

UK Limited Partnerships can be non-EU AIFS in the Channel Islands

Service area / [Investment Funds](#)

Location / [Guernsey and Jersey](#)

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A non-EU AIF can be established using an English and Scottish limited partnership (LP), if it has a Guernsey or Jersey general partner (GP).

In brief

In recent guidance the UK Financial Conduct Authority (FCA) has clarified that a UK LP with a principal place of business in the Channel Islands will be regarded by them as a non-EU AIF.

Accordingly, an English LP with a Guernsey or Jersey GP can choose to:

- remain outside the scope of AIFMD entirely (if it is not being marketed into the EU/EEA); or
- significantly reduce AIFMD-related costs and disclosure requirements by marketing to potential EU investors using NPP regimes in accordance with AIFMD Article 42.

Using an English LP as a fund vehicle with a Guernsey or Jersey general partner has become more popular over recent years, particularly for private equity and venture capital funds. The FCA guidance is welcome, as it confirms that these funds are not in danger of becoming subject to the full requirements of AIFMD.

Background

The Alternative Investment Fund Managers Directive (AIFMD) principally regulates EU alternative investment fund managers (AIFM). However, in some circumstances AIFMD can extend to directly regulate non-EU AIFMs. For example Article 37 of AIFMD enables the European Commission, following receipt of positive advice and an opinion from ESMA, to require non-EU AIFMs to comply with AIFMD in full after a specified date.

Following the issue of ESMA's opinion recommending the extension of the passport to the Channel Islands on 30 July, many commentators think such an extension is imminent. When that happens, non-EU AIFMs will find themselves subject to a significant additional regulatory and cost burden if they manage an EU AIF (alternative investment fund) – even if the fund was never marketed into the EU/EEA or that marketing was completed long ago. For that reason, many non-EU AIFM wish to ensure that the funds they manage are regarded as non-EU AIFs.

Accordingly, where the fund vehicle is an English or Scottish LP, it could reduce or entirely remove AIFMD-related costs and disclosure obligations if it can be classified as a “non-EU AIF” by appointing a Guernsey or Jersey general partner to act as its AIFM. That may be all which is required, but it may also be necessary to have the LP regulated in Guernsey or Jersey, and both jurisdictions allow for this to occur.

Becoming regulated in Guernsey

Investment funds which have sufficient connection with Guernsey have always been required to be regulated by the Guernsey Financial Services Commission (GFSC). A fund established as a non-Guernsey LP (English, Scots or otherwise) with a Guernsey place of business and a Guernsey general partner has always had sufficient connection with Guernsey to warrant regulation by the Guernsey Financial Services Commission.

Guernsey does not prescribe the legal form that general partner must take but it could include a Guernsey registered company, LP or limited liability partnership. Therefore, an English or Scottish LP with a Guernsey place of business and a Guernsey general partner will be regarded as a Guernsey AIF by the GFSC and require to be regulated in Guernsey as such.

Becoming regulated in Jersey

A fund vehicle structured as a UK LP with a Jersey GP is generally not subject to regulation in Jersey. However, it can opt to become regulated by the Jersey Financial Services Commission, in which case it will be subject to (and only to) the limited requirements to which it is subject under the AIFMD. To “opt in” to this regulatory regime, the UK LP:

- must not have a registered office, head office or principal place of business outside Jersey; and
- must have a Jersey general partner which must be a Jersey company, a Jersey LP (with a Jersey company as its general partner) or a Jersey LLP with its registered office or head office in Jersey.

The FCA guidance

The full text of the FCA guidance can be found [here](#).



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