

International Funds Net
Country updates

June 2022



Europe

Albania



Albanian Financial Supervisory Authority publishes consultation paper on a new regulation for recognition of collective investment undertakings

On 24 May 2022, the Albanian Financial Supervisory Authority (AFSA) published for public consultation the "Regulation on the Recognition of Collective Investment Undertakings with Public Offer Licensed in an EU Member State and Management Company or Branch of the Management Company of Collective Investment Undertaking Licensed in an EU Member State for Trading and Marketing Collective Investment Undertakings with Public Offer in the Republic of Albania", with the purpose of stipulating the procedure, rules and requirements for their recognition.

According to the regulation:

- no management company and no branch of a company licensed in an EU member state for the administration of collective investment undertakings with public offer may conduct its activity in Albania unless recognized by the Albanian Authority;
- a collective investment undertaking with a public offer licensed in an EU member state and administered by a company or a branch licensed in an EU member state, may be marketed only after its recognition by AFSA; and
- the prospectus provided to investors in Albania shall be in Albanian and accompanied with an appendix providing information on marketing strategy and on the sale of collective investment undertakings, with public offer licensed in an EU member state, in Albania. It will also include a KIID.

Information kindly provided by our relationship firm in Albania, Karanovic & Partners.

Belgium



Belgian regulator publishes its new approach to combat Closet Indexing

The Financial Services and Markets Authority

(FSMA) announced on 23 June 2022 that it has developed a methodology to detect possible Closet Indexers on the Belgian public investment fund market, with a view to preventing that such practice would be adopted in Belgium. Closet Indexing refers to the practice of promoting an investment fund as actively managed, whereas in fact the fund closely tracks a benchmark index. This practice is disadvantageous to investors, since, on the one hand, they do not receive the active management described in the fund's investment policy, while on the other hand, they pay higher fees than those charged for passive management. Therefore they are receiving passive management for the price of active management.

Previous analyses conducted at European level by ESMA with a view to detecting potential Closet Indexers focused only on share funds (37% of the market). The importance of mixed funds (42% of the market), which invest in both shares and bonds and, to a lesser extent, in bond funds (6% of the market), on the Belgian public investment fund market prompted the FSMA to expand the scope of analysis. This new methodology can be applied to all funds, whatever their investment policy (shares, bonds or mixed).

The methodology compares the performance of funds with the performance of combinations of indices. Working with combinations of indices makes it possible to expand the scope, since many funds, and especially mixed funds, use multiple indices (e.g. an index for the share component of the portfolio and another index for the bond component).

Information kindly provided by our relationship firm in Belgium, Janson.

Bosnia & Herzegovina



National Assembly of the Republic of Srpska sends the Draft Law on Amendments to the Law on Investment Funds for expert discussion

The Draft Law is a significant addition to the existing Law on Investment Funds in the Republic of Srpska, prescribing the possibility of establishing alternative investment funds, the manner of their establishment, operation, business restrictions, reporting, as well as additional misdemeanour provisions.

Information kindly provided by our relationship firm in Bosnia & Herzegovina, Karanovic & Partners.

Czech Republic



Cross-Border Distribution Directive transposed into Czech Law

The Czech Parliament has passed Act No. 96/2022 Coll. with the effective date of 29 May 2022 which, among other laws, transposed into Czech law the Directive (EU) 2019/1160 on cross-border distribution.

The key changes introduced are as follows:

- harmonisation and clarification of unclear procedures of notification of changes in the marketing of both UCITS and AIFs;
- removing the physical presence requirement for UCITS marketing in the Czech Republic;
- introducing concept of pre-marketing AIFs to professional investors.

Information kindly provided by our Eversheds Sutherland Czech Republic office.

Estonia



Amendments to the Investment Funds Act concerning cross-border distribution

The Investment Funds Act was amended to harmonise the rules concerning cross-border distribution of UCITS and AIFs targeted to retail investors. The amendments transposed Directives (EU) 2021/1269 (requirements for developing investment products), 2021/1270 (requiring UCITS fund managers to take into account financial risks), and 2021/2261 (requirement for fund managers to prepare an overview document on the main characteristics of the UCITS). The main changes are as follows:

- option for the pre-marketing of investment funds is added;
- fund manager no longer needs to have a permanent seat/place of business or local representative for cross-border distribution;
- the Financial Supervision Authority may refuse to register a small fund manager if their seat or place of business is not in Estonia or the fund manager does not actually manage

any funds.

