



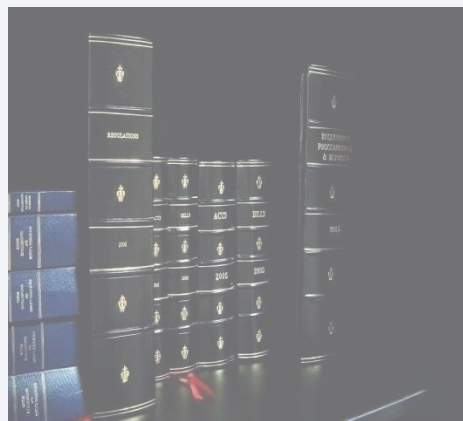
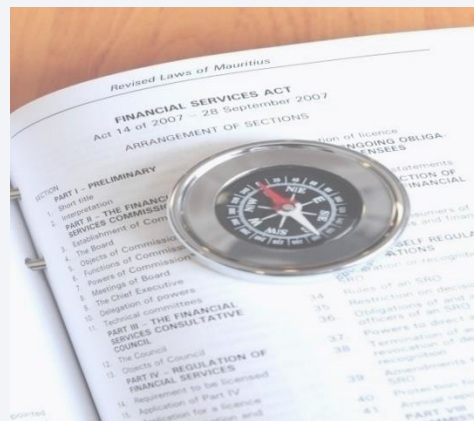
**Financial Services Commission**  
Mauritius



# The Alternative Investment Fund Managers' Directive (AIFMD) – Impact on Third Country

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# AGENDA

- **Introduction** – Factors leading to AIFMD;
- **Background** – Objectives, Requirements and Exemptions;
- **Marketing** – Available routes into EU;
- **Third Country Regime** – Requirements;
- **Statistics** – Some Figures;
- **The European Securities & Markets Authority (ESMA) MoU** – What it covers?
- **Conclusion** – Way Forward for Mauritius-licensed Funds/Managers.

# INTRODUCTION

## **A variety of factors led to the initial proposal of the AIFMD:**

- Financial crisis;
- Madoff;
- Shadow banking;
- Market volatility;
- “Unregulated world of Hedge funds”, “speculators”, “asset strippers”;
- G20 commitment.

# BACKGROUND

## Objectives of the AIFMD:

- To create a comprehensive and effective regulatory and supervisory framework for AIFMs;
- To enhance the transparency of the activities of these AIFMs and their funds (*broadly categorised as non-harmonized funds/Alternative Investment Funds “AIFs” in the form of hedge funds, private equity funds and real estate funds amongst others*) towards investors and public authorities;
- To improve the macro-prudential oversight of the sector in the EU.

## Requirements under the AIFMD:

- Organizational requirements;
- Leverage;
- Depositary;
- Delegation;
- Risk management;
- Liquidity management;
- Reporting/disclosure requirements.

# BACKGROUND (Cont'd)

**Subject to exemptions (Referred to as Small AIFMs)\*\* outlined in the Directive, the AIFMD applies to:**

- EU AIFM managing EU/non-EU AIF, regardless where marketed;
- Non-EU AIFM managing EU AIF, regardless where marketed;
- Non-EU AIFM marketing EU/non-EU AIF within the EU;
- 'Marketing': Any direct/indirect offering to, or placement with, investors domiciled in the EU, AT THE INITIATIVE of the AIFM, or on its behalf, of units/shares in an AIF it manages;
- Reverse inquiry/solicitation of EU Investors by non-EUAIFM—allowed;
- EU Investors investing with non-EU AIFM will not cause such non-EU AIFM to be subject to the directive—UNLESS the non-EU AIFM is marketing its AIF in the EU.

***\*\*The AIFM manages portfolios of AIF where the total AUM is less than €100m; or  
The AUM is less than €500m where there is no leverage and the AIFs have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.***

# MARKETING

These are the Marketing Routes into Europe:

Market in EU	EU Manager/ EU Fund	EU Manager/ Non-EU Fund	Non-EU Manager / EU Fund	Non-EU Manager / Non-EU Fund
EU Passport	✓	✗	✗	✗
Private Placement	n/a	✓	✓	✓

Subject to complying with the following:

Capital Requirements	✓	✓	✗	✗
Depository (Custody)	✓	✗	✗	✗
Operational (Valuation...)	✓	✓	✗	✗
Transparency (Disclosures)	✓	✓	✓	✓

