# AIFMD II makes Guernsey even more attractive as a fund domicile

**Briefing Summary:** AIFMD II introduces substantial new obligations for EU AIFMs, but these do not apply to Guernsey managers except for expanded reporting requirements. Guernsey AIFMs can continue marketing to EU professional investors through NPPRs, as Guernsey meets all revised third-country criteria under AIFMD II. As a result, Guernsey remains an efficient and attractive domicile for fund managers seeking EU capital without the heavier regulatory burden placed on EU-based firms.

**Service Area:** Investment Funds

**Location:** Guernsey

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## Summary

AIFMD II significantly increases the burdens imposed on EU domiciled managers ("**EU AIFMs**") of alternative investment funds ("**AIFs**"). Guernsey managers (as Non-EU AIFMs) avoid the additional obligations of AIFMD II, save for expanded reporting and disclosure requirements (which apply to both EU and Non-EU AIFMs).

Guernsey managers may continue to raise capital from EU professional investors via national private placement rules ("**NPPR**"), largely unaffected by AIFMD II.

AIFMD II therefore *further enhances the attractiveness of Guernsey as a domicile for funds and fund managers* when compared with the regulatory burdens of establishing in the EU.

We believe that the most efficient way to raise capital from EU markets – both before and after the implementation of AIFMD II – is to *establish your fund in Guernsey and access EU capital markets through NPPR*.

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## Guernsey and the AIFMD I / II

Some key points of AIFMD I ***vis-à-vis*** Guernsey managers and Guernsey funds:

- Guernsey is not, and never has been, a member state of the EU/EEA
- Guernsey funds are classified as Non-EU AIFs
- Guernsey fund managers are classified as Non-EU AIFMs
- Guernsey funds can be marketed to professional investors in the EU using individual Member States' national private placement regimes
- Article 42 is the key Article of AIFMD I for Guernsey funds with a Guernsey manager (i.e. non-EU AIF, non-EU AIFM).

## Overview of AIFMD II

AIFMD II amends AIFMD II (the original Alternative Investment Fund Managers Directive, which governs the managers of alternative investment funds and the manner in which alternative investment funds can be marketed in the EU and the EEA).

AIFMD II effects a refinement and enhancement, rather than a total re-write, of certain aspects of AIFMD I.

AIFMD II was published in 2024. The two-year period for the Directive to be transposed into Member States' domestic laws is coming to an end; AIFMD II will therefore enter into force during this year (by 16 April 2026 for most Member States).

## The key changes made by AIFMD II

AIFMD II introduces additional regulations in respect of:

### Substance Requirements

EU AIFMs must have two natural persons domiciled in the EU who are either full-time employees or executive members of the governing body of the EU AIFM and who are committed full time to the business of that EU AIFM.

### Delegation Requirements

EU AIFMs must supply more detailed information to national regulators on delegation and sub-delegation arrangements, resources allocated, and monitoring frameworks.

The concept of delegation is broadened to cover additional activities formerly seen as ancillary, and there are more rigorous expectations for oversight, including reporting of material changes.

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## Loan Origination Requirements

New regulations have been introduced for EU AIFs originating loans, including leverage caps, a prohibition on allowing EU AIFMs to pursue an originate-to-distribute investment strategy, a 5% risk retention requirement, a 20% limit on loans to a single borrower meeting certain conditions and a requirement that such funds are closed-ended (unless the EU AIFM can demonstrate that its liquidity risk management can satisfy the liquidity terms whilst still complying with its investment strategy).

## Liquidity Risk Management Requirements

EU AIFMs managing open-ended AIFs are required to select liquidity management tools from the list provided, adopt detailed policies and procedures for their use, and notify the home regulator when such tools are activated or deactivated.

## Conflict of Interest Requirements

Third-party EU AIFMs must submit detailed explanations and evidence of their compliance with the existing conflicts of interest provisions in AIFMD I.

## Depositaries Requirements

Depositaries domiciled outside the home jurisdiction of an EU AIFM may be appointed, but there is now tighter oversight of such depositaries.

## Reporting Requirements

Additional reporting requirements have been imposed on both EU and Non-EU AIFMs.

Please see below for a summary of the additional reporting requirements introduced by AIFMD II.

The above changes will have significantly less impact on Guernsey AIFMs managing Guernsey AIFs than they will on EU AIFMs managing EU AIFs:

| AIFMD II changes | EU AIFM & EU AIF | Guernsey AIFM & Guernsey AIF |
|---|---|---|
| Substance Requirements | Applicable | Not applicable |
| Delegation Requirements | Applicable | Not applicable (save for reporting on delegation) |

| AIFMD II changes | EU AIFM & EU AIF | Guernsey AIFM & Guernsey AIF |
|---|---|---|
| Loan Origination Requirements | Applicable for loan originating AIFs | Not applicable |
| Liquidity Risk Management Requirements | Applicable for open-ended AIFs | Not applicable |
| Conflict of Interest Requirements | Applicable | Not applicable |
| Depositaries Requirements | Applicable | Not applicable |
| Reporting Requirements | Applicable | Applicable |

## Guernsey AIFs may still be marketed in the EU/EEA using NPPRs

AIFMD I only permits NPPR-based marketing if the third country where the non-EU AIFM or the non-EU AIF is established (i.e. Guernsey) is not listed as a Non-Cooperative Country and Territory by FATF (the "**FATF Requirement**").

