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7	In the following the term "service recipient/client" is being used in order to emphasize that the person the IAM corresponds with is not coercively and in all cases the "business partner" in the narrower sense. Instead, the person may also be the beneficial owner or another contact person (e.g. legal representative).  In general it is assumed that no specific regulation applies to the situation in which a "service recipient/client" travels to Switzerland, e.g. in the course of the business mode 1 (the IAM provides the services directly in Switzerland). Thus this catalogue solely describes the business modes 2 and 3 in detail.  1) Yes, this is correct, no other regulations apply: <input checked="" type="checkbox"/>  2) No, this is not correct, the following regulations apply: n/a											
8	Swiss based Independent Asset Managers, who intend to manage, market or advise collective investment schemes in the EU have to be mindful of provisions which apply due to the EU's AIFMD or national transposed law thereof. In Spain, AIFM Directive has been transposed into national law by means of Law 22/2014, of 12th September, on the private equity entities, other alternative investment funds and the management companies of alternative investment funds.											
9	Applicable Regulation											
10	What kind of services may qualify as Asset Management/ Wealth Management Services in Spain? Is there a general definition and what would be the applicable regulations that might affect such services? Who are the competent authorities?				<p><b>Definition of "Asset management / wealth management"</b></p> <p>Investment Services: Reception and transmission of client's orders in relation to one or more financial instruments; Execution of orders on client's account; Negotiation on own account; Discretionary and individualized portfolio management, according to the mandate provided by the clients; Placement of financial instruments; Investment advice: personalized recommendations to customers, either upon their request or at the indicative of the investment services companies with regard to one or several transactions regarding financial instruments; Assurance of either an issuance or placement of financial instruments; Management of multilateral negotiation systems.</p> <p>CIS Management: Regarding Alternative Investment Funds, it should be noted that only duly authorized Alternative Fund management Companies are entitled to manage Alternative Investment Funds, according with Law 22/2014, of 12 November, on the private equity entities, other alternative investment entities and the Management Companies of Alternative Investment Funds ("Law 22/2014").</p> <p>Furthermore, Management Companies of Collective Investment Schemes could also be authorized (upon request) to manage alternative investment funds as well as to provide the following services: (i) discretionary and individualized portfolio management, including those belonging to pension funds, according to the mandate provided by the investors or an individual legally authorized, as long as such portfolios comprise one or several of the instruments set out in article 2 of Royal Legislative Decree 4/2015, of October 23, approving the recasted Act of the Securities Market ("Securities Market Act") and (ii) administration, representation, management and distribution of private equity entities, in accordance with Law 22/2014.</p> <p><b>Applicable regulation:</b> On the one hand, the Spanish regime on UCITS is regulated in Law 35/2003 of 4 November, as amended ('Law 35/2003'), and its developing legislation, including the Royal Decree 1082/2012 of 13 July approving the regulation of the law on UCITS ('Royal Decree 1082/2012'). This Royal Decree was amended on October 10, 2015 by means of the Royal Decree 877/2015. Spain amended Law 35/2003 on 31 October 2011 following the adoption of Directive 2009/65/EC, simplifying the regime of cross-border marketing of shares and collective investment schemes harmonized according to the Directive, and enhancing the supervision of UCIs and their managing entities by the CNMV. Furthermore, regarding Investment Services are aplicable the following regulations, that has been aproved for ther adoption of for the adoption of Directive 2014/65/UE, of May 15 2014 (hereinafter, "MiFID II"). Royal Decree-Law 14/2018, of September 28, which modifies the recasted Act of the Securities Market, Royal Decree 1464/2018, of December 21, by which the recasted Act on the Securities Market is approved and Royal Decree-law 21/2017 , of 29 December, of urgent measures for the adaptation of the Spanish Law to the norm of the European Union in matter of securities market, and which partially modifies Royal Decree 217/2008, of 15 February, on the legal regime of investment services companies and other entities that provide investment services and also partially modifying Law 35/2003, Royal Decree 1082/2012, and other regulations concerning securities.</p>							
