



Mauritius Global Business Update 19

MAURITIUS CONCLUDES AGREEMENT TO ENABLE MAURITIUS-LICENSED FUNDS TO CONTINUE TO MARKET IN EUROPE AFTER THE INTRODUCTION OF THE EU ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (“AIFMD”) WHICH BECOMES EFFECTIVE ON 22 JULY 2013.

The Mauritius FSC signed a Memorandum of Understanding (MoU) with the European Securities and Markets Authority (“ESMA”) on 30 May 2013, to facilitate the marketing of Mauritius based funds to European investors. The Association of Trusts & Management Companies, of which GWMS is the current President, was engaged in working sessions with the FSC and other industry operators, to ensure that the interests of Mauritius-licensed funds are safeguarded.

1. Introduction

1.1. The MoU enables Mauritius-licensed funds to continue to market in Europe after 22 July 2013.

2. The AIFMD in a nutshell

2.1. The AIFMD is a proposed European Union (“EU”) law which provides for the supervision of hedge funds, private equity funds and real estate funds.

2.2. Objectives of the AIFMD:

2.2.1. To create a comprehensive and effective regulatory and supervisory framework for Alternative Investment Fund Managers (“AIFMs”);

2.2.2. To enhance the transparency of the activities of the AIFMs and their Alternative Investment Funds (“AIFs”) towards investors and public authorities.

2.3. Some of the reforms proposed by the AIFMD:

2.3.1. Requirement for non-EU AIFMs marketing AIFs within the EU to comply with disclosure requirements to both investors and EU regulators;

2.3.2. EU AIFMs authorised under the AIFMD will be granted a passport to either manage AIFs in other EU member States or market shares in AIFs to professional investors.

2.3.3. Requirement for EU AIFMs to appoint independent custodians for each AIF which they manage;

2.3.4. Requirement for EU AIFMs to have independent risk management and valuation functions.



2.4. Application of the AIFMD:

The AIFMD applies to:

- 2.4.1. Non-EU AIFMs marketing* EU/non-EU AIFs within the EU;
- 2.4.2. Non-EU AIFMs managing EU AIFs, regardless where marketed*;
- 2.4.3. EU AIFMs managing EU/non-EU AIFs, regardless where marketed*.

** '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.*

Point 2.4.1 above concerns Mauritius based funds which have EU investors.

2.5. Exemptions under the AIFMD:

The AIFMD is subject to exemptions and will not apply to funds where:

- 2.5.1. The AIFM manages portfolios of AIF where the total Asset Under Management ("AUM") is less than €100 million; or
- 2.5.2. The AUM is less than €500 million 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.

3. **The post 22 July 2013 status**

- 3.1. With the signature of the 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.
- 3.2. 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.
- 3.3. **IMPORTANT** - Even though the FSC has signed a Memorandum of Understanding ("MoU") with ESMA, AIFMs based in Mauritius will still need to consult the EU regulators, which have the discretion under the AIFMD to impose additional conditions on AIFMs wishing to market in the EU after 22 July 2013. Mauritius based AIFMs will need to contact the regulators of the jurisdiction where they intend to promote their funds, to find out if there are any additional conditions, and make application for authorisation accordingly.
- 3.4. For further information, please click on the two attachments to this update,
 - 3.4.1. ESMA-FSC MoU
 - 3.4.2. AIFMD most FAQ on the Third Country regime



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