

- 01 : The AIFM Directive – What Next?
- 03 : The International Limited Partners Association (ILPA)
- 04 : Private Equity Gains Exemption from Offshore Regime

TECHNICAL

The AIFM Directive – What Next?

As everyone is aware the AIFM Directive has now been agreed by all parties and is moving forward into the implementation stages. Rather than try to cover what is in, and what is not in, the Directive – which has been written about by many others, we attempt to set out what Managers need to think about in the coming months, how they should consider structuring their thoughts and their businesses.

Suffice to say there is a great deal to be finalised in the coming months. The Directive, as published, has primarily been produced by the politicians. It is now down to the Commission and Country regulators to produce a practical framework in which we can all work. There are many issues that need to be defined and a relatively short time in which to do it – all of the relevant terms, conditions and the small print will need to be finalised by July 2011. There is a massive amount to be done and Augentius will be contributing to the process.

Timetable of Events

The attached timetable sets out the processes relating to Grandfathering and Third Countries etc. The first main point to make is that this is a long and drawn out process and nothing is going to change overnight. As a consequence an element of “wait and see” can be applied to short term decisions.

Passporting

The Directive introduces, for the first time into the PE and Property world the concept of “Passporting” – a concept that has existed for many years for retail Funds within Europe. Basically the idea is that as long as the Fund complies with all the “European” rules and approvals it can then proceed to market itself throughout Europe without having to comply with the individual rules of the relevant member states. Passporting Funds issued by EU Managers will not commence until 2013. For non-EU Managers (which includes “Offshore” domiciled Funds), Passporting will



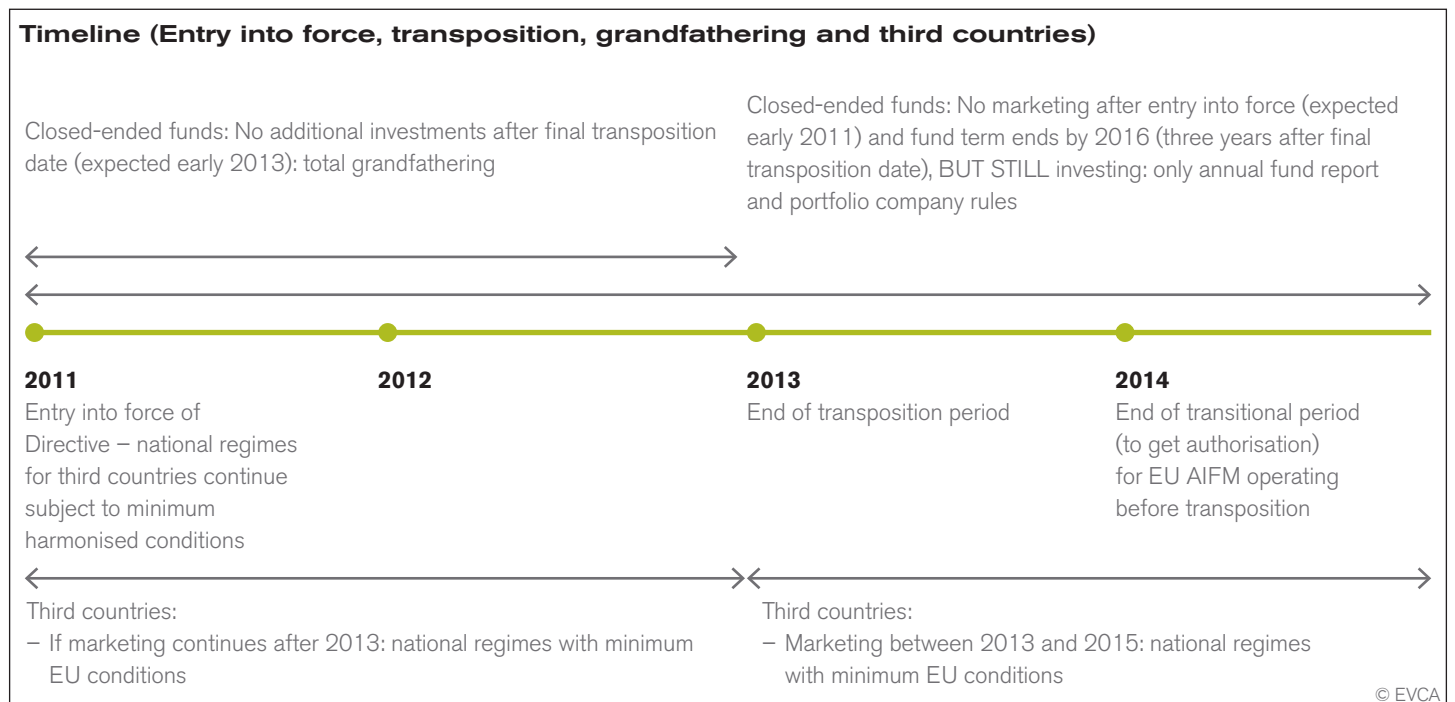
David Bailey
Managing Partner

not be available until 2015, assuming that the relevant domiciles achieve the appropriate “equivalence” status to facilitate the issuance of Passporting Funds. In the interim period Funds will use national regimes and laws (as at present) to facilitate the marketing and other processes.