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12	continued						<p>On the other hand, Directive 2011/61/UE on Alternative Investment Fund Managers ("AIFM Directive") entered into force on July 22, 2011, being transposed into Spanish law on November 12, by means of Law 22/2014</p> <p>Furthermore, on February 5, 2016, Order ECC/2316/2015 regarding the disclosure and classification obligations on financial instruments entered into force. This order mainly includes information obligations and obligations related to the classification of financial products, particularly addressing the protection of investors, including standards set out by EU Directives, such as MIFID 2 or PRIIPS.</p> <p>Finally, regarding Investment Services, the applicable regime is found in Royal Legislative Decree 4/2015, of october 23, approving the recasted Act on the Securities Markets ("LMV"), as well as Royal Decree 217/2008, of February 15, on investment services firms and other entities providing investment services. However, it is important to note that, as stated above, currently the main legal documento transposing MiFID II in Spain is under public hearing (the "Draft Law on the Securities Market"), as well as a Draft of Royal Decree was published in August 4 2017, for public hearing, amending Royal Decree 217/2008 in order to complement the transposition of MiFID II ("Draft Regulation on Investment Services").</p> <p>Regarding the protection on personal data regulation, the regulation applicable is the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights, following the adoption of the Directive (UE) 2016/680 on Data Protection. Regulation 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and the free circulation of such data and repealing the Directive 95/46 / CE ("RGPD").</p> <p><b>Competent authorities:</b> CNMV ("Spanish Securities Markets Commission"). Bank of Spain may also have supervision faculties (particularly regarding investment services provided by credit entities).</p>					
13												
14												
							<p><b>General Principle</b></p> <p>In general terms, Spanish investors may freely invest in securities and financial instruments, independently of whether these products are registered or not within the CNMV. Notwithstanding the foregoing, it is important to mention that the transposition of AIFM Directive into local law has put an end to the "private placement regime" (formerly applicable to closed-ended investment funds under a former - and now revoked- exemption available in the LMV). As a result, an commercialization of, either financial products, or the render of investment services (as regulated in the Securities Market Act and Royal Decree 217/2008) in Spain, requires in any event prior registration of the corresponding product or service (or as the case may be, the registration of the entity before the corresponding supervisor authority).</p> <p>Consequently, it is important to differentiate which activities may fall under the commercialization concept, particularly differentiating the sub-concepts of "active commercialization" (always requiring prior registration) and "passive/reverse commercialization" (which may not be subject to prior registration).</p>					

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15	continued				<p>Taking this into account, nothing prevents an investor from, either requesting the provision of investment services, or the purchase of units or shares of a collective investment scheme.</p> <p>Without prejudice to the previous, there is a high risk of falling under the scope of "Active Commercialization" if retail clients are targeted, a high-volume is marketed or distributed, or if marketing of the investment services or financial products is performed. In such event, it should be noted that there is a potential risk of being sanctioned by CNMV, which is very proactive in the supervision of commercialization of financial instruments or investment services.</p> <p>As a conclusion, in case certain products and/or services are actively commercialized, promoted or marketed in Spain, prior registration (authorization) will be necessary.</p> <p>Finally it is also important to consider that:</p> <p>(i) In accordance with Law 22/2014 of 12th September on the private equity entities, other alternative investment funds and management companies of alternative investment funds, it is defined the concept of commercialization of AIF as the attraction, through advertising activity and on the account and on behalf of the AIF, of clients putting funds into the AIF.</p> <p><b>General remark:</b></p> <p>It is relevant to bear in mind that article 28 ter of the Securities Market Act, states that "When a third country investment services entity renders investment services or activities to a client located in Spain at own exclusive initiative of the client, it would be understood that such activity is not rendered in Spanish territory [...]. An initiative by such clients shall not entitle the third-country firm to market otherwise than through the branch, where one is required in accordance with national law, new categories of investment products or investment services to that client."</p> <p>Accordingly, reverse solicitation/passive services approach outside the Spanish territory should be allowed under a limited perspective, particularly considering that there should not be any prior direct or indirect contact with the client, and that it will be highly advisable to document the service request. Nevertheless, it must be taken into account that, as mentioned in the General Overview, prior registration of the product and/or (authorization) of the entity may be required before the CNMV, if the activities rendered in Spain may fall within the concept of active commercialization.</p>							
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17	Cooperation Agreements											
18	Formalized cooperation agreements between the Swiss IAM (without being licensed in Spain) with a Spanish bank / finder / etc.				General Comment		As a general principle, there should be no problem in entering into cooperation agreements between a Swiss IAM and a Spanish bank/finder as long as such an agreement does not govern activities that may fall under the abovementioned concept of "active commercialization".					
