



Financial Services Commission
Mauritius

European Securities and Markets Authority MoU:
What does it mean for you?
(Promoters of Investment Funds)



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Introduction

In Mauritius, Investment Funds and Intermediaries are regulated by the FSC as per the Securities Act 2005 and the Securities (Collective Investment Schemes and Closed-End Funds) Regulations 2008 (the CIS Regulations).

In order to adhere to the requirements of the Alternative Investment Fund Managers' Directive (AIFMD), the FSC signed bilateral Memorandum of Understandings (MoUs) with 23 European Union Member States through the European Securities and Market Authority (ESMA) on 30 May 2013.

1. What is ESMA?

The European Securities and Markets Authority (ESMA) is a European Union financial regulatory institution and European Supervisory Authority. ESMA works in the field of securities legislation and regulation to improve the functioning of financial markets in Europe and to strengthen investor protection and cooperation between national competent authorities. The idea behind ESMA is to establish a “European Union-wide financial markets watchdog”.

2. What is AIFMD?

The Alternative Investment Fund Managers Directive (AIFMD) is a European Union Directive seeking to regulate hedge funds, private equity funds and real estate funds -also called Alternative Investment Funds (AIFs).

3. When did the AIFMD come in force?

The AIFMD came into force on 22 July 2013. Mauritius regulated funds were required to be in compliance with the provisions of the AIFMD (as applicable) on or before 22 July 2013 to be allowed continued marketing in Europe.

4. Who should be concerned by AIFMD?

All fund managers established in the EU, whether managing or marketing EU funds or non-EU funds will be subjected to the AIFMD. Non-EU managers marketing non -EU AIFs in the EU will also be governed by the AIFMD. The AIFMD also covers the supervision of funds and companies performing fund management duties whether by custodies or delegations.

5. What does it mean for promoters?

For existing funds being marketed in EU: the signature of the MoUs with the different EU Member States will allow existing Mauritius regulated funds to continue marketing in these jurisdictions, subject to meeting any additional conditions that may be imposed by the regulator of the EU country.

For new funds to be marketed in EU: new Mauritius regulated funds will also be allowed to market in the European Member States with which the FSC has signed a MoU, subject to meeting any additional conditions that may be imposed by the regulator of the EU country.



6. What are the minimum conditions which a country or a fund manager need to satisfy under AIFMD?

To qualify under the AIFMD, the conditions to be satisfied are:

Disclosure requirements:

- a) Submission of Annual Report of the fund(s) to the EU regulator(s) where marketing of fund(s) are being done;
- b) Submission of periodic statutory fillings to the EU regulator(s) where funds are being promoted;
- c) Fulfill transparency requirements by providing offer documents or other documents related to the funds to investors.

Cooperation Agreements: There should be a cooperation agreement (in the form of a MoU) for exchange of information between the jurisdiction of the non-EU fund/fund managers (i.e. Mauritius) and the EU regulator(s) where the funds are being promoted. These have been centrally negotiated by ESMA.

Financial Action Task Force (FATF): the country of the non-EU fund/fund manager must not be on the FATF list of non-cooperative jurisdiction and territory. Mauritius is not on that list thus in compliance with AIFMD requirements.



7. What should the fund manager do to be AIFMD ready ?

Subject to satisfying the minimum conditions under the AIFMD, the fund manager will need to contact the EU regulator(s) where marketing of fund(s) are being intended to find out if there are any additional conditions being imposed and make an application for authorisation/permission accordingly. Different regulators may have different additional conditions and/or different application processes.

8. What if the fund manager is not ready on or after 22 July 2013?

If the fund manager has not received any authorisation by 22 July 2013 or after, he will not be allowed to continue to market his fund(s) in the EU.

9. Is there an application process to be AIFMD ready?

Yes, there is an application process. The fund manager should contact each EU Member State regulator(s) where marketing of the fund is being intended to find out the application process to be followed – different regulators may have different processes.

10. What if the fund manager is promoting funds in more than one EU country?

The fund manager will need to contact and seek prior authorisation from each EU Member State regulator(s) where marketing of the fund(s) are intended.

11. Does the fund manager need to make a new application with the FSC under the AIFMD even if he has an existing licence?

No, he needs not apply to the FSC again if he has an existing licence. Application for authorisation must be lodged directly with the EU regulator(s) where marketing of the funds is being intended.

12. Does the fund manager still need to consult European regulators even though FSC Mauritius has signed a MoU through ESMA?

The fund manager needs to consult the EU Member State regulator(s) as they have the discretion under the AIMFD to impose additional conditions on fund managers wishing to market their funds in Europe after 22 July 2013.

The fund manager will need to contact the regulator(s) of the jurisdiction where marketing of funds are being intended to find out if there are any additional conditions, and make application for authorisation accordingly.

13. Will the fund manager still be able to market funds in the EU while waiting for his application for authorisation to be processed?

Marketing of funds will not be allowed until approval is obtained from the EU regulator(s).

14. How long will it take for the fund manager to receive authorisation after his application?

Different EU regulators may have different application processes. The fund manager will need to consult the EU regulator(s) to confirm the length of time. However, on average the time taken to receive authorisation is 20 days.

15. What will be the cost element involved ?

The imposition of a fee (application fee) is at the discretion of the EU regulator(s). The cost, if any, may vary amongst different regulators.

16. What must the fund manager do if his fund falls under the exemptions outlined in the AIFMD?

Irrespective of whether the funds fall under the exemptions outlined in the AIFMD or not, the process of seeking prior authorisation applies. National EU regulators can decide to apply exemption clauses to fund managers that collectively manage funds of less than €100m or less than €500m which are unleveraged and do not grant investors redemption rights for a period of 5 years following the date of constitution of each fund(s).



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