

AIFMD Factsheet: Third Country Regime

What is the AIFMD?

The Alternative Investment Fund Managers Directive (“AIFMD”) introduces a new passport system for the marketing of alternative investment funds (“AIFs”) in the EU. The marketing passport is automatically available to authorised EU AIFMs managing EU AIFs. However, the AIFMD introduces different rules for non-EU AIFMs and non-EU AIFs which mean that the passport will not be available for non-EU AIFMs and non-EU AIFs unless and until the European Commission adopts the necessary legislation extending the passport. The chart below summarises the rules applicable to the management and marketing of EU and non-EU AIFs by EU and non-EU AIFMs.

AIFMD Third Country Regime

Domiciles		Marketed in EU?	Does AIFMD apply?	Marketing Regime	Requirements
AIFM	AIF				
EU	EU	Yes	Yes	EU Passport	Comply with all provisions of AIFMD
EU	EU	No	Yes	None	Comply with all provisions of AIFMD
EU	Non-EU	Yes	Yes	NPPRs (2013 to at least 2018)	Comply with all provisions of AIFMD (including modified requirements in respect of depositary function) and conditions (a) and (b) below
				EU Passport (from date of passport extension)*	Comply with all provisions of AIFMD and each of conditions (a), (b) and (c) below
EU	Non-EU	No	Yes	None	Comply with all provisions of AIFMD except for depositary and annual report requirements and comply with condition (a) below
Non-EU	Non-EU	No	No	None	None
Non-EU	Non-EU	Yes	Yes	NPPRs (2013 to at least 2018)	Comply with annual report, disclosure to investors and reporting obligations to national regulators and with conditions (a) and (b) below
				EU passport (from date of passport extension)*	Seek authorisation from MSR, comply with all provisions of AIFMD and comply with conditions (a), (b) and (c) below
Non-EU	EU	Yes	Yes	NPPRs (2013 to date of passport extension)	Comply with annual report, disclosure to investors and reporting obligations to national regulators and with conditions (a) and (b) below
				EU passport (from date of passport extension)*	Seek authorisation from MSR, comply with all provisions of AIFMD and comply with conditions (a), (b) and (c) below
Non-EU	EU	No	Yes	None	From date of passport extension, seek authorisation from MSR, comply with all provisions of AIFMD and comply with conditions (a), (b) and (c) below

Conditions

- An appropriate cooperation arrangement is put in place between the competent authority of the AIFM's home member state or the member state of reference and the supervisory authority of the third country where the non-EU AIF/AIFM is established.
- The third country where the non-EU AIF/AIFM is established is not listed as a “non-cooperative country” by the Financial Action Task Force.
- The third country where the non-EU AIF/AIFM is established has signed a tax information sharing agreement with the competent authority of the AIFM's home member state or the member state of reference and each competent authority where the AIF is proposed to be marketed.

AIFMD = Alternative Investment Fund Managers Directive; NPPRs = National Private Placement Rules (member states may introduce stricter local rules when the AIFMD comes into force); MSR = member state of reference

Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team can be accessed at www.matheson.com.

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