19					The IAM travels to the Spain		See General Comment.					
20					Crossborder supply							
21	Appearance in public in Spain											
22	Services and products advertising via e.g. web, mass mailing, cold calling, print media, sponsoring, personal visits, organization of events (promotion and social)				General Comment		<p>Advertising activities according to the Order EHA 1717/2010 are considered as: Any way of communication focused to the public in general, in order to promote, directly or through third parties, the hiring of a particular service or investment activity, or the subscription or acquisition of financial instruments included in the Order, as well as the communications which any party concerned makes during a public bid of its securities.</p> <p>It is also considered advertising activities: any communications designed to attract public attention about the activities of management or commercialization of collective investment institutions, venture capital funds or securitization funds, although communication does not refer individually to a particular institution. Commercialization of financial products could be summarized as being the offering of the product through any way of communication (including advertising), aimed at promoting those products.</p> <p>Law 22/2007, of July 11, on the distance Marketing of Financial Services for Consumers also refers to the broadcasting of advertising by Collective Investment Institutions ("Law 22/2007").</p> <p>Finally it is also important to consider that: (i) In accordance with Law 22/2014, of November 12, on private equity entities, other closed investment schemes and Management Companies of closed investment schemes, commercialization of AIF is limited to professional investors, and is defined as the attraction by means of advertising activities on the account and behalf of the AIF, of clients in order to invest in the AIF cash, assets or goods. Furthermore, it shall be understood as advertising activities, any direct or indirect communication addressed to potential investors to promote, directly or through third parties acting on the account of the AIF or an AIFM, the subscription of units or shares (including visits, tailored letters, phone calls, emails or other telematic medium within the scope of a advertisement campaign); (ii) The advertisement campaign shall always be understood within the Spanish territory if addressed to investors residing in Spain. Related to the email or other telematic medium, the offer will be addressed to investors residing in Spain if the AIF or the AIFM or third party acting on behalf of the previous, suggests the purchase or subscription of the shares or units or provides to investors resident in Spain the information required to review the characteristics of the offer or the documents required to subscribe. (iii) Accordingly, to carry out advertising activities of asset management/wealth management services related to AIFs to investors resident in Spain, prior registration and authorization is required, since it falls within the concept of "Active commercialization".</p> <p>Finally, Order ECC 2316/2015, of November 4, on the information and classification obligations of financial products ("Order ECC 2316/2015"), may be of application. Depending of the financial instrument to be marketed, the advertisement campaign may be required also to observe the obligations set out in Order ECC 2316/2015 (i.e. inclusion of risk indicator, complexity and liquidity alerts, etc.). The impact of Order ECC 2316/2015 should be also understood as related within the "active commercialization" and "passive commercialization" concepts, and therefore, should be specifically addressed on a case by case basis.</p>					
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35	Prospecting												
36	Establishing contact with prospect												
37	Pro-active "one to one" prospect contact for promotion of products and services (e.g. cold calling, mail, post mail, visit in Spain)				General Comment		According to the Securities Market Act and article 2.1 of Order EHA/1717/2010, the promotion of a service or investment activity to an investor resident in Spain, such as pro-active "one-to-one" prospect contacts for the promotion of financial products and/or investment services may be considered as an advertising/marketing activity, therefore within the scope of "Active Commercialization" .						
38					The IAM travels to Spain		Forbidden unless the IAM has the relevant authorization and is registered before the CNMV.						
39					Crossborder supply								
40	Handing out business card (pro-active, first mover)				General Comment		Handing out a business card is, neither specifically regulated under the laws of Spain, nor the CNMV has issued a formal interpretation on this regard. Nevertheless, according with the general comments stated previously, under a safe harbor perspective, we understand that handing out a business card may be understood as within the scope of "Active Commercialization", as it is a pro-active move not initiated by an investor resident in Spain regarding an specific financial product or investment service.						
41					The IAM travels to Spain		Forbidden unless the IAM has the relevant authorization and is registered before the CNMV.						
42					Crossborder supply								
43	Handing out personal card (pro-active, first mover)				General Comment		Handing out a personal card is, neither specifically regulated under the laws of Spain, nor the CNMV has issued a formal interpretation on this regard. Nevertheless, according with the general comments stated previously, handing out a personal card should not fall within the concept of "Active Commercialization", if the IAM proceeds strictly within a personal context. On this regard, it should be noted that, if done in a recurrent manner, CNMV may potentially consider this act as an advertising activity.						
