



Financial Services Commission
Mauritius

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

Financial Services Commission (FSC)

The FSC is the independent regulator of financial services other than banking and Global Business in Mauritius. The FSC's regulatory mandate is to license, monitor and supervise the conduct of business activities in line with the internationally recognised principles and standards under the legal framework of the Financial Services Act 2007.

In Mauritius, Investment Funds and Intermediaries are regulated by the FSC under the Securities Act 2005 and the Collective Investment Schemes Regulations.

The FSC signed a Memorandum of Understanding (MoU) with the European Securities and Market Authority (ESMA) on 30th May 2013, which means that after 22nd July 2013, Mauritius licensed fund will be able to continue to market their funds in Europe under the Alternative Investment Fund Managers Directive (AIFMD) requirements.

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, strengthening 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 which regulates fund managers of Alternative Investment Funds (AIFs), wherever they are based in the world and those who market shares of an EU fund.

3. **When will the AIFMD be in force?**

The AIFMD will come into force on 22nd July 2013. Mauritius licensed funds will be required to be in compliance with the provisions of the AIFMD (as applicable) on or before the 22nd of July 2013 for continued business in Europe.

4. **Who should be concerned by AIFMD?**

Those who should be concerned by the AIFMD are players of investment funds (fund managers, companies managing funds, investors, promoters amongst others).

This is because the AIFMD 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: with the signature of the ESMA MoU, Mauritius licensed funds which are currently being marketed in Europe will be able to continue to promote their funds after 22 July 2013, subject to meeting any additional conditions that may be imposed by the Regulator of the EU country where the fund is actually being marketed.

For new funds to be marketed in EU: with the signature of the ESMA MoU, new Mauritius licensed funds/new promoters will also be able to establish new funds to be promoted in Europe subject to meeting any additional conditions that may be imposed by the Regulator of the EU country where the fund is actually being marketed.

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) You will need to submit an Annual Report of your company to the EU Regulator(s) where you are marketing the funds.
- (b) You will need to send periodic statutory filings and submissions to the EU Regulator(s) where funds are being promoted
- (c) You will need to fulfil the 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 I do to be AIFMD ready by 22nd July?

Subject to satisfying the minimum conditions under the AIFMD, you will need to contact the EU Regulator(s) where you intend to market your funds 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 I am not ready by 22nd July?

If you are not ready by 22 July 2013 or you have not received any authorisation by then, you will not be allowed to continue to market your fund in the EU.

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

Yes, there is an application process. The non-EU AIF 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 I am promoting funds in more than one EU country, do I apply to just one EU Member State?

No, you will need to contact and seek prior authorization from each EU Member State where you intend to promote your funds.

11. Do I need to make a new application with the FSC under the AIFMD even if I have an existing licence?

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

12. Do I need to still to consult European regulators even though FSC Mauritius has signed a MoU through ESMA?

Yes, you need to consult the EU Member State Regulator(s) as they have the discretion under the AIFMD to impose additional conditions on fund managers wishing to market their funds in Europe after 22 July 2013.

You will need to contact the Regulator(s) of the jurisdiction where you intend to promote your funds to find out if there are any additional conditions, and make application for authorisation accordingly.

13. Will I still be able to market my funds in EU while waiting for my application for authorisation to be processed?

No marketing of funds is allowed until approval is obtained from the EU Regulator(s).

14. How long will it take for me to be able to continue market my funds after my application accordingly?

Different EU Regulators may have different application processes; so you will need to consult the EU Regulator to confirm the length of time. However, on average the time taken to receive authorisation is 20 days.

15. Will there be a cost element involve and how much?

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 I do if my fund falls under the exemptions outlined in the AIFMD?

Irrespective of the funds falling under the exemptions outlined in the AIFMD or not, the process of seeking prior authorisation applies. National regulators can decide to apply exemption clauses to Fund Managers (AIFMs) that collectively manage Funds (AIFs) 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 AIFs.

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