Compliance to achieve Passporting post 2013

For a Fund to achieve “Passported” status it will need to comply with the principles of the Directive as adopted by the different local

[continued on page 2](#)



TECHNICAL

The AIFM Directive – What Next? **continued**

regimes. This will include the appointment of a Depository, approval of the Fund by the regulator, Capital Adequacy requirements met, creation of a valuation function (or the outsourcing of the valuation function to an independent party) and the like. However many of these functions and processes have yet to be defined in greater detail and in the case of the Depository function, created in many jurisdictions.

The Depository

This is a completely new concept for Private Equity and Property Funds in many jurisdictions – although a common requirement for many other Fund types. In some domiciles this requirement is already in place e.g. Luxembourg and France. Many would argue that the Depository function creates little additional protection and only adds another layer of costs. However the Directive requires that a Depository be appointed and, once the regulation is in place, there will be a need for compliance.

The rules regarding the type of entity that can be appointed as a Depository for unquoted assets have been widened considerably in the final version of the Directive. However much needs to be clarified in the coming months, including the level of financial risk to be borne

by the Depository, and the appropriate wording put in place. Once the specific requirements are known products will be able to be put in place in the jurisdictions that do not currently have this requirement e.g. the UK.

Whilst the safe keeping of the assets i.e. the relevant share certificates, is one aspect of the role of the depository, in future no cash movements to and from the Fund's bank accounts will be able to take place without the consent of the Depository – indeed it may be that the Depository is the only entity authorised to instruct re cash movements. This is a very different situation to the current practises and one that will change the role of the GP considerably.

Augentius is working with a number of parties to assist in development of these principles into a set of pragmatic and sensible operating procedures and we will keep everyone advised as the discussions proceed.

The Valuation Process

Again the Directive will force changes in the process adopted by GPs. Early drafts of the Directive were potentially forcing Funds to employ independent Valuation Agents to carry out Fund valuations. The final version refers to either independent valuations or a valuation

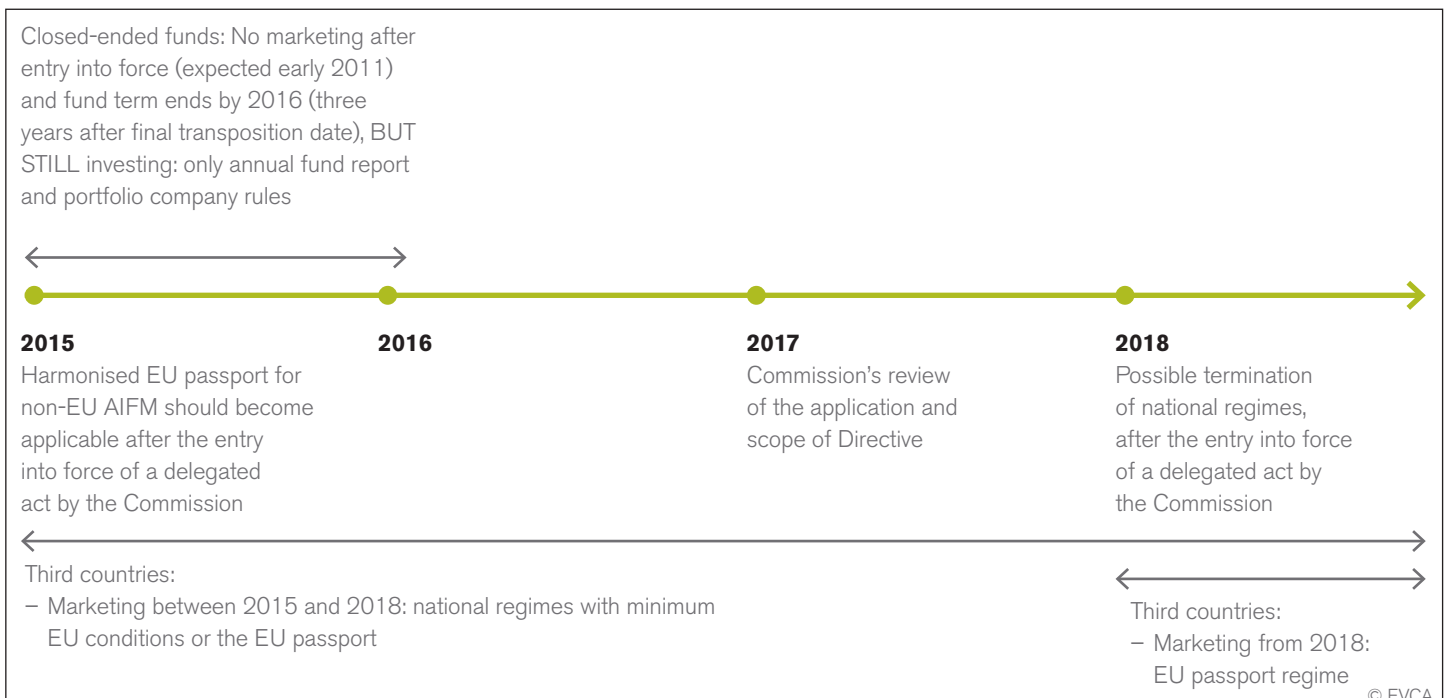
process/function segregated within the GPs own organisation. Managers will therefore need to give consideration, during the course of the next two years as to how they are to design their own businesses to ensure this segregated role – unless they decide to outsource the function.