44					The IAM travels to Spain		ö						
45					Crossborder supply								
46	Reverse prospect contact (prospect contacts				General Comment		Besides the cross-border issues regarding the provision of banking and investment services, please note that Spanish legislation (in particular, Law 22/2007) establishes additional conditions and requirements with regard to the remote provision of financial services provided by entities duly authorized in Spain: (i) relevant information regarding the services provider; (ii) characteristics of the financial product; (iii) nature of the remote agreement to be formalized; (iv) complaint and indemnity possibilities.						

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	Reverse prospect contact (prospect contacts IAM out of his own initiative) e.g. visit in Switzerland, mail or call to IAM, invites IAM to visit him with solicitation of products and services				The IAM travels to Spain		Although it is not specifically regulated in the Spanish legislation, reverse prospect contacts may be forbidden if the IAM travels to Spain, unless the IAM has the relevant authorization and it is registered before the CNMV. It would be difficult to prove that the initiative has emerged from the prospect in case an offering of financial products and/or investment services is to be carried out.						
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48					Crossborder supply		Although it is not specifically regulated in the Spanish legislation, reverse prospect contacts may be permitted if it is at the prospect's initiative and it does not fall within the concept of "Active Commercialization".					
49	Agreements with local introducers/finders aiming at the referral of prospects domiciled in Spain to the Swiss Asset Manager/Wealth Manager (remunerated by Swiss Asset Manager /Wealth Manager).				General Comment		Per article 27 bis of Royal Decree 1082/2012 , investment services companies duly authorized and registered before the CNMV can appoint agents adequately empowered to act in the name of and on behalf of the company for the promotion and commercialization of investment services and ancillary services.					
50					The IAM travels to Spain		Permitted if the company is authorized and registered before the CNMV, and the agent is registered before the CNMV.					
51					Crossborder supply							
52	Swiss Asset Manager/Wealth Manager is introduced to prospects via existing clients, friends, colleagues etc. (not via a business relationship based on a contractual agreement, not remunerated)				General Comment		Introduction of prospects via existing clients, friends or colleagues is, neither specifically regulated under the laws of Spain, nor the CNMV has issued a formal interpretation on this regard.					
53					The IAM travels to Spain		There is no explicit rule in this regard. The relationship manager must be able to prove that the reference was made by an existing client. Otherwise it could be considered as a proactive approach and therefore potentially falling within the scope of "Active Commercialization".					
54					Crossborder supply		The provision of such service on a cross-border basis may be allowed as long as the Company is in Switzerland, and no financial products or investments services are offered into Spain.					
55	Handing out <b>business</b> card <b><u>on prospects request</u></b>				General Comment		Handing out a business card on prospects request is, neither specifically regulated under the laws of Spain, nor the CNMV has issued a formal interpretation on this regard.					
56					The IAM travels to Spain		We understand that this practice may fall within the concept of "Active Commercialization" as there is a proactive move, and there may be forbidden on the Spanish territory.					
57					Crossborder supply		The provision of such service on a cross-border basis may be allowed as long as the Company is in Switzerland, and no financial products or investments services are offered into Spain.					



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58	Handing out <b>personal</b> card on <b>prospects request</b>				General Comment		Handing out a personal card on prospect request is, neither specifically regulated under the laws of Spain, nor the CNMV has issued a formal interpretation on this regard. Nevertheless, according with the general comments stated previously, handing out a personal card should not fall within the concept of "Active Commercialization", if the IAM proceeds strictly within a personal context. On this regard, it should be noted that, if done in a recurrent manner, CNMV may potentially consider this act as an advertising activity.					
59					The IAM travels to Spain		Handing out of a personal card on prospect request may not be prohibited. From a safe harbor perspective, it should be noted that, if done in a recurrent manner, CNMV may potentially consider that behind this act there is a marketing activity. For this purpose, IAM should take into consideration the frequency/number of prospects contact.					
60					Crossborder supply							
61	Negotiation of contract conditions / content				General Comment		According to the Securities Market Act and Royal Decree 1082/2012 if a foreign investment firm (or credit entity providing investment services) not authorized in other EU Member State intends to negotiate contract conditions without a branch in Spain (or providing services under the freedom to provide services regime), it needs to notify the CNMV in advance, specifying its activities in order to obtain the relevant authorization.					
