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Status: Answer Published

Additional Information

Level 1 Regulation

Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic

Delegation

Additional Legal Reference

Article 20(1)(c)(d)

Subject Matter

Permission of AIFMs to delegate portfolio or risk management to non-supervised undertakings established outside of the EU

Question

Are AIFMs allowed to delegate portfolio or risk management to non-supervised undertakings established outside of the EU?

ESMA Answer

06-01-2025

Original language

Answer from the European Commission:

No.

Under point (d) of Article 20(1) of Directive 2011/61/EU, the delegation of portfolio or risk management functions to an undertaking established outside the EU requires that cooperation between the national competent authorities of the AIFM's home Member State and the supervisory authority of the third-country undertaking is ensured. Article 78(3) of Commission Delegated Regulation (EU) No 231/2013 sets out the minimum conditions necessary to ensure this cooperation.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.