Information kindly provided by our Eversheds Sutherland Estonia office.

Liechtenstein



Liechtenstein implements EEA Financial Services Sustainability Implementation Act

On 1 May 2022 the EEA Financial Services Sustainability Implementation Act (EWR-FNDG) entered into force in Liechtenstein.

As the Regulation (EU) 2019/2088 on sustainability-related disclosure requirements in the financial services sector (so-called SFDR) and the Regulation (EU) 2020/852 establishing a framework to facilitate sustainable investment and respective implementing acts (so-called Taxonomy Regulation) are still waiting to be incorporated into the EEA Agreement, the act serves as a preliminary implementation of the (then directly applicable) legal acts until this process is completed.

Liechtenstein fund management companies are therefore required to comply with accordant sustainability disclosure requirements on a product and firm level starting 1 May 2022.

Information kindly provided by our relationship firm in Liechtenstein, Gasser Partners.

Luxembourg



Publication of the CSSF working paper "An Assessment of Investment Funds' Liquidity Management Tools"

The CSSF presents in this joint work, with two co-authors from the BIS, an empirical assessment of the effectiveness of liquidity management tools used by Luxembourg-domiciled open-ended funds (UCITS) during the COVID-19 crisis and the years before.

The analysis focuses on the following tools:

- the funds' portfolio management, including cash and other liquid assets;
- the use of swing pricing; and
- the temporary suspension of redemptions.

New double tax treaty signed between Luxembourg and the United Kingdom

On 7 June 2022, the governments of Luxembourg and the United Kingdom signed a new double tax treaty replacing the treaty of 1967, as amended. The New Treaty contains significant amendments, not all of which are in line with the 2017 OECD Model Tax Convention.

The most notable amendments concern:

- Article 10 on dividends, which now includes an exemption from withholding tax in most cases;
- Article 13 on capital gains, which now includes the so-called “land-rich provision”; and
- the New Treaty’s application to Luxembourg collective investment vehicles under certain conditions (Article 4 and the Protocol to the New Treaty).

Information kindly provided by our Eversheds Sutherland Luxembourg and UK teams.

Malta



Malta Financial Services Authority clarifies the concept of reverse solicitation

On 5 April 2022, the Malta Financial Services Authority (MFSA) issued a circular to provide a clear definition of the concept of reverse solicitation in line with the MiFID II Package.

The MFSA remarked that the concept of reverse solicitation should not be given a broad interpretation, and that the exemption mentioned in Article 42 of the MiFID II Package is to be applied only in limited cases, including cases of third country firms targeting EU nationals. The MFSA explained that this exemption is only applicable when a retail or a professional client that is located in the EU commences, at its own exclusive initiative, the provision of an investment service or activity by a third-country firm. The exclusive initiative of the client should be assessed on a case-by-case basis for each investment service or activity provided, and if it results that such provision of an investment service or activity has been triggered at the sole initiative of the EU national, then the third country firm would not be subject to the requirements under Article 39 of the MiFID II Package.

Investment firms should refer to the guidance provided by ESMA in its Questions and Answers booklet and to ESMA’s Public Statement on reverse solicitation which provide further guidance for an Investment Firm to be able to rely on the reverse solicitation rule.

MFSA issues new regulations on PRIIPs

On 17 June 2022, the MFSA Act (Chapter 330) Malta Financial Services Authority Act (Packaged Retail and Insurance-Based Investment Products (PRIIPs) Regulations (PRIIPs Regulations) entered into force. The purpose of these PRIIPs Regulations is to implement the relevant provisions of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on PRIIPs.

The PRIIPs Regulations apply to PRIIP manufacturers and persons advising on, or selling, PRIIPs. The MFSA shall be the designated competent authority in Malta to supervise the requirements that the PRIIPs Regulation places on PRIIP manufacturers and the persons advising on or selling, the PRIIP.