# THIRD COUNTRY REGIME

Private Placement – 2013 to at least 2018



Holland, France, Germany, Ireland, Portugal, Spain, Romania, Italy, Luxemburg, Cyprus, Czech, Sweden, Finland, Denmark, Latvia, Austria, Estonia, Poland, UK, Bulgaria, Belgium, Greece, Lithuania, Malta, Slovakia, Hungary, Slovenia, Croatia, Iceland, Norway, Liechtenstein



Subject to:

1. Reporting (disclosure & Transparency) requirements;
2. Cooperation Agreements in place;
3. Not listed on FATF non-cooperative list;



# THIRD COUNTRY REGIME

Passport– may be available as from 2015



Holland, France, Germany, Ireland, Portugal, Spain, Romania, Italy, Luxemburg, Cyprus, Czech, Sweden, Finland, Denmark, Latvia, Austria, Estonia, Poland, UK, Bulgaria, Belgium, Greece, Lithuania, Malta, Slovakia, Hungary, Slovenia, Croatia, Iceland, Norway, Liechtenstein



Subject to:

1. Seek authorisation and comply with all provisions of the AIFMD;
2. Cooperation Agreements in place;
3. Not listed on FATF non-cooperative list;
4. Tax information agreement in place.

# STATISTICS

## Some Figures

Item	Dec 2012	May 2013
Number of Global Funds	859	864
- CIS(including SCIS, Expert Funds...)	482	484
- CEF (PCIS)	377	380

# STATISTICS (Cont'd)

## Industry Survey Results – February 2013

- 56% of Respondents plan to continue operating in Europe past July 2013;
- 20% of Funds have their fund managers domiciled in Europe;
- 46% of Funds are being distributed in Europe covering almost all the Member States;
- 44% of Funds are distributing more than 50% (in fund proportion) in Europe;
- 88% of Respondents believe the signing of the MoU is of importance.

**\*\* Response rate: 16% iro MCs and 10% iro of funds**

# ESMA MoU

## Insights

The ESMA MOU covers the cooperation agreements required to be in place between non-EU AIFM/AIF and EU Member States for continued marketing in the EU under the AIFMD and:

- Is a statement of intent to consult, cooperate and exchange information for the supervision and oversight of alternative investment fund managers that operate on a cross-border basis, from the jurisdiction of one party of this MoU into the jurisdiction of the other;
- Also covers the supervision of funds, entities performing fund management by delegation and depositaries, where relevant.
- Mauritius is in the first tranche of jurisdictions (as USA, Singapore, Hong Kong, Switzerland...) to receive ESMA's approval.

# ESMA MoU (Cont'd)

## The Provisions

- The MoU defines:
- The scope of cooperation;
- The procedure to be followed in case of cross-border on-site visits;
- The content of the request for assistance;
- The permissible uses of the information;
- The confidentiality rules applicable to the information exchanged;
- The conditions for the termination of the MoU.
- Finally, the MoU contains specific rules and safeguards for the onward sharing of the information in the EU Internal Market between the EU securities supervisors, ESMA and the European Systemic Risk Board (ESRB). *(The latter provisions are a consequence of obligations directly imposed by the AIFMD on the EU authorities).*

# CONCLUSION

## Transitional Provisions

- AIFMD comes into force on 22 July 2013;
- AIFMs already operational to submit application for authorisation by July 2014 (*Applicable to EU AIFMs only under Passport system*);
- AIFMs managing closed ended AIFs which do not make further investments after 2013 need not comply with AIFMD;
- AIFMs managing closed ended AIFs with certain characteristics on subscription periods need not comply with AIFMD;
- 2013, 2015 and 2018 timelines for use of passport by EU AIFs or non-EU AIFs or private placement.

# CONCLUSION (Cont'd)

## What's Next?

- With the approval of the ESMA MoU by EU Regulators with on 22 May 2013, Mauritius will have satisfied all the conditions under the AIFMD for Mauritius-regulated funds to continue to market in Europe under the private placement (*Conditions Apply*);
- The non-EU AIFM (whether small or not) intending to market its funds in the EU to contact the relevant Member State Regulator(s) to find out whether any additional conditions are being imposed;
- The non-EU AIFM to contact each EU Member State Regulator(s) where marketing is being intended to find out the application/registration process to be followed – different regulators may have different processes.



# THANK YOU FOR YOUR KIND ATTENTION

## **Vision**

*“To be an internationally recognised Financial Supervisor committed to the sustained development of Mauritius as a sound and competitive Financial Services Centre”*