

## Write up on AIFMD

In April 2009, the European Commission proposed a directive on alternative investment fund managers ('AIFMs') with the objective of creating a comprehensive and effective regulatory and supervisory framework for AIFMs at the European level. The proposed alternative investment fund managers directive was aimed at providing harmonised regulatory standards for all AIFMs within scope. The Directive entered into force on 21 July 2011 and the European Commission, on the advice of the European Securities and Markets Authority ('ESMA'), published one regulation regarding the implementing measures on 19 December 2012.

The act takes the form of a regulation and does not need any national transposition, but will be directly applicable in all EU Member States. However, European Parliament and Council have a period of three months, which may be extended to six months, to object to this act. If there are no objections, the Delegated Regulation will be applicable from July 2013.

Under the AIFMD, AIFMs must become authorised in order to operate in the EU. However, in the first phase of AIFMD implementation, non-EU AIFMs cannot become authorised under the AIFMD. Further, EU based advisers and sub-managers to non-EU AIFMs cannot opt to become authorised as AIFMs under the AIFMD. However, the AIFMD gives EU Member States discretion to allow non-EU AIFMs to continue to market AIFs to professional investors using national private placement regimes, provided certain minimum requirements are satisfied.

The Directive will increase the amount of disclosure made by funds, both to investors and supervisors. The Directive also imposes requirements on managers in terms of organisation, capital, depositaries and marketing of funds, etc. The Directive also includes a marketing passport for third country managers and funds.

The Financial Services Commission ('FSC') of Mauritius has been approached by the ESMA, the body to ensure the implementations and enforcement of the Directive, because of the impact that the Directive shall have on funds licensed by the FSC. In January 2013, the Chief Executive of the FSC confirmed that the FSC was in the process of signing a Memorandum of Understanding with the ESMA in connection with the AIFM Directive which would bring Mauritius at par in terms of recognition, with other signatory countries and would represent convenient access of Mauritian alternative investment funds and funds providers in the Euro zone area.