MFSA issues new regulations on Consumer Protections

The MFSA Act (Chapter 330) Malta Financial Services Authority Act (Consumer Protection Cooperation) Regulations (the Consumer Protection Regulations) also entered into force on 17 June 2022. The purpose of these Consumer Protections Regulations is to implement article 3(1), 3(5), 5 (in part), and 10 (in part) of Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

The Consumer Protections Regulations apply to intra-Union infringements, widespread infringements, and widespread infringements with a Union dimension, even if those infringements have ceased before enforcement starts or is completed.

Transposition of the Commission Delegated Directive (EU) 2021/1270 amending Directive 2010/43/EU as regards the Sustainability Risks and Sustainability Factors to be taken into account for UCITS

The introduction of the above Delegated Directive led to various changes in the MFSA’s Investment Services Rules for Investment Service Providers, and the MFSA’s Investment Services Rules for Retail Collective

Investment Schemes.

Clients must ensure to implement the below changes:

- update to any corporate structure chart/ remit of functions with respect to sustainability risks;
- update to the company's procedures manuals to integrate sustainability risk assessment in terms of in the investment management and risk management process;
- upskilling of key personnel on sustainability risks;
- update to the Conflicts of Interest Policy; and
- update to the Risk Management Policy.

This Delegated Directive will become applicable as from the 1st August 2022.

Transposition of the Commission Delegated Regulation (EU) 2021/1255 amending the AIFMR as regards the Sustainability Risks and Sustainability Factors to be taken into account by AIFMs

The introduction of the ESG AIFM Delegated Regulation led to various changes in the MFSA's Investment Services Rules for Investment Service Providers, and the MFSA's Investment Services Rules for Alternative Investment Funds. This Delegated Regulation will become directly applicable to Malta as from 1 August 2022.

Transposition of the Commission Delegated Regulation (EU) 2021/1253 as regards the integration of Sustainability Factors, Risks and Preferences into certain Organisational Requirements and Operating Conditions for Investment Firms

The introduction of the ESG MiFID Delegated Regulation led to various changes in the MFSA's Investment Services Rules for Investment Service Providers. This Delegated Regulation will become directly applicable to Malta as from the 2nd August 2022.

Information kindly provided by our relationship firm in Malta, Mamo TCV Advocates.

North Macedonia



New rules on life insurance in relation to shares in investment funds set to enter force on 1 October 2022

The Council of Experts of the Insurance Supervision Agency adopted a Rulebook on Life Insurance in Relation to Shares in Investment Funds when the Insured Person Assumes the Investment Risk (Rulebook) at a session held on 28 April 2022. The Rulebook was published in the Official Gazette of North Macedonia on 9 May 2022.

The Rulebook determines the grounds for performing life insurance activities related to shares in investment funds when the insured person assumes the investment risk in relation to the change in the value of investment coupons or other securities of the investment funds in accordance with the Law on Insurance Supervision.

Information kindly provided by our relationship firm in North Macedonia, Karanovic & Partners.

Slovenia



Slovenian Securities Market Agency adopts new Decision on the method and conditions of marketing units of investment funds

On 24 February 2022 the Slovenian Securities Market Agency adopted a new Decision on the method and conditions of marketing units of investment funds which came into force on 19 March 2022. The new Decision applies to cross-border distribution and marketing of both UCITS and AIFs and inter alia seeks to implement the requirements of the Regulation (EU) 2019/1156 and Directive (EU) 2019/1160 on a practical level, by:

- streamlining the requirements for marketing communications, by allowing that more information may be referenced instead of directly included in marketing communication;
- setting out the conditions for marketing of units of the UCITS of Member States without physical presence and the facilities that need to be provided therewith in accordance with the amended Article 137 of the Investment Funds and Management Companies Act, which removed the

physical presence requirement in accordance with Directive (EU) 2019/1160 in October 2021;

- providing the requirements for marketing of AIFs with specific reference to ESMA Guidelines on marketing communications under the Regulation on cross-border distribution of funds.

Information kindly provided by our relationship firm in Slovenia, Rojs, Peljhan, Prelesnik & partners.

Switzerland



Swiss registrations of foreign funds: From KIIDs to PRIIPs-KID

From 1 January 2023 all EU PRIIPs-KIDs that exist for a (sub-)fund registered in Switzerland will need to be filed including a Swiss supplement (in the same pdf) with the FINMA initially and at the occasion of every update.