AIFMD II replaces the FATF Requirement and provides that access via NPPRs will only be available where the non-EU AIFM or the non-EU AIF is established in a jurisdiction which is not identified as a "high-risk third" country pursuant to the EU's 4th Anti-Money Laundering Directive.

This should not have any effect on Guernsey funds or Guernsey fund managers, or the ability to utilise the NPPR. Guernsey has never been listed as a "high-risk third country" by the EU (and is not expected to be).

AIFMD II also introduces a requirement (by an amendment to Article 42(1) of AIFMD I) that:

"*... the third country* [i.e. Guernsey] *where the non-EU AIFM or non-EU AIF is established has signed an agreement with the Member State in which the units or shares of the non-EU AIF are intended to be marketed which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital* ["**Article 26**"] *and ensures an effective exchange of information in tax matters, including any multilateral tax agreements, and that third country is not mentioned in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes*."

Per recital 45 of AIFMD II, these requirements:

"*... should ... ensure the appropriate and effective exchange of information in tax matters in line with international standards such as those laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital*."

We do not consider that requires a ***bilateral*** treaty to be in place between Guernsey and an individual Member State for marketing under NPPR to be permitted in that Member State by a Guernsey AIFM. The wording highlighted above confirms that it is sufficient to have signed up to a ***multilateral*** tax agreement which complies with the standards laid down in Article 26 and ensures an effective exchange of information in tax matters.

In this regard, Guernsey, together with EEA Member States and leading non-EEA jurisdictions, has signed up to and ratified the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "**Multilateral Convention**"), the provisions of which go further than those of Article 26.

We consider that the Multilateral Convention therefore avoids the need for Guernsey to have entered into bilateral treaties with individual EEA Member States in order to satisfy the provisions of Article 42(1) of AIFMD I (as amended by AIFMD II).

Accordingly, we consider that Guernsey AIFMs continue to be able to raise capital in the EU via NPPRs as before.

One interesting point to note is that, at the time of writing, it is unclear as to whether funds domiciled in the United States of America will be able to utilise the NPPR mechanisms. The US signed the most recent protocol amending the Multilateral Convention in 2010 but is yet to ratify it (it having been submitted to the Senate for ratification in 2012).

## Changes to the Reporting Requirements

The main changes for Guernsey managers and Guernsey funds (i.e. a non-EU AIFM of non-EU AIF) will be in respect of the additional reporting requirements required by AIFMD II. Note that these additional reporting obligations *apply equally to EU AIFMs of an EU AIFs*.

The existing AIFMD I reporting requirements applicable to a Guernsey AIFM of a Guernsey AIF, and the changes which will be brought by AIFMD II, are summarised in the following table. For a full redline of the changes being implemented, click here.

| Reporting obligations | Changes introduced by AIFMD II |
|---|---|
| Article 22<br><br>*Annual reporting requirements in respect of an AIF* | No changes |
| Article 23<br><br>*Initial and ongoing reporting requirements in respect of an AIF* | Additional disclosures to be made to investors before investing:<br>• the name of the AIF<br>• the possibility and conditions for using liquidity management tools selected in accordance with Article 16(2b)<br>• a list of fees, charges and expenses that are borne by the AIFM in connection with the operation of the AIF and that will be directly or indirectly allocated to the AIF<br><br>Additional ongoing disclosure to investors:<br>• the composition of the originated loan portfolio<br>• on an annual basis, all fees, charges and expenses that were directly or indirectly borne by investors<br>• on an annual basis, any parent company, subsidiary or special purpose entity utilised in relation to the AIF's investments by or on behalf of the AIFM |

| Reporting obligations | Changes introduced by AIFMD II |
|---|---|
| Article 24<br><br>*Reporting of certain information in respect of the AIF to the designated home member state of the non-EU AIF* | Additional reporting on:<br><br>• all (not just the main) instruments traded by the AIF<br>• all (not just the main) exposures and assets of the AIF<br>• identifiers to be provided<br>• total amount of leverage employed by the AIF<br>• information on delegation arrangements concerning portfolio management or risk management functions |
| Article 27 (only applies if the AIF is a buyout fund)<br><br>*Notifications in respect of the acquisition and disposal of major holdings and control of non-listed companies* | No changes |
| Article 28 (only applies if the AIF is a buyout fund)<br><br>*Notifications in respect of the acquisition of control of non-listed companies and issuers* | No changes |
| Article 29 (only applies if the AIF is a buyout fund)<br><br>*Annual reports to contain certain information in respect of the non-listed company controlled by the AIF* | No changes |

| Reporting obligations | Changes introduced by AIFMD II |
|---|---|
| Article 30 (only applies if the AIF is a buyout fund)<br><br>*Precludes certain "asset-stripping" activities in respect of non-listed companies or issuers controlled by the fund* | No changes |