The EU's AIFMD II changes make Guernsey funds more attractive

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The EU's original Alternative Investment Fund Managers Directive was amended with effect from 15 April 2024 (with the new rules applying from 15 April 2026) ("**AIFMD II**"). Our briefing note on the broader implications of AIFMD II can be found here.

AIFMD II has a significant impact on EU alternative investment funds ("**AIFs**"), and their managers ("**AIFMs**"), engaging in loan origination. These additional regulations come with inevitable cost implications, which reduce returns to EU AIF investors and increased costs to EU AIFMs.

Other than some comparatively minor additional reporting obligations, these provisions do not affect Guernsey AIFs or Guernsey AIFMs. This further enhances the attractiveness of Guernsey as a domicile for loan originating AIFs.

National private placement regimes remain a highly effective means to market Guernsey AIFs into the EU/EEA, providing access to those capital markets whilst avoiding the onerous and costly requirements of complying in full with AIFMD requirements (as supplemented by AIFMD II).

Guernsey also continues to enjoy easy access to the major UK investor market, which continues unaffected following the UK's departure from the EU. There is no suggestion that the UK will implement AIFMD II type changes to the UK's existing regime.

What types of AIFs are affected?

AIFMD II impacts EU AIFs:

- engaged in originating loans; and
- designated as "**loan-originating AIFs**", being AIFs "*whose investment strategy is mainly to originate loans … whose originated loans have a notional value that represents at least 50% of its net asset value*".

What is "Loan Origination"?

"Loan origination" (or "originating a loan") is defined as:

"*the granting of a loan directly by an AIF as the original lender or indirectly through a third party or special purpose vehicle, which originates a loan for or on behalf of the AIF or AIFM in respect of the AIF, where the AIFM or AIF is involved in structuring the loan, defining or pre-agreeing its characteristics prior to the purchase*".

What is the impact on EU AIFMs?

All EU AIFMs of EU AIFs which originate loans will, subject to limited exemptions, be subject to the following:

- *Risk Retention*. An AIF which originates loans must retain at least 5% of the notional value of each loan it originates for 8 years or until maturity (if less than 8 years).
- *Concentration Limits*. AIFMs of AIFs which originate loans must ensure that the notional aggregate value of the loans advanced to any single borrower does not exceed 20% of the AIF's capital (if the borrower is an AIF, a UCITS or certain types of financial undertaking).
- *Governance and Risk Management*. AIFMs of AIFs which

originate loans must have effective policies, procedures and processes for:

a. the granting of loans;

b. assessment and management of credit risk; and

c. administering and monitoring their credit portfolios.

- *Lending Restrictions.* AIFMs of AIFs which originate loans must ensure that the AIF does not grant loans to certain related parties, including the AIFM and members of the AIFM's group.
- *"Originate to Distribute" Strategies Prohibited.* AIFMs will be prohibited from managing AIFs s that engage in loan origination where the whole or part of the investment strategy of those AIFs is to originate loans with the sole purpose of transferring those loans or exposures to third parties.
- *Proceeds of Loans.* The proceeds of loans originated by an AIF must be attributed to the AIF in full (less allowable loan administration fees).
- *Disclosure.* All loan administration costs and expenses must be disclosed to investors.

In addition, EU AIFMs of Loan-Originating EU AIFs will, subject to limited exemptions, be subject to the following:

- *Leverage Limits.* Loan-Originating AIFs are subject to leverage limits of:

  a. 175% of NAV (for open-ended AIFs); and

  b. 300% of NAV (for closed-ended AIFs).
- *Mandatory Closed-Ended Structure.* Loan-Originating AIFs must be closed-ended, unless the AIFM can demonstrate that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy.

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