62					The IAM travels to Spain		It is not permitted unless there is a relevant authorization from the CNMV.					
63					Crossborder supply		Not permitted unless on prospect's request and outside the territory of Spain.					
64	Conclusion of contract (providing prospect with contract forms and procuring prospect signature)				General Comment		According to the Securities Market Act and Royal Decree 1082/2012 when a foreign investment firm (or credit entity providing investment services) not authorized in other EU Member State intends to negotiate contract conditions without a branch in Spain (or providing services under the freedom to provide services regime), it needs to notify the CNMV in advance, specifying its activities in order to obtain the relevant authorization.					
65					The IAM travels to Spain		It is not permitted unless there is a relevant authorization from the CNMV.					
66					Crossborder supply		Not permitted unless on prospect's request and outside the territory of Spain.					



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81	Pro-active client contact due to urgent reasons which have an impact on client's assets (e.g. margin calls, delisting of stocks, stock splits)				General Comment	Pro-active client contact due to urgent reasons which have an impact on client's assets (e.g. margin calls, delisting of stocks, stock splits) could be interpreted as "investment advice" and would only be permitted if the IAM has the relevant authorization and is registered before the CNMV. However, a contact due to urgent reasons and to the protection of the client may be admissible. However, neither the Spanish laws explicitly regulates this scenario, nor there is a criteria issued by the CNMV on this regard.						
82					The IAM travels to Spain	See General Comment.						
83					Crossborder supply	There is neither an explicit regulation nor criteria issued by the CNMV regarding this service on a cross-border basis. Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.						
84	Providing general information (e.g. information on economic and financial trends, financial research) on clients request (reverse client contact)				General Comment	Order EHA/1717/2010 (article 2.3. c) does not consider an advertising activity the periodical publication by analyst about financial services or instruments, including analysis report and investment recommendations.						
85					The IAM travels to Spain	This situation may easily fall within the category of "active marketing" in Spain. Therefore, a case by case analysis should be performed, in order to assess the specific content of the kind of information to be provided to the client (should be general in nature, and specific information related to a financial product should be avoided).						
86					Crossborder supply							
87	Providing on clients request information on strategic asset allocation. However, this information is general and not model portfolio specific.				General Comment	Article 140.g), second paragraph of the Securities Market Act does not consider general (not personalized) assessment as an investment services. These recommendations may be considered as commercial communications.						
88					The IAM travels to Spain	Not permitted without the relevant authorization and registry before the CNMV.						
89					Crossborder supply	There is neither an explicit regulation nor criteria issued by the CNMV regarding this service on a cross-border basis. Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.						
90	Providing marketing material on model portfolio and other AM services and products on clients request (reverse client contact)				General Comment	Order EHA/1717/2010 considers as an advertising activity any way of communication aimed to the public in general, in order to promote, directly or by means of third parties, the hiring of a particular service or investment activity.						
91					The IAM travels to Spain	Not permitted without the relevant authorization and registry before the CNMV.						
92					Crossborder supply	There is neither an explicit regulation, nor criteria issued by the CNMV regarding this service on a cross-border basis. Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.						



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93	Investment Advisory to existing service recipient												
94	Assessing and registering the client's suitability profile				General Comment		Assessing and registering the client's suitability profile may be understand as included within the concept of providing investment advice (preliminary investment advice). Therefore, according to article 140. g) of the Securities Market Act, assessing and registering the client's suitability profile may be considered as an investment service which may only be rendered by investment firms or entities authorized to provide investment services in Spain.						
95					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.						
96					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.						
97	Investment advice related to the <u>choice of depository banks</u> in Switzerland, in Spain and/or domiciled in a third country				General Comment		Under the current regulation, investment advice related to the choice of depository banks is not explicitly regulated. However, it should be considered included within the concept of providing investment advice as regulated in article 140. g) of the Securities Market Act: "advising regarding investments, being understood as providing personalized recommendations to a client". Therefore, according to the Securities Market Act investment advice related to the choice of depository banks, may be considered as an investment service, which may only be rendered by investment firms or entities authorized to provide investment services in Spain.						
98					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.						
99					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.						
100	Investment advice with reference to specific financial products (in the field of direct investments and/or collective investment schemes)				General Comment		According to the Securities Market Act, providing investment advice related to specific financial products is included within the concept of investment advice: "advising regarding investments, this being understood providing personalized recommendations to a client". Therefore, investment advice related to specific financial products, may be considered as an investment service, which may only be rendered by investment firms or entities authorized to provide investment services in Spain.						
101					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.						
