

## **Transposition of the Alternative Investment Fund Managers Directive: Questions and Answers**

Q – Can existing EEA AIFMs that have not yet been authorised under the Directive benefit from the transitional provisions in regulation 68?

A – As the regulations are currently drafted they may not. However, the Treasury will be making amendments to the draft regulations to allow them to do so.

Q – Can third country AIFMs make use of the transitional provisions in regulation 68 to market to UK investors?

A – The Treasury intends to amend the draft regulations to permit existing third country AIFMs to make use of the transitional arrangements.

Q – Would a UK or EEA AIFM managing a third country AIF or a third country AIFM that is making use of the transitional provisions in regulation 68 need to wait for cooperation agreements in line with Article 36(1)(b) or Article 42(1)(b) of the Directive to be in place between the home Member State of the AIFM and the relevant supervisory authorities before marketing to UK investors?

A – Not while the transitional provisions apply. However once authorisation is obtained, even while the transitional period is still running, the cooperation agreement would need to be in place to continue marketing.

Q – Could an AIFM operating under the transitional arrangements launch and market new AIFs?

A – Yes. The transitional arrangements attach to the AIFM. This includes EEA and third country AIFMs.

Q – Could an existing manager that does not meet requirements for authorisation under the Directive continue to manage under the transitional arrangements?

A – Yes, provided that the manager either meets the requirements for authorisation and becomes authorised, or is replaced by another authorised AIFM by the end of the transitional period.

Q – Do AIFMs ceasing to operate by July 2014 need to apply for authorisation?

A – The obligation at regulation 68(2) applies to all UK AIFMs which do not benefit from the grandfathering provisions at regulations 70 and 71, but it is important to note that the obligation is to make an application by 22 July 2014. In the case of an AIFM which ceases to manage AIFs before that obligation crystallises in July 2014, the failure to comply with the obligation would be academic. However to provide greater legal clarity, the Treasury intends to apply the obligation to make an application for permission or registration only to UK AIFMs that intend to continue to managing an AIF after 21 July 2014.

Q – What activities must a firm be carrying out before 22 July 2013 to be able to benefit from the transitional arrangements?

A – To make use of the transitional arrangements, a firm must be managing an AIF or carrying out an activity before 22 July 2013 which, if carried on after that date without the benefit of the transitional, would require it to submit an application for Part 4A

permission to manage an AIF or for registration as a small registered AIFM. Such firms do not need to make any specific application or go through any procedure to benefit from the transitional period.

Q – Does the transitional provision apply to depositaries?

A – The AIFMD depositary regime will start to apply to the depositary of an AIF from the point when the AIFM managing that AIF becomes authorised. From that point the depositary will need to comply with the requirements of AIFMD. However we are proposing to include an additional transitional provision enabling depositaries to act for AIFs during the transitional period prior to obtaining the new Part 4A permission.

Q – Do regulations 70 and 71 permit an AIFM to make use of the grandfathering arrangements for AIFs to which those regulations apply, even if the AIFM manages other AIFs?

A – As currently drafted they do not, however the Treasury will be amending the text to permit this.

Q – Will the assets of AIFs covered by regulations 70 and 71 be used for the purposes of calculating an AIFM's total assets under management under the Directive?

A – No.

Q – If an AIFM is authorised under the Directive, do Directive provisions apply with respect of AIFs covered by regulations 70 and 71?

A – No.

Q – Who will be caught by the marketing restrictions?

A – The Treasury regulations will be amended so that the marketing restrictions will apply only to offering or placement at the initiative of, or on behalf of, the AIFM. Specific provisions will be included for investment firms, but only if they offer or place units or shares of an AIF on behalf of an AIFM.

Q – Why is there a requirement for a 'single AIFM' where a third country AIFM is seeking permission to market?

A – This requirement was intended to ensure that a single entity is identified which is responsible for complying with the requirements accompanying permission for such funds to be marketed, and not to require that there be no other entity which could be considered an AIFM. The Treasury will be amending the regulations to clarify this.

Q – Does the transitional period apply to marketing?

A – Yes it applies to the marketing of AIFs managed by transitional AIFMs.

Q – Why does regulation 58(6) require a single depositary for Article 36 AIFs?

A – Arguably regulation 58(6) can be interpreted as allowing one or more entities to act as depositary, but the Treasury will be amending regulation 58(6) to make this clear.

Q – The definition of an 'AIFM' in the regulations could catch entities which are really delegates as any entity which carries out any portfolio management or risk management

at all could be considered an AIFM under the definition in regulation 4. Is this the Treasury's intention?

A – The Treasury will amend the current drafting to include a more general concept of management as a necessary element of being an AIFM.

Q – Some of the language in the draft regulations is European language that could be taken to mean something different under UK law (for example 'domicile' and 'best efforts'). Doesn't copying this language into the UK regulations produce the wrong result?

A – Regulation 2(2)(a) of the draft regulations provides that expressions used in the Directive have the same meaning when used in the draft implementing regulations. This, as well as the general rule of interpretation of UK legislation which implements a Directive, means that even if an expression may be used differently in the UK in other situations, within the regulations the expression will have the same meaning as it has in the Directive.