

private investment funds lawflash

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Treasury Changes Course on UK Implementation of AIFMD

UK will now allow qualifying non-EEA firms to rely on the one-year transitional provision.

On 29 April, HM Treasury published a short Q&A on the transposition of the Alternative Investment Fund Managers Directive (AIFMD) into UK law, featuring an important development that is welcome for the UK implementation of AIFMD.

Specifically, HM Treasury has changed its position materially regarding the scope of the transitional provision in AIFMD. It has decided that, under the UK's implementation of AIFMD, the transitional provision should not apply only to UK alternative investment fund managers (AIFMs) existing before 22 July 2013 (as per its draft regulations released in January 2013). Rather, this provision will now be extended to cover both (i) existing non-UK European Economic Area (EEA) AIFMs and (ii) existing third-country (i.e., non-EEA) AIFMs.

The transitional provision aside, as from 22 July 2013, an existing non-EEA AIFM that does not qualify as a "small AIFM" and that wishes to market an alternative investment fund (AIF) in the UK will have to comply with the UK's national private placement regime and be required under AIFMD to (i) apply for registration of the AIF on the UK Financial Conduct Authority's (FCA's) Article 42 register, (ii) comply with the transparency requirements of AIFMD, and (iii) comply with the private equity provisions, if applicable. In addition, for a US AIFM of a US AIF, there must be written cooperation agreements in place between the US Securities and Exchange Commission and the UK FCA before any marketing can take place in the UK. An existing non-EEA small AIFM will be required to register the AIF with the FCA and provide the FCA with ongoing disclosures.

In short, as a result of HM Treasury's revised approach to the transitional provision, non-EEA AIFMs will be able to market AIFs in the UK from 22 July 2013 for up to 12 months without having to comply with any of the above requirements otherwise imposed by AIFMD. Instead, such AIFMs will need to ensure compliance only with the UK's national private placement regime.

It remains to be seen whether other member states will follow the UK's lead. It is possible certain member states may choose to implement the transitional provision more restrictively.

Contacts

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