102					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.						
103	Investment advice limited to investment strategies and asset allocation (without reference to specific financial products)				General Comment		According to the Securities Market Act, providing investment advice limited to investment strategies and asset allocation is included within the concept of investment advice: "advising regarding investments, this being understood as providing personalized recommendations to a client". Therefore, investment advice limited to investment strategies and asset allocation, may be considered as an investment service, which may only be rendered by investment firms or entities authorized to provide investment services in Spain.						
104					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.						
105					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.						



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106	Investment advice related to legal structuring of assets / wealth (company, trust, foundation, and insurance policy structures) - <u>including</u> taxation and inheritance related advice				General Comment		Under the current regulation, investment advice related to legal structuring of assets / wealth - including taxation and inheritance related advice- is not explicitly regulated. However, it should be considered included within the concept of providing investment advice regulated in the Securities Market Act: "advising regarding investments, being understood as providing personalized recommendations to a client". Therefore, investment advice related to legal structuring of assets / wealth - including taxation and inheritance related advice-, may be considered as an investment service, which may only be rendered by investment firms or entities authorized to provide investment services in Spain.					
107					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.					
108					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.					
109	Investment advice related to legal structuring of assets / wealth (company, trust, foundation, and insurance policy structures) - <u>excluding</u> taxation and inheritance related advice				General Comment		Under the current regulation, investment advice related to legal structuring of assets / wealth - excluding taxation and inheritance related advice- is not explicitly regulated. However, it should be considered included within the concept of providing investment advice as regulated in article 140 of the Securities Market Act: advising regarding investments, being understood as providing personalized recommendations to a client. Therefore,investment advice related to legal structuring of assets / wealth - excluding taxation and inheritance related advice-, may be considered as an investment service, which may only be rendered by investment firms or entities authorized to provide investment services in Spain.					
110					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.					
111					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.					
112	Portfolio management services											
113	Discretionary portfolio management including "direct investments" (e.g. shares, bonds) and/or investments in collective investment schemes deposited with a bank in Switzerland and/or in Spain and/or in a third country.  <u>Please note:</u> the licensing requirement referred to in the General Comment refers to rendering portfolio management services in or into Spain on a cross-border basis. However, in case the activities regarding the portfolio management are rendered only outside of Spain (e.g. only in Switzerland) no license is required.				General Comment		According to article 140 of the Securities Market Act, discretionary portfolio management is an investment service: "discretionary, individualized management of Investment Portfolios pursuant to the mandate granted by the clients". Therefore, discretionary portfolio management, is an investment service, which may only be rendered by investment firms or entities authorized to provide investment services in Spain. Any activities related to an investment mandate (e.g. contacts, discussions for conditions, rendering advice) are forbidden if taking place in Spain unless granted with the relevant authorization from the CNMV.  With regard to activities concerning the deposit bank, local requirements of the banks domicile may apply and, additionally, a written agreement shall be entered into between the manager and the deposit bank governing the flow of necessary information so that the deposit bank can deploy the obligations and functions as provided by the Spanish legislation (if the case may be).					
114					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.					
115					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.					

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3	Services				Service Approach		Comments / applicable regulation				IAM Risk Rating	
4												
116	Providing the client with written client's reports (e.g. performance report, account statements) based on own client reporting and/or 3rd party reports (e.g. bank reports).				General Comment		According to article 140 of the Securities Market, assessing may be understand as included within the concept of providing investment advice. Particularly, providing the client with written client's reports should be understood according to article 5.2. e) of the Draft Regulation on Investment Services as an ancillary service of an investment service (providing investment advice): "the production of investment research, and financial analysis related to operations about financial instruments".  Therefore providing the client with written client's reports based on own client reporting and/or 3rd party reports, should be considered as an ancillary service of an investment service, which therefore, may only be rendered by investment firms or entities authorized to provide investment services in Spain.					
117					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.					
118					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.					
119	Managing clients assets as a corporate director or foundation council				General Comment		Under the current regulation, managing clients assets as a corporate director or foundation council is not explicitly regulated. However, according to article 140 of the Securities Market Act, it should be considered included within the concept of discretionary portfolio management: "discretionary, individualized management of investment portfolios pursuant to a mandate granted by the clients".  Therefore, according to article 140 of the Securities Market Act, discretionary portfolio management, is an investment service, which may only be rendered by investment firms or entities authorized to provide investment services in Spain.  Any activities related to an investment mandate (e.g. contacts, discussions for conditions, rendering advice) are forbidden if taking place in Spain unless granted with the relevant authorization from the CNMV.					
