Agreement between the Financial Services Commission, Mauritius ("FSC") and the European Securities and Markets Authority ("ESMA") ensuring continuity in the marketing of licensed funds in Europe effective as from 22nd July 2013.

In January 2013, the Chief Executive of the FSC confirmed that they were in the process of signing a Memorandum of Understanding with the ESMA in compliance with the AIFM Directive. This initiative would bring Mauritius at par in terms of recognition, with other signatory countries and would represent convenient access of Mauritian alternative investment funds and fund providers in the Euro zone area. This cooperation agreement was signed on 30thMay 2013 enabling Mauritius-licensed funds to continue to market in Europe under the private placement regimes of EU member states after the introduction of the EU Alternative Investment Fund Managers Directive ("AIFMD") as from 22 July 2013. (Read More)

On 30 May 2013, the European Securities and Markets Authority (ESMA) announced that it has approved the much anticipated co-operation arrangements between Bermuda, the British Virgin Islands (BVI), the Cayman Islands and Mauritius and provided the securities regulators with responsibility for the supervision of alternative investment funds (AIFs) of all 27 EU member states, as well as Iceland, Liechtenstein, Norway and Croatia.

These co-operation arrangements are a key element of the implementation infrastructure of the EU Alternative Investment Fund Managers Directive (AIFMD), which is due to come into force on 22 July 2013. These arrangements will provide the machinery for the exchange of information, oversight and application of the provisions of the AIFMD to be put into effect between EU member states and the regulators in Bermuda, the BVI, the Cayman Islands and Mauritius. They are a pre-condition for AIFs in those jurisdictions to continue to be marketed into the EU in accordance with applicable private placement regimes.

The co-operation arrangements are embodied in the memorandum of understanding between each EU securities regulator and the relevant regulator in each of Bermuda, the BVI, the Cayman Islands and Mauritius. This is now a reality for Mauritius as announced by the FSC. Mauritius licensed funds will thus 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.

Since the AIFMD covers the supervision of funds and companies performing fund management duties whether by custodies or delegations, companies managing funds, fund managers, investors, promoters amongst others would be the most impacted by the new regulations.

ESMA has published a consultation on guidelines on reporting obligations under Articles 3 and 24 of the AIFMD. Alternative investment fund managers (AIFMs) have to report prescribed information on the portfolio of the alternative investment funds (AIFs) they manage or market in the EU. ESMA wants to standardize the format of information AIFMs send to their home state regulator.

Under the AIFM Directive, three conditions will need to be satisfied, namely: **Disclosure requirements** whereby a promoter will need to submit an Annual Report of his company to the EU Regulator(s) where he is marketing the funds. Periodic filings will need to be made as well as providing offer and other documents to fulfill transparency requirements. **Cooperation agreements** 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. **Compliance with Financial Action Task Force (FATF)** requiring that 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.

In order to be AIFMD compliant, fund managers/promoters will need to contact the EU Regulator(s) where they intend to market their funds to find out if there are any additional conditions being imposed and make an application for authorization/permission accordingly. Different Regulators may have different additional conditions and/or different application processes. If they have not received any authorization by 22nd July, they will not be allowed to continue to market their fund in the EU. 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.

If funds are being promoted in more than one EU country, prior authorization from each EU Member State will need to be sought. Each EU Member State Regulator(s) will need to be consulted 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. No marketing of funds is allowed until approval is obtained from the EU Regulator(s). On average the time taken to receive authorization is 20 days and 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.

Irrespective of the funds falling under the exemptions outlined in the AIFMD or not, the process of seeking prior authorization 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.

According to Steven Maijoor, ESMA Chair: “The approval by EU securities regulators of these co-operation arrangements is a significant step towards the successful implementation of the supervision of alternative investment funds by the July 2013 deadline, and their negotiation is a key achievement for ESMA in its coordinating role for EU securities markets. The agreements set high standards for co-operation on the supervision of cross-border alternative funds, thereby strengthening investor protection and the global consistency of supervision.”