With the introduction of new Swiss Financial Services Act (FinSA) the requirements regarding the necessary key investor information document for foreign funds approved in Switzerland for offering to non-qualified investors were amended. The new requirements are subject to a transition period ending on 31 December 2022.

After this period, foreign funds approved in Switzerland for offering to non-qualified investors must use either a Swiss Key Information Document or a EU PRIIPs-KID.

The FINMA-filing requirements applicable for EU PRIIPs-KIDs including the Swiss supplement (in the same pdf) are the same as currently for the Swissized UCITS-KIIDs:

- each EU PRIIPs-KID in existence for a (sub-)fund will need to be added the Swiss supplement and will need to be filed via the FINMA's EHP-platform initially and each time it is updated;
- an existing EU PRIIPs-KID will need to be added the Swiss supplement and be filed with FINMA even if the share-class it covers it not marketed in Switzerland.

Information kindly provided by our relationship firm in Switzerland, Naegeli & Partners.

Limited qualified investor fund likely to be introduced in early 2023

Following the expiration of the referendum period for amending the Swiss Collective Investment Schemes Act (CISA), the introduction of a limited qualified investor fund (L-QIF) will likely become a reality in Switzerland in the first half of 2023.

The L-QIF will not need to be approved by the Swiss Financial Market Supervisory Authority (FINMA) and will not be subjected to direct prudential supervision, making it quicker and more cost-efficient to set up compared to currently available Swiss fund structures.

Only qualified investors will be eligible to invest in the L-QIF and it will only be managed by a regulated asset manager or fund management company.

New funds as well as changes to existing fund products will therefore be able to be implemented more quickly. This will favour funds with a focus on alternative investments such as real estate, private equity, and private debt, where the approval process takes longer.

On the investor side, pension funds and insurance companies in particular have expressed their interest in the new structure. The L-QIF will offer qualified investors a Swiss alternative to similar foreign fund structures, and is comparable to Luxembourg's reserved alternative investment fund (RAIF).

The launch of the new fund structure will not include the introduction of a new legal structure. Instead, it will be possible to launch an L-QIF in the form of an existing Swiss fund structure, namely a contractual fund, a SICAV or a Swiss LP.

Furthermore, the L-QIF will not be subjected to any rules on possible investments or risk diversification. The only requirement is that these points will be disclosed in a transparent manner in the fund contract.

Information kindly provided by our Eversheds Sutherland team in Switzerland.

UK overseas territories

Guernsey



Guernsey proposes world's first Natural Capital Fund regime

Guernsey could become home to the world's first Natural Capital Fund regime after lawmakers and regulators propose its introduction in new consultation papers.

The first paper, published by the Guernsey Financial Services Commission (GFSC), proposes the creation of a Natural Capital Fund designation that is committed to making nature positive investments. It will complement the jurisdiction's existing regulated Guernsey Green Fund regime, which was introduced in 2018 and now channels more than £4.4 billion into green investments.

The second consultation paper seeks to enhance levels of confidence in Guernsey's sustainability framework by introducing further guidance to guard against greenwashing.

To be designated a Natural Capital Fund, funds will be required to set and monitor targets aligned with the United Nations' Sustainable Development Goals, as well as the Convention on Biological Diversity's Post-2020 Global Biodiversity Framework's 2030 Action Targets.

Information kindly provided by our relationship firm in Guernsey, Ogier.

Americas

Chile



New maximum TERs for Chilean pension fund investments

On 6 June 2022 the Chilean securities, banking and insurance regulator (CMF) published for comment the proposed new annual rule whereby it jointly sets with the Chilean pension regulator (SP) the maximum fees and expenses that may be borne by Chilean pension funds (Max TER). The excess over such Max TER must be borne by the pension fund managers (AFPs).

The main aspects of the rule proposed by the regulators can be summarized as follows:

- The Max TERs for most actively managed

liquid funds (i.e. mutual funds) will drop. However, for most types of alternative funds, such as private equity (PE), the Max TER rises (e.g. the PE Max TER rises to 2.12% up from 2.08% and that of PE funds of funds rises from 3.70% to 3.84%). However, the Max TER for private debt funds (excluding funds of funds) will drop from 2.06% to 2.05%. As to ETFs, the Max TER will either rise or stay the same, depending on the target index.

