



STATUTORY INSTRUMENTS.

S.I. No. 428 of 2019



EUROPEAN UNION (ALTERNATIVE INVESTMENT FUND
MANAGERS) (AMENDMENT) REGULATIONS 2019

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011¹ and Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014², hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2019.

Definition

2. In these Regulations, “Principal Regulations” means the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013).

Amendment of Regulation 5 of Principal Regulations

3. Regulation 5(1) of the Principal Regulations is amended –
- (a) in the definition of “financial instrument”, by substituting “European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017)” for “European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007)”,
 - (b) in the definition of “host Member State of the AIFM” –
 - (i) in paragraph (e), by substituting “an EU AIF;”, for “an EU AIF; or”,
 - (ii) in paragraph (f), by substituting “a non-EU AIF; or” for “a non-EU AIF;”, and
 - (iii) by inserting after paragraph (f) the following paragraph:
 - “(g) a Member State, other than the home Member State, in which an EU AIFM provides the services referred to in Regulation 7(4);”,
 - (c) in the definition of “issuer, by substituting “European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017)” for “European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007)”, and

¹ OJ No. L 174, 01.07.2011, p. 1

² OJ No. L 173, 12.06.2014, p. 349

- (d) in the definition of “non-listed company”, by substituting “European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017)” for “European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007)”.

Amendment of Regulation 7 of Principal Regulations

4. Regulation 7 of the Principal Regulations is amended –

- (a) by substituting for paragraph (6) the following:

“(6) Regulations 4(2), 9(10), 23(1)(a) to (l), (4) and (13), 31(1), 32(3) to (12) and 33(3) and (5) to (13) of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017) and Commission Delegated Directive (EU) 2017/593 of 7 April 2016³ shall with all necessary modifications apply to the provision of the services referred to in paragraph (4) by an AIFM.”,

- (b) by substituting for paragraph (6A) the following:

“(6A) An AIFM which provides individual portfolio management services, referred to in paragraph (4), shall comply with –

(a) Parts 6 and 7 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. No. 604 of 2017), and

(b) Schedule 3 to the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017).”,

and

- (c) by substituting for paragraph (6C) the following:

“(6C) Where an AIFM maintains a client asset account pursuant to paragraph (6B), it shall comply with Parts 6 and 7 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017, as applicable, and subject to any conditions imposed by the Bank pursuant to Regulation 9.”.

Amendment of Regulation 22 of Principal Regulations

5. Regulation 22 of the Principal Regulations is amended –

- (a) in paragraph (3)(a)(iii)(I), by substituting “Section 9E of the Central Bank Act 1971 (No. 24 of 1971)” for “Regulation 6(1) of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992”,

- (b) by substituting for paragraph (3)(a)(iii)(II) the following:

“(II) is wholly owned by an institution in a third country, provided the liabilities of the company are guaranteed by the institution and the institution has a paid up share capital which is not less than the limits specified in section 9E of the Central Bank Act 1971 (No. 24 of 1971).”,

³ OJ No. L 87, 31.03.2017, p. 500

- (c) by inserting after paragraph (7) the following paragraph:
- “(7A) In the event of the insolvency of a depositary, or any third party, located in the Union –
- (a) to which custody of AIF assets has been delegated, or
- (b) which holds cash assets of an AIF,
- neither the assets of an AIF held in custody nor the cash assets held shall be available for distribution among, or redistribution among, or realisation for the benefit of, creditors of the depositary or third party concerned.”,
- and
- (d) by inserting after paragraph (16) the following paragraph:
- “(17) The assets of an Irish AIF shall –
- (a) belong exclusively to the AIF, and
- (b) be segregated from the assets of the depositary or its agents or both and shall not be used to discharge directly or indirectly liabilities or claims against any other undertaking or entity and shall not be available for any such purpose.”.

Amendment of Regulation 23 of Principal Regulations

6. Regulation 23 of the Principal Regulations is amended by inserting after paragraph (4A) the following paragraphs:

“(4B) Where the auditor of an AIF, which has been authorised by the Bank, has reason to believe that any fact or decision concerning an AIF is liable to—

- (a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of the AIF,
- (b) affect the continuous functioning of the AIF, or
- (c) lead to a refusal by the auditor to certify the accounts of the AIF or to the expression of qualifications by the auditor,

he or she shall report the matter to the Bank in writing without delay.

- (4C) (i) The auditor of an authorised AIF shall report to the Bank any facts or decisions referred to in paragraph (4B) of which the auditor becomes aware while conducting an audit of an undertaking which has close links resulting from a control relationship with the AIF concerned.
- (ii) For the purposes of this paragraph, “close links” includes, in addition to the definition in Regulation 5(1) of “close links”, an arrangement whereby 2 or more natural or legal persons are permanently linked to one and the same person by a control relationship.”.

Amendment of Regulation 25 of Principal Regulations

7. Regulation 25(2)(e) of the Principal Regulations is amended by substituting “18(1) and (2)” for “18(2)”.

Amendment of Regulation 34 of Principal Regulations

8. Regulation 34 of the Principal Regulations is amended by substituting for paragraphs (1) to (3) the following:

“(1) An authorised Irish AIFM may either directly or by the establishment of a branch –

- (a) manage an EU AIF established in another Member State, provided that the Irish AIFM is authorised to manage that type of AIF, and
- (b) provide in another Member State the services referred to in Regulation 7(4) for which it has been authorised.

(2) An authorised AIFM from another Member State may either directly or via the establishment of a branch –

- (a) manage an Irish AIF provided that the AIFM is authorised to manage that type of AIF, and
- (b) provide in the State the services referred to in Article 6(4) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011⁴ for which it has been authorised.

(3) An authorised Irish AIFM intending to provide the activities and services referred to in paragraph (1) for the first time shall provide the following information to the Bank:

- (a) the Member State in which it intends to manage such AIF directly, establish a branch and to provide the services referred to in Regulation 7(4);
- (b) a programme of operations stating in particular the services which it intends to perform and identifying the AIFs that it intends to manage.”.

⁴ OJ No. L 174, 01.07.2011, p. 1

Amendment of Regulation 46 of Principal Regulations

9. Regulation 46(8) of the Principal Regulation is amended by inserting after Regulation 46(8)(b) the following subparagraph:

- “(c) The Bank may require the suspension by the AIFM of the repurchase, or redemption, of units in the interest of the unit-holders or the public.”.



GIVEN under my Official Seal,
13 August 2019

PASCHAL DONOHOE,
Minister for Finance.

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