoters to launch new funds because of the real expertise on the island, its accessibility, time zone and infrastructure. Because of the attractive fiscal climate a number of fund managers have actually relocated to Guernsey.

As a last resort Guernsey could apply for membership to the EU. Locally this would be quite a controversial move, but perhaps it would place us on a level playing field allowing us to compete with comparable jurisdictions such as Luxemburg and Dublin.

What is the most likely outcome?

Guernsey is a dynamic, proactive and responsive jurisdiction which has established a track record of meeting internationally recognised regulatory standards.

It is now widely expected that the draft EU AIFM Directive will undergo significant changes before it can be implemented. If introduced I expect that Guernsey will have the opportunity to be acknowledged as an equivalent jurisdiction by the EU soon after the Directive has been implemented.

However this does not mean that Guernsey's funds industry is complacent or of the opinion that this Directive is beneficial, it is just that we are confident that we can overcome whatever obstacles to competition are put in our way.

And now my favourite bedtime story- Goldilocks and the three fund jurisdictions.

Goldilocks Capital Partners is a fund promoter looking where to domicile her next alternative investment fund. First she tried the EU, but there was too much regulation and she decided it was too hard. Next she tried the Caribbean jurisdictions but there wasn't enough regulation and she decided it was too easy. Lastly Goldilocks investigated the possibility of forming a new fund in Guernsey and discovered that there was less red tape than within the EU but enough regulation to satisfy investors that the investment fund industry in Guernsey is appropriately regulated. She decided that it was just right.

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