



Alternative Investment Fund Managers Directive Update 2016

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In its commentary ESMA noted that, at this time, it could not give definitive advice in relation to extending the passport to the Cayman Islands, as the Cayman Islands is in the process of implementing its new regulatory regimes. However, while it did not provide definitive advice, ESMA acknowledged that the Cayman Islands already has frameworks in place to address systemic risks. This includes legislative amendments passed in August 2015 that established an opt-in regime for regulating Cayman Islands-domiciled AIFs and AIFMs connected to the EU. Whilst ESMA is of the view that there are no significant obstacles regarding competition and market disruption impeding the application of the passport to the Cayman Islands, ESMA wishes to further examine criteria on investor protection and effectiveness of enforcement before affirming that the passport should be extended to the Cayman Islands. Part of this process involves ESMA completing its review of draft rules and regulations supplied by the Cayman Islands government as part of the assessment process. Following its initial review, ESMA has confirmed that the draft rules and regulations seem to show that the Cayman Islands’ proposed new AIFMD-like regime would be broadly similar to the AIFMD framework, but ESMA still needs to undertake a more in-depth analysis.

The Cayman Islands’ Minister of Financial Services, Wayne Panton, has explained that rather than being 12 to 18 months away from completing Cayman’s AIFMD regime, the jurisdiction actually is expected to be finalised imminently:



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"The 12 to 18-month timeframe was given last year, as part of the Cayman Islands Monetary Authority's initial submissions to ESMA", he noted in July this year.

With only 5 out of the 12 jurisdictions assessed by ESMA to date being approved for the extension of the passport, and assessments on a further 10 new jurisdictions still to be commenced, it is not certain when the extension of the passport to non-EU countries will occur. ESMA has advised that the Commission and co-legislators may also wish to consider fiscal matters and anti-money laundering regimes, in addition to ESMA's advice, before extending the passport to any jurisdiction.

Accordingly, whilst the Cayman Islands is likely to become an approved jurisdiction imminently, it is not clear at which point the passport will be made available to such approved jurisdictions. Cayman Islands AIFMs are currently marketed in the EU under national private placement regimes ("NPPRs"). The NPPR and passport regimes will coexist until at least 2018, by which time ESMA will have decided, and acted upon, whether or not the passport regime should entirely displace NPPRs.

Accordingly, whilst the Cayman Islands is doing all it can to obtain the passport as soon as possible, investment managers should, for the time being, continue to take advantage of the NPPRs to market their funds into the EU pending any further decision of the European Commission.



AIFMD Update 2016

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances.

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