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22 January 2016

AIFM Directive: the AMF publishes the 34 bilateral cooperation agreements signed with non-European supervisors of alternative investment fund managers

To assist management companies in their international operations, the AMF is publishing in full on its website the 34 AIFM bilateral cooperation agreements signed by the AMF between July 2013 and October 2014 with non-European supervisors of alternative investment fund managers.

34 AIFM bilateral cooperation agreements

The AMF published the list of AIFM bilateral cooperation agreements on its website in 2014. Following publication in the Official Journal of the most recent agreements to date, and as part of ongoing European work towards a potential "third country" passport, the AMF is now publishing these agreements in full.

The agreements cover:

- exchange of information by the AMF and the authority of the signatory country;
- provision of the information needed for the AMF to supervise third country entities;
- assistance in ensuring that entities domiciled in the third country comply with domestic rules stemming from transposition of the AIFM Directive and assistance in taking corrective measures if necessary.

The existence of cooperation agreements between the AMF and its counterparts outside the European Union (EU) is one of the pre-conditions established by the AIFM Directive for the following cross-border activities:

- 1 • delegation by a French manager of portfolio management or risk management of an alternative investment fund (AIF) to an entity domiciled outside the EU;
- 2 • management by a French manager of AIFs domiciled outside and not marketed within the EU;
- 3 • marketing without a passport in a Member State by a French manager of AIFs domiciled outside the EU;
- 4 • marketing without a passport in a Member State by a non-EU manager of AIFs domiciled inside or outside the EU.

These agreements may also apply to cross-border AIF management and marketing activities covered by a future “third country” passport.

The AMF reiterates that in addition to the signature of AIFM bilateral cooperation agreements by the AMF, all of the abovementioned activities remain subject to various requirements set forth in the Directive. Before engaging in such activities, managers must therefore ensure that they meet all requirements.

Other requirements applicable to cross-border business by managers involving third countries: case of states and territories that are non-cooperative in tax matters

In addition to the requirement to sign AIFM bilateral agreements, the AIFM Directive establishes a number of other requirements for cross-border management activities. These include the need for France and the third country to have entered into an agreement that complies fully with the standards set out in Article 26 of the OECD model tax convention on income and on capital and that guarantees the effective exchange of tax information. The AMF considers that countries on the list of non-cooperative states and territories, as defined in Article 238-0 A of the French General Tax Code, are jurisdictions with which France does not cooperate effectively in tax matters. Accordingly, the AIFM Directive's requirement pertaining to the effective exchange of tax information cannot be deemed to be satisfied in the case of these jurisdictions.

French AIF managers that engage in or that are planning to engage in cross-border activities in non-European jurisdictions are therefore urged to keep abreast of this list.

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