Which Domicile?

In many instances the Domicile of a Fund is determined by the needs and wants of potential investors. The initial uncertainty created by the Directive will in turn encourage Managers to consider alternative domiciles in the shorter term for the launch of their next Fund. A Luxembourg domiciled structure already meets many of the requirements of the Directive and may be an option. However there is no doubt that each and every EU domicile will have service providers in place to meet the requirements of the Directive once it starts to become live. Similarly many “Offshore” domiciles intend to have “equivalence” in place, including Guernsey and Jersey.

In addition there is the potential for new domiciles to emerge as good options for Private Equity and Property Funds e.g. Malta and Dublin.

[continued on page 3](#)



TECHNICAL

The AIFM Directive – What Next? continued

Once phase 2 of the exercise of has been completed and all the detail and operational aspects clarified (by July 2011) it will then be down to the individual EU jurisdictions to create their own local laws to ensure compliance with the overall Directive. This does have the opportunity for different jurisdictions to create slightly different rules and for “jurisdictional arbitrage” to take place – again we will need to “wait and see”.

In the meantime Managers launching new Funds will need to take the feelings of their investors into account – although not in place as yet some investors could start to demand that a Fund complies with the Directive rules sooner rather than later and this will need to be taken into consideration.

Conclusion

Whilst the Directive has been finalised, much is still very unclear. There is still time for representation to be made through the different channels to facilitate the Phase II process. ESMA, The FSA and others are open to comment and Managers, Investors and others are encouraged to make their views heard.

Whilst some matters (such as Depository) can be put to one side for the time being, other issues such as the segregation of the valuation and risk management processes need to start moving along the agenda. These are complex issues that will need to be addressed and will take time to put in place.

However it is important that everyone concerned maintains a watching brief on the developments. The Directive, as we have at present, provides little more than a skeleton outline. The true detail will be in the output from Part II and the subsequent implementation by individual country regulators.

The International Limited Partners Association (ILPA)

The International Limited Partners Association (ILPA) published the second edition of their “Principles” on the 11th January 2011 along with the first of its Standardised Reporting Templates. These best practice documents are “part of its continued commitment to drive asset class best practices and support long-term partnerships between Limited Partners (LPs) and General Partners (GPs)”. Full details can be found at: <http://ilpa.org/wp-content/uploads/2011/01/ILPA-Private-Equity-Principles-2.0.pdf>

The revised Principles include:

- A new component containing amended proposals on GP Carry Clawback
- A substantially redrafted appendix on the Best Practices of the Limited Partnership Advisory Committee [LPAC]
- Amendments and clarifications to the existing guiding Principles
- ILPA has committed to providing a set of five “Standardised Reporting Templates” the first of which (covering capital call and distribution notices) is available on the ILPA website (see above). Further templates covering Annual and Quarterly reporting are in development

The ILPA Principles remain an important reference point for many GPs although many of the suggestions are already in place. The practice of “fund as a whole” carried interest is common in almost all the funds that we administer within Europe (recent surveys by both Preqin and SJ Berwin bear this out, suggesting that 93% of all European funds follow this model) as are “step downs” in management fees after the investment period.

However there has not been over-riding acceptance within the industry of all the recommended Principles. The Preqin survey suggests that only 4% of all recent funds are complying with the suggestion that the GP may be removed by a two thirds vote of LPs. Similarly there has been some contention in the past regarding the suggested powers given to the LPAC and there has been some softening in the new Principles issued in January.



James Watts
Head of Onshore Client Services

Again there has been discussion regarding the issue of suggested Capital Call and Distribution Notices. In our experience every GP often has a slightly different layout/format for notices – but generally these have been agreed with their own LPs thus ensuring that the reporting needs of their own investors are being met. Certainly in recent years LPs have been more demanding in their reporting requirements and much of what we do is to ensure these needs are met in their entirety and within a timely manner. We all await with interest the formats for the suggested Quarterly and Annual reports.

