



AIFMD Update: Cayman Islands omitted from initial list of recommended countries

Cayman Islands omitted from the initial list of countries recommended for extension of the AIFMD passport regime.

On 30 July 2015, the European Securities and Markets Authority (“**ESMA**”) issued its advice and opinion (“**Advice**”) to the European Commission, Parliament and Council in relation to the extension of the Alternative Investment Fund Managers Directive (“**AIFMD**”) passport regime to non-EU Alternative Investment Fund Managers and Alternative Investment Funds. The initial list of recommended countries for the extension of the AIFMD passport consisted of only Guernsey, Hong Kong, Jersey, Singapore, Switzerland and the United States of America.

ESMA has only been able to assess those six countries to date but is expected to review more than 40 jurisdictions in relation to the AIFMD passport extension. The Cayman Islands is still to be fully assessed and it therefore remains to be seen whether it too will be recommended. However, given the Cayman Islands’ prominence in the funds industry, which is mentioned throughout the Advice, it is perhaps surprising that the assessment of the Cayman Islands was not undertaken as a priority.

Due to the limited number of non-EU countries that have been assessed and approved to date, the Advice notes that the European Commission, Parliament and Council ‘may wish to consider waiting until ESMA has delivered positive advice on a sufficient number of non-EU countries, before introducing the passport in order to avoid any adverse market impact that a decision to extend the passport to only a few non-EU countries might have’.

ESMA also ‘aims to finalise the assessments of Hong Kong, Singapore and the USA as soon as practicable and to assess further groups of non-EU countries until it has provided advice on all the non-EU countries that it considers should be included in the extension of the passport’.

It is anticipated that, due to recent amendments to the laws of the Cayman Islands in anticipation of compliance with the AIFMD passport regime, the Cayman Islands is likely to be approved by ESMA once the assessment has been completed and it is therefore a matter of “when” rather than “if” the AIFMD passport regime will be extended to it. The Cayman Islands Legislative Assembly will also consider further amendments in August that will better facilitate the extension of the AIFMD passport.

Clearly, it will be a significant disadvantage to the Cayman Islands if the EU Commission, Parliament and Council elect not to heed the Advice and determine to extend the AIFMD passport regime to just the six approved countries now rather than waiting for a ‘sufficient number’ of approved non-EU countries.

Currently, investment funds located in the Cayman Islands which are seeking investors based in the EU are required to comply with each EU member state’s specific national private placement regimes (“**NPPRS**”). Clearly, this adds a level of complexity, administration and costs which can be removed if the AIFMD passport is extended and the Cayman Islands funds can simply market to EU investors



Key Contact



Chris Humphries

Managing Director

Tel: (345) 814-7911

chris.humphries@stuartslaw.com



Megan Wright

Partner

Tel: (345) 814-7904

megan.wright@stuartslaw.com

by complying with AIFMD. In any event, the NPPR and passport regimes will coexist until at least 2018, by which time ESMA will have finally determined whether or not the passport regime should entirely displace NPPRs.

It is hoped that the extension of the AIFMD passport to the Cayman Islands will allow the Cayman Islands to strengthen and expand its EU presence whilst cementing its dominance in the fund industry. However, it appears it is going to be some time longer until the Cayman Islands is really going to be able to take advantage of the AIFMD passport.

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.

If you would like further information please contact:



Chris Humphries
Managing Director
Tel: (345) 814-7911
chris.humphries@stuartslaw.com



Megan Wright
Associate
Tel: (345) 814-7904
megan.wright@stuartslaw.com

Our Organisation

Stuarts Humphries is a leading Cayman Islands legal practice with international reach. Offering a full range of corporate and commercial legal advice together with a constant client focus, our experienced attorneys assist our clients on their most significant and challenging commercial transactions, structures, liabilities and obligations. Our proven track record in advising leading international Law Firms, Investment Managers, Investment Companies and High-Net-Worth individuals is a result of the deep understanding of our markets.

At Stuarts, we strive to build and maintain lasting relationships with our clients through the combined legal expertise and business acumen of our practice groups and by providing outstanding service.



Cayman omitted
from initial list of
recommended
countries