- The proposed regulation does not alter the existing definitions of either the numerator nor of the denominator of the TER. Furthermore, the proposed regulation will continue to allow to alternatively use the concept "ending NAV-Net of Incentive Allocation" taken from the Institutional Limited Partner Association (ILPA) reports, instead of "invested capital".
- The statistical methodology used to calculate the Max TER continues to contemplate using the 75th percentile of the TERs of each category of funds, except in the case of alternative asset funds, such as private equity, private debt, real estate and infrastructure funds as well as Gold ETPs, for which the 90th percentile of the TERs will continue to be used.

Information kindly provided by our relationship firm in Chile, Alessandri Attorneys.

Peru



New limits and sub-limits for AFP investments

By Resolution SBS 1559-2022, published on 12 May 200 (Resolution 1559), the SBS eliminated the difference between limits and sub-limits per issuer. The former regulation generated inefficiencies in the management of the private pension funds (AFP) investments. Resolution SBS establishes a single limit per issuer, regardless of its nature or the type of instrument, in order to contribute to obtaining better possibilities of combining profitability and risk.

The following maximum investment limits are applicable, except to those abroad mutual funds that use referential or mandatory

profitability reference indicators on of local instruments, prepared and calculated by an entity independent of the management company and its affiliates:

- The sum of the investments made in shares of the same mutual fund, including co-investments, must not exceed five percent (5%) of the combined value of all Managed Portfolios.
- The sum of the investments made in shares of the same mutual fund, including the co-investments, must not exceed thirty-five percent (35%) of the sum of the value of the equity of said mutual fund and the co-investments.

This new regulation will come into force on 9 September 2022.

Information kindly provided by our relationship firm in Peru, Rebaza, Alcazar & De Las Casas.

Asia Pacific

Australia



Australian regulator expected to extend deadline for compliance with the 2022 Proposed Relief Regime

In February 2022, the Australian Government put forward a bill proposing the following new licensing exemptions which were intended to replace the '2020 Relief Regime':

- The Professional Investor Exemption, which provided relief to Foreign Financial Service Providers (FFSPs) whose head office is outside of Australia and which provide financial services from outside Australia to professional investors (which is a subset of Wholesale clients).
- The Comparable Regulator Exemption, which provided an exemption to holding an Australian financial services licence (AFSL) to FFSPs that are regulated in "comparable jurisdictions".
- The Fit and Proper Person Test Exemption, which provided a fast-track method for FFSPs to apply for an AFSL by removing the need for particular background checks to be provided for certain people within the FFSP who hold relevant authorisations, registrations or licenses in their home jurisdictions.

These exemptions were due to come into effect from 1 April 2023. However in April 2022, an Australian Federal election was called which subsequently saw a change in Government. All unpassed legislation before Parliament at that time lapsed including the draft bill containing the proposed '2022 FFSP relief regime'. The position of the new Government on the proposed regime is unknown and it remains to be seen if the bill will be reintroduced. It may be the case that the bill is reintroduced in its current form or will contain new or modified relief mechanisms. There is uncertainty as to a timeframe of when a new bill may be introduced, if at all.

If a new relief regime bill is not introduced soon, it is expected that the Australian regulator will extend the deadline for compliance with the 2022 Proposed Relief Regime beyond 1 April 2023.

Information kindly provided by our relationship firm in Australia, Clayton Utz.

China



AMAC issues checklists and key points to note for private fund managers

On 2 June 2022, the Asset Management Association of China (AMAC) published a notice on matters relating to the registration and filing obligations of Chinese private fund managers. Together with the Notice, AMAC issued:

- revised checklists for the registration application of private fund managers; and
- key points to note for filing of private funds in Mainland China.

AMAC issued separate checklists and key points for private securities fund houses and private equity and venture capitalist firms. The revised checklists require information over nine areas including:

- basic information about the applicant;
- relevant mechanisms such as risk management, information disclosure and transaction record;
- licensing details of the applicant and information of affiliates; integrity information;
- financial statements;
- information about funders;

- information about the largest shareholder and actual controlling person;
- information about senior management; and
- a legal opinion.

The revised checklists aim to improve the transparency of the AMAC application process and facilitate the preparation of application materials by private fund managers.

Information kindly provided by our relationship firm in China, Deacons.

