

Jersey and the Alternative Investment Fund Managers Directive (“AIFMD”)

Briefing Summary: Jersey is outside the European Union and regarded as a “third country” for AIFMD purposes. Jersey has implemented an AIFMD regime only to the extent necessary to allow Jersey funds and Jersey managers to access investors in EU/EEA countries.

Service Area: Investment Funds, Investment Managers, Funds Strategies and Asset Classes

Location: Jersey

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The AIFMD regulation in Jersey overlays the existing regime to provide maximum flexibility for Jersey funds (and other non-EU funds) with a Jersey Manager:

- Outside AIFMD – where the fund is not an “AIF” or is not “marketed” into the EU/EEA (as defined in the AIFMD), the fund and its manager are not subject to Jersey’s AIFMD implementation regime.
- Article 42 requirements only – the fund can be “marketed” into the EU/EEA through national private placement (“NPP”) regimes by complying with only the requirements of AIFMD Article 42 (annual reports, pre-investment disclosure and regulatory reporting on liquidity, risk management arrangements and leverage). This reduces costs as other AIFMD requirements do not apply, including that no depositary is needed (although a small number of EU/EEA countries require a depositary before permitting marketing).
- Full compliance – A Jersey manager can opt for full AIFMD compliance under Jersey’s regime, to be ready for the extension of the AIFMD passporting regime to third countries.
- For Jersey Private Funds, a small amount of additional regulation will be needed. However, Jersey CIFs (and their AIFMs) are already considered appropriately regulated for these purposes, so they are exempt from the need to obtain any further approvals from the JFSC. Notification Only funds cannot be marketed into the EU/EEA, so there is no AIFMD overlay for such funds.

NPP regimes have proved effective in many EU/EEA countries and Jersey funds continue to be established and marketed in those countries, thereby avoiding the more onerous and costly AIFMD requirements.

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It is simple and cost effective to establish a “special purpose” Jersey manager with sufficient activity and substance in Jersey for AIFMD purposes. Where required, investment advice can still be received from an onshore advisor.

Jersey has extensive experience with establishing funds and “special purpose” managers for private equity, real estate, and funds of hedge funds, with a growing reputation for more emerging asset classes (e.g. mezzanine and other debt funds and infrastructure funds).

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