

AIFMD BURDEN IS HURTING EUROPEAN INVESTMENT, SAYS EXPERT PANEL

21 MAY 2015

Some fund managers are passing up European investment opportunities in a bid to steer clear of the Alternative Investment Fund Managers Directive (AIFMD), according to a panel of experts at the Guernsey Funds Forum 2015.

The event was held in London last week and attracted more than 500 attendees to listen to keynote speaker Guy Hands and two panel sessions. The first of those was titled 'meeting the needs of European private equity', including a focus on Base Erosion and Profit Shifting (BEPS) and the Alternative Investment Fund Managers Directive (AIFMD).

Tim Hames, Director General of the [British Private Equity and Venture Capital Association \(BVCA\)](#), said that BEPS provided a challenge to the future success of private equity in Europe.

"If we create a world, whether by accident or design, via the OECD BEPS process, in which it becomes so gruesome in terms of tax treatment for investors to get involved in European private equity, then they are not going to do so, even if the returns are alpha, alpha, alpha," he said.

He added that this would be particularly so because it would be adding to the demands already being exacted on the industry by AIFMD, where there was one question which should be asked.

"Will this action make Europe a less or more attractive place to outside investors and observers?...If that is the simple test for the AIFMD process, then the honest answer is that there are people giving Europe a pass now, who would not have given Europe a pass previously. Because whilst there is no particular individual provision that is a deal breaker, the collective weight, the sheer hassle, and the fact that there are other parts of the world that are not bothering you with this sort of thing, are a very powerful set of arguments," said Mr Hames.

Karen Sands, Head of Finance at [Hermes GPE](#), said: "We early adopted for AIFMD and became an authorised AIF [Alternative Investment Fund] firm on the 1st July 2014. We have found that AIFMD has layered the ordinary process, whether it be from an investment or investor perspective, with a whole heap of tasks to make sure you are compliant with AIFMD...So it's quite cumbersome.

"I think delivering European private equity with co-mingled vehicles becomes even more complex, particularly if you are marketing to investors outside of Europe. They are put off by AIFMD and certainly some of the discussions that we've had have been around single investor funds."

James Gee from [Weil](#) said that AIFMD had probably proved more onerous for those onshore rather than third countries such as Guernsey, which was able to offer access to the EU through national private placement regimes.

Robert Mellor, Tax Partner at [PwC](#), said that Guernsey's advantage was in having a dual regulatory regime - one which is AIFMD compliant and another which is free from the requirements of AIFMD - and the Island therefore provides flexibility and options.

Emma Bailey, Director of the Investment Supervision and Policy Division of the [Guernsey Financial Services Commission \(GFSC\)](#), said that the national private placement route was working well.

"On the whole, I think the private placement regimes have been successful for Guernsey as a jurisdiction. Markets have remained open. Admittedly, some have been easier than others, but what has been really key in the whole way that Guernsey has reacted, is that the industry has been proactive in telling us where there have been these difficulties...As soon as industry lets us know that there are areas where maybe we could be of assistance in helping to speak to those counterparts, we have done so. I think we have managed to, as I say, smooth things along in some aspects," she said.

Ms Bailey added that Guernsey is seeking to be among the first wave of third countries within any extension of the passport.

"We are now taking every opportunity to speak to our counterparts in the margins or the international meetings that we have, along the lines of third party passporting, just to say 'Guernsey, this is what we are,' educate them, re-emphasise what we are about, what the industry is about to ensure that we are in the best place possible, that when the recommendations are put through to the EU that Guernsey is there and being considered. So I would probably say that I'm as confident as I possibly can be that, through those discussions and interactions, we are in the best possible position that we could be at this stage," she said.

Mr Gee said: "When you look at the status of Guernsey under AIFMD, for example, it is a third country, it is in the same camp as the US and many other significant onshore centres...I'm sure Guernsey is going to be right at the front of the queue and will do everything possible and be a good place to get the passport. The issue is actually whether managers will want to get the passport once, if, it becomes available."

He raised the prospect that the passport could be extended but would not prove popular while the successful national private placement regime would be lost in 2018.

Ms Bailey said: "It may well be that once that passport becomes available, people simply don't want to take it up. Now the question then becomes, 'Have we also lost the national private placement regimes?' which are, despite a lot of concern at the start, working reasonably well.

"We have had no indication that national private placement is going to get switched off from us, if we are granted the extension. We do keep asking our counterparts what their views are on that but, as I say, the worst case scenario would be not to be in the run for the passporting and, in 2018, national private placement regime does get switched off in its entirety.

Mr Hames said he foresees the commencement of a second version of AIFMD but predicts a more positive outcome.

"I think there are reasons for some cautious optimism, that when the directive is revised, we will start looking at the right questions the right way around and might even make a little bit of movement in the right direction," he said.

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