There is no doubt that the continuing dialogue between ILPA and the GPs is of value. It is however unlikely to lead to complete standardisation within the industry. GPs will however still want to tailor their individual fund structures and terms and conditions to the individual needs of their investors, and to maintain a competitive advantage over others if at all possible.

Augentius Continues to Win

Augentius has continued to win industry accolades being named as Fund Administrator of the Year, for the third year in a row by Private Equity News and Top Rated Private Equity Fund Administrator in both London and the Channel Islands by Global Custodian.



Private Equity Fund Administrator of the Year
2008, 2009 and 2010



Top Rated Private Equity Fund Administrator in London
2008, 2009 and 2010
Top Rated Private Equity Fund Administrator
in the Channel Islands 2010. Commended in 2009

TECHNICAL

Save the date

The second EVCA COO-CFO Summit will be held in Barcelona on the 16th/17th June 2011 at the Princesa Sofia Gran Hotel. Full details of the event can be found here: http://www.evca.eu/cfo-coo_summit_2011/home.html. Last year's event was one of the most successful events run by the EVCA and we are very much looking forward to a repeat performance in 2011.

David Bailey, Managing Partner of Augentius is chairing the working party of CFOs putting the Summit together. Indeed this really is an event for the industry put together by practitioners in the industry and will be covering as many of the issues and headaches currently being faced by COOs and CFOs as we can squeeze into the day.

Booking for the event is now open and we look forward to seeing many of our friends in Barcelona.

Augentius Invests

Augentius is currently investing nearly £1m in new technology infrastructure. Our business has grown significantly and it is now time to make further investment, including the virtualisation of all servers.

With the new server infrastructure in place, all software is being updated and Office 2010 has already be rolled out around the business. The next phase will be the installation of the latest version of Sungard Investran® which will add additional facilities and capabilities. This will include the provision of remote access to our system for all our clients.

This major investment will propel Augentius into the next phase of technology and allow us to enhance and develop our services even further.

Private Equity Funds Gain Exemption from UK's Offshore Funds Regime

HM Revenue and Customs has very recently issued draft amendments to the Offshore Funds Regulations which, amongst other changes, include a specific exception for Private Equity Funds. There were significant amendments during 2009 to the offshore funds regime including the introduction of a new definition of offshore funds – which in turn created some confusion as to whether private equity funds were caught within the regime.

In the first instance a fund should consider (with its lawyers and advisers) whether the structure is caught by the offshore funds regime. If it is, then consideration can be given to the "unlisted trading company exemption".

For this exemption to be applicable at least 90% of the assets of the underlying offshore holding company must be:

- Shares in a "trading company", the "holding company of a trading group" or a "trading subgroup" and
- Such shares must not be listed on a recognised stock exchange or admitted to trading on a regulated market

Further detail can be found at: <http://www.hmrc.gov.uk/drafts/draft-equalisation.htm>

Whilst the legislation is still in draft the revised regulations are expected to take effect w.e.f. 6th April 2011.

Luxembourg Office on the Move



Augentius Fund Administration (Luxembourg) recently moved into new offices. Despite being one of our newest offices, with continued growth and a strong pipeline of new business opportunities, it was necessary to find larger premises. Augentius can now be found at:

E Building, Parc d'Activité Syrdall
6, Rue Gabriel Lippmann,
L-5365 Munsbach, Luxembourg
Telephone: +352 26 3921 70

Augentius Charitable Foundation

Throughout the year we raise money for the Foundation and make a number of donations to needy causes. Every Christmas we look for a special project that we can help and in 2010 supported a Womens Refuge – providing suitable Christmas gifts for all the children and Pampering Bags for all the ladies, all of which helped to fill out Santa's Grotto. We recognise that we are all lucky people and hope that our efforts made the lives of others a little more enjoyable.



MORE INFO

For further information on Augentius Fund Administration please contact:

David Bailey
Managing Partner
Tel: +44 (0) 20 7397 5453
Email: david@augentius.com

Gavin Davies
Managing Director, Guernsey
Tel: +44 (0) 1481 734 302
Email: gavin@augentius.com

Malcolm Wilson
Managing Director, Luxembourg
Tel: +352 26 39 21 71
Email: malcolm.wilson@augentius.com

Walter Davis
Director, Business Development
Tel: +44 (0) 20 7397 7268
Email: walter.davis@augentius.com

Hugh Stacey
Director, Business Development
Tel: +44 (0) 20 7397 5489
Email: hugh.stacey@augentius.com

Roxane Combe
Director, Business Development
+44 (0)207 397 5483
Email: roxane.combe@augentius.com