120					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.					
121					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.					
122	Holding and managing as a Trustee assets deposited with a bank in Switzerland and/or in Spain, and/or in a third country				General Comment		There are no specific regulations regarding trusts in Spain. There is neither an explicit regulation nor criteria issued by the CNMV regarding this service. Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.					
123					The IAM travels to Spain		See general comment.					
124					Crossborder supply							
125	Orders in the name of the client / service recipient											
126	Accepting and on warding of orders to the depository bank (or a broker/dealer) in the name of client <u>without</u> previous investment advice (execution only)				General Comment		The Securities Market Act forbids to carry out execution without the relevant authorization. Although it is not specifically regulated, it is also forbidden to accept and onward orders to the depository bank in the name of the client without previous investment advice.					
127					The IAM travels to Spain		Accepting and on warding of orders to the depository bank (or a broker/dealer) in the name of client without previous investment advice (execution only) is forbidden, unless authorized and registered before the CNMV.					
128					Crossborder supply		Permitted only upon client's request. Potentially may fall within the concept of "reverse solicitation".					

	A	B	C	D	E	F	G	H	I	J	K	L	
1	KPMG/ Country Information				Spain								
2													
3	Services				Service Approach		Comments / applicable regulation					IAM Risk Rating	
4													
129	Accepting and on warding of orders to the depository bank (or a broker/dealer) in the name of client <u>with</u> previous investment advice				General Comment		The Securities Market Act forbids to carry out acceptance and on warding of orders to the depository bank without the relevant authorization. On this regard, accepting and on warding orders to the depository bank (or a broker/dealer) in name of the client with previous advice should be understood also forbidden.						
130					The IAM travels to Spain		Accepting and on warding of orders to the depository bank (or a broker/dealer) in the name of client with previous investment advice should not be permitted, unless authorized and registered before the CNMV.						
131					Crossborder supply		Permitted only upon client's request for both the investment advice and the order. Potentially may fall within the concept of "reverse solicitation".						
132	Execution of orders on the basis of a power of attorney (e.g. E-Banking)				General Comment		Under the current regulation, execution of orders on the basis of a power of attorney is not explicitly regulated. However, it should be considered included within the concept of execution as regulated in article 140 of the Securities Market Act: "execution of client's orders related to financial instruments". Therefore, execution of orders on the basis of a power of attorney, may be considered as an investment service, which may only be rendered by investment firms or entities authorized to provide investment services in Spain.						
133					The IAM travels to Spain		Execution of orders on the basis of a power of attorney should not be permitted without the authorization and registry before the CNMV.						
134					Crossborder supply		Permitted only upon client's request. Depending on the content of the power of attorney, it may be difficult to proof that this does not fall within the category of discretionary portfolio management. Therefore, a case by case analysis should be made .						
135	Values (e.g. cash, securities, gold)												
136	Safe-keeping of values				General Comment		According to article141 of the Securities Market Act, the safe-keeping and administration of values is considered as an ancillary service of an investment service. Therefore, according the safe-keeping and administration of values may only be rendered by investment firms or entities authorized to provide investment services in Spain.						
137					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.						
138					Crossborder supply		Provided that it is an existing service recipient, it may be allowed as long as the service was requested by an existing client and is provided outside the Spanish territory.						
139	Receipt and transfer of values				General Comment		The Securities Market Act considers the receipt and transfer of values as one of the main activities from an investment services firm in its article 140 and therefore the IAM needs the authorization of the CNMV to perform this activity.						
140					The IAM travels to Spain		Not permitted without the relevant authorization and registry before the CNMV.						
141					Crossborder supply		Permitted only upon client's request.						



	A	B	C	D	E	F	G	H	I	J	K	L
1				KPMG/ Country Information		Spain						
2												
3				Services	Service Approach	Comments / applicable regulation					IAM Risk Rating	
4												
142	Other services											
143	Contingency Planning ("Vorsorgeplanung")			General Comment	If it is exclusively legal and tax advice, it is not an investment service and may be permitted. Should be considered that in Spain being a legal advisor is specifically regulated. However, the CNMV may verify if insurance products advice or investment products advice has been "camouflaged" through a legal or tax information/advice, which would not be permitted. In this case IAM should obtain authorization of the relevant authority (" <i>Dirección General de Seguros y Fondos de Pensiones</i> " for insurance services).							