Hong Kong



SFC proposes amendments to exemption for advertisements of investment products and enforcement-related provisions of the Securities and Futures Ordinance

On 10 June 2022, the Securities and Futures Commission (SFC) issued the Consultation Paper on Proposed Amendments to Enforcement-related Provisions of the Securities and Futures Ordinance (Consultation Paper).

Proposed amendments relating to advertisements of investment products:

- Section 103(1) of the SFO prohibits the issue of advertisements, invitations or documents relating to investment products unless the issue has been authorised by the SFC, subject to certain exemptions. In particular, section 103(3)(k) provides an exemption to section 103(1) for the issue, or the possession for the purposes of issue, of any advertisement, invitation or document made in respect of securities or structured products, or of interests in any collective investment scheme, that are or are intended to be disposed of only to PIs (PI Exemption).
- In *Securities and Futures Commission v Pacific Sun Advisors Ltd and Mantel, Andrew Pieter*, in which the interpretation of the PI Exemption under section 103(3)(k) of the SFO was the subject matter of the appeal, the Court of Final Appeal (CFA) held that the PI Exemption applies to any advertisement having some connection or relation to

investment products that are or are intended to be disposed of only to PIs. The effect of the CFA's interpretation is that, advertisements of investment products, albeit not authorised by the SFC, may nevertheless be issued publicly as long as the products are intended for sale only to PIs.

- The SFC considers that the CFA's interpretation of the PI Exemption under section 103(3)(k) of the SFO may result in retail investors being exposed to unauthorised offers or solicitations to invest in risky or complex products which are unsuitable for them. The relatively lower threshold of qualifying for the PI Exemption (i.e. a mere intention to sell investment products only to PIs) makes the statutory regime extremely difficult, in the SFC's view, to enforce and it appears to contradict the intended purposes of Part IV and section 103(1) of the SFO, namely to regulate the advertising of (as distinct from the sale of) investment products which have not been authorised by the SFC.
- The SFC therefore seeks to amend section 103(3)(k) of the SFO to the effect that the PI Exemption will only apply to advertisements which are issued only to PIs. As such, following the proposed amendments, unauthorised advertisements of investment products which are or are intended to be sold only to PIs may only be issued to PIs who have been identified as such in advance by an intermediary through its know-your-client and related procedures, regardless of whether or not such an intention has been stated on the advertisements.
- In addition, the SFC also proposes to amend the exemption under section 103(3)(j) of the SFO (applicable to issue of advertisement, invitation or document to person outside Hong Kong) which is phrased in terms which are identical to the PI Exemption to reflect the same amendments made to section 103(3)(k) of the SFO for consistency.
- While the SFC has not yet set out the exact manner in which sections 103(3)(j) and 103(3)(k) of the SFO are to be

amended in the Consultation Paper, the proposal may trigger a need for fund managers to review the existing practice in issuing or distributing advertisements relating to investment products which are only intended for sale to PIs. As indicated in the Consultation Paper, the SFC will expect advertisements relating to products for sale or intended for sale to PIs to be issued to a particular group of prospective investors which have been identified to be qualified as such in advance through know-your-client and related procedures. Enhanced measures in controlling the audience to which such advertisements are made available may be required.

SFC is currently inviting the public to submit comments no later than 12 August 2022 on the proposed amendments set out in the Consultation Paper.

MPF investments broadened to include Chinese government bonds

Hong Kong's Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) has been amended to facilitate the investment of Mandatory Provident Fund Scheme (MPF) funds into debt securities issued or unconditionally guaranteed by the following entities:

- the Central People's Government;
- the People's Bank of China;
- the Agricultural Development Bank of China;
- the China Development Bank; and
- The Export-Import Bank of China.

Pursuant to the amendments, these entities will be added to the category of "exempt authority". An MPF constituent fund may invest up to 30% of its funds in debt securities of the same issue issued or unconditionally guaranteed by an exempt authority. All of the funds of the MPF constituent fund could also be invested in debt securities comprising at least six different issues issued or unconditionally guaranteed by the same exempt authority.

As the MPF Authority continues to review permissible classes of assets, this legislative amendment further diversifies the types of investments that may be held by MPF funds.

Information kindly provided by our relationship firm in Hong Kong, Deacons.

India



Securities and Exchange Board of India streamlines the procedure for seeking prior approval for change in control of portfolio managers in India

On 2 June 2022, the Securities and Exchange Board of India (SEBI), modified its circular dated 12 May 2021 to provide for approval process for change in control of portfolio managers. In addition to existing procedures, this circular addresses scheme of arrangements requiring sanction of the National Company Law Tribunal (NCLT) in terms of the provisions of the (Indian) Companies Act, 2013. The fresh circular requires that an application before NCLT for such scheme of arrangement can be made only upon receipt of in-principle approval from SEBI. The circular also clarifies that upon receipt of NCLT order approving the scheme, another application is required to be filed digitally to obtain SEBI approval. The circular is applicable with effect from 15 June 2022.

Facility for conducting annual meeting and other meetings of unitholders of REITs and InvITs through Video Conferencing (VC) or through Other Audio-Visual means (OAVM) extended

On 3 June 2022, SEBI in a circular issued for investment trusts (real estate and infrastructure), stock exchanges, etc. extended the facility to conduct annual meetings and other meeting of unitholders through VC or OAVM till 31 December 2022. This facility was previously set to end on 30 June 2022.

SEBI clarifies position on registration of investment managers based in India managing offshore funds

Through an informal guidance made public on 13 June 2022, in the matter of Ace Lansdowne Investment Services LLP, SEBI clarified its position on regulating investment managers based in India.

SEBI stated that investment managers managing an alternative investment fund under (Indian) SEBI (Alternative Investment Funds) Regulations, 2012 are deemed to be regulated. However, investment managers intending to manage an offshore fund are required to obtain portfolio manager registration under the SEBI (Portfolio Managers) Regulations, 2020 (PMS

Regulations), if the offshore fund is an eligible fund under PMS Regulations, fulfilling all conditions as referred to in Section 9A (2) of the (Indian) Income Tax Act, 1961.

Information kindly provided by our relationship firm in India, Khaitan & Co.

Middle East and Africa

Bahrain



Central Bank of Bahrain issues new Collective Investment Undertakings rulebook

The Central Bank of Bahrain has issued a new Collective Investment Undertakings (CIU) rulebook, replacing the current rulebook on funds in its entirety. The rulebook came into effect on 24 March 2022 and the main changes are as follows:

- the Central Bank of Bahrain's definition of "accredited investors" has become wider to allow for the addition of experienced investors and investors with large portfolios that would not have otherwise met the previous definition of "accredited investors";
- there will no longer be a set list of recognized jurisdictions from which funds should originate from the Central Bank of Bahrain's perspective. The Central Bank of Bahrain is currently still using the previous list of recognized jurisdictions as a guide, but the new CIU rulebook will allow for a larger number of acceptable jurisdictions in due course; and
- "expert funds" are no longer included as a category of fund. Funds are now simply classified as either retail, exempt or PIUs, with simpler filing and registration regimes.

Information kindly provided by our relationship firm in Bahrain, Zu'bi & Partners (Attorneys & Legal Consultants).

South Africa



Forthcoming Conduct of Financial Institutions Act will regulate alternative investment funds

The second version of the Conduct of Financial Institutions (CoFI) Bill, originally published in

September 2020, is expected to be finalised in 2022.

The CoFI Bill seeks to regulate inter alia all types of AIFs, including managers of AIFs. Under CoFI, providers (such as management companies) of AIFs will require licensing.

CoFI proposes the following definition of an "alternative investment fund":

"an arrangement, but excluding a collective investment scheme, constituted in any legal form, including in a company, in terms of a contract, by means of a trust or a partnership, or in terms of a statute, which:

- raises capital from two or more financial customers to facilitate the participation or interest in, subscription, contribution or commitment to, a fund or portfolio, with a view to investing it in accordance with a defined investment policy for the benefit of the financial customers; and
- the financial customers share the risk and the benefit of investment in proportion to their participation or interest in, subscription, contribution or commitment to, the fund".

Information kindly provided by our relationship firm in South Africa, Bowmans.

Your contacts

Please note that this update on recent legal developments is not designed to provide legal advice and it is advisable to consult with local legal counsel before any actual undertakings.

For more information on these updates or about FundsNet, our specialist solution for global AIFs and UCITS distribution activities, please contact:



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