144				The IAM travels to Spain	See General Comment.							
145				Crossborder supply								
146	Succession Planning ("Nachlassplanung")			General Comment	If it is exclusively legal and tax advice, it is not an investment service and may be permitted. Should be considered that in Spain being a legal advisor is specifically regulated. However, the CNMV may verify if insurance products advice or investment products advice has been "camouflaged" through a legal or tax information/advice, which would not be permitted. In this case IAM should obtain authorization of the relevant authority (" <i>Dirección General de Seguros y Fondos de Pensiones</i> " for insurance services).							
147				The IAM travels to Spain	See General Comment.							
148				Crossborder supply								
149	Other family office services (e.g. legal and tax advice)			General Comment	If it is exclusively legal and tax advice, it is not an investment service and may be permitted. Should be considered that in Spain being a legal advisor is specifically regulated. However, the CNMV may verify if insurance products advice or investment products advice has been "camouflaged" through a legal or tax information/advice, which would not be permitted. In this case IAM should obtain authorization of the relevant authority (" <i>Dirección General de Seguros y Fondos de Pensiones</i> " for insurance services).							
150				The IAM travels to Spain	We refer to the general comment.							
151				Crossborder supply								



	A	B	C	D	E	F	G	H	I	J	K	L
1	KPMG/ Country Information				Spain							
2												
3	Services				Service Approach		Comments / applicable regulation				IAM Risk Rating	
4												
152	Appendix											
	<p><b>The following modifications have been made for Spain</b></p> <p>No country specific modifications as of 2020.</p> <p><b>General Principles</b></p> <p>Swiss based Independent Asset Managers, who intend to manage, market or advise collective investment schemes in the EU have to be mindful of provisions which apply due to the EU's AIFMD or national transposed law thereof. In Spain, AIFMD has been transposed into local law by means of Law 22/2014, of November 12, on private equity entities, other closed investment schemes and Management Companies of closed investment schemes.</p> <p>As an additional consideration, depending the financial instrument to be advertised, the advertisement campaign may be required to observe the obligations set out in Order ECC 2316/2015 (i.e. inclusion of risk indicator and complexity and liquidity alert, etc.), for further precision this should be analyzed on a case by case basis.</p> <p><b>Applicable Regulations</b></p> <p><b><u>Definition of "Asset management / wealth management"</u></b></p>											
153	<p>CIS Management: At this regards, Management Companies of Collective Investment Schemes could also be authorized (upon request) to manage Alternative Investment Funds as well as to provide the following services: (i) discretionary and individualized portfolio management, including those belonging to pension funds, according to the mandate provided by the investors or an individual legally authorized, as long as such portfolios comprise one or several of the instruments set out in article 2 of Spanish Stocks Market Law; and (ii) administration, representation, management and distribution of private equity entities, in accordance with Law 22/2014, of November 12, on private equity entities, other closed investment schemes and Management Companies of closed investment schemes.</p> <p><b>General Principle</b></p> <p>Spanish investors may freely invest in securities and financial instruments, independently of whether these products are registered or not within the CNMV. Notwithstanding the foregoing, it is important to mention that the transposition of AIFM Directive into local law has put an end to the "private placement regime" (formerly applicable to closed-ended investment funds under an exemption regime available in Article 30bis of the Stock Markets Act).</p>											
154	<p><b>Appearance in public in Spain</b></p> <p><b>General Comment:</b></p> <p>Finally it is also important to consider that:</p> <p>(i) In accordance with Law 22/2014 of 12th September on the private equity entities, other alternative investment funds and management companies of alternative investment funds, it is defined the concept of commercialization of AIF as the attraction, through advertising activity and on the account and on behalf of the AIF, of clients putting funds into the AIF.</p>											
155												
156	IMPORTANT NOTICE: DISCLAIMER											
157	<p>The information presented in this document relates to the provision of cross border services and is provided in accordance with the terms of an agreement between KPMG AG and SAAM. It is of a general nature only and not intended to provide a complete or conclusive overview of all relevant aspects, nor does it address the specific circumstances of any particular individual or legal entity. The information should not be used or passed on without appropriate professional advice and a thorough examination of the particular situation. KPMG AG is not under any obligation to update the information and accepts no liability in respect of the information (unless otherwise agreed in writing towards anyone except SAAM).</p>											