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Country updates

August 2022

Europe

European Union

ESMA publishes supervisory briefing on sustainability risks and disclosures in the area of investment management

On 31 May 2022, the European Securities and Markets Authority ("**ESMA**") published a supervisory briefing on sustainability risks and disclosures in investment management area ("**Briefing**"). The briefing is addressed to EU National Competent Authorities ("**NCAs**"). ESMA has developed this supervisory briefing to promote convergence on the supervision of sustainability-related disclosures as well as the supervision of how fund managers integrate sustainability risks in their organisational framework and decision-making processes. The content of this supervisory briefing is not subject to any "comply or explain" mechanism for NCAs regarding the supervision of sustainability-related disclosures and integration of sustainability risks.

The main topics set out by ESMA in the briefing are as follows:

- Verification of the compliance of the pre-contractual disclosures
  - Requiring pre-contractual information for financial products disclosing under Articles 8(1) and 9(1)-(3) of the sustainable finance disclosure regulation ("**SFDR**") to be provided in an annex to the prospectus for undertakings for collective investment in transferable securities ("**UCITS**"), and in an annex to the information which is to be disclosed to investors in accordance with Article 23 of the alternative investment fund managers' directive for alternative investment funds ("**AIFs**").
  - Suggesting national authorities create a checklist based on the disclosures to be made in the pre-contractual templates that will help assessing the compliance of the disclosures of new and existing funds disclosing under Article 8 or 9 SFDR.
- Verification of the consistency of information in the fund documentation and marketing material
  - Advising that NCAs should, on a risk-based approach, assess the accuracy and consistency of sustainability-related disclosures across the fund documentation and the marketing material.
  - Confirming that fund names should not be misleading. The terms "green" or "sustainable" should only be used where there is evidence of sustainability characteristics.
  - Advising that a sustainable investment policy and/or objectives should be included in the fund documentation. The fund's documentation must be based on the policy and the fund must be managed in accordance with it.
- Verification of the compliance with the website disclosures' obligation
  - Advising NCAs to verify that the information is published according to Article 24 of the SFDR Delegated Regulation for funds disclosing under Article 8 SFDR and Article 37 of the SFDR Delegated Regulation for funds disclosing under Article 9 SFDR.
- Verification of the compliance with the periodic disclosures' obligation
  - Suggesting that NCAs could create a checklist based on the information to be provided in periodic reports that will help assess the compliance of disclosures of funds disclosing under Article 8 or 9 SFDR (and Article 5 or 6 of Regulation (EU) 2020/852, the Taxonomy Regulation ("**TR**")).
- Integration of sustainability risks by Alternative Investment Fund Managers ("**AIFMs**") and UCITS managers
  - Advising NCAs to verify compliance of the UCITS management companies and AIFMs with the Regulation (EU) 2021/1255 and Delegated Directive (EU) 2021/1270 requirement from 1 August 2022 to integrate sustainability risks in their portfolio and risk management processes and overall governance structure.
- Regulatory interventions in case of breaches
  - In line with the Article 14 SDFR requirement for NCAs to monitor the compliance of financial market

participants and financial advisers with the requirements of SFDR, providing examples of where administrative measures could be taken.

Clarifications on the European Supervisory Authorities draft Regulatory Technical Standards under SFDR

On 2 June 2022, the European Supervisory Authorities ("**ESAs**") provided clarifications on the ESAs' draft Regulatory Technical Standards ("**RTS**") issued under Regulation (EU) 2019/2088 on SFDR.

Such clarifications concern the draft RTS included in the Final Report on draft Regulatory Technical Standards of 4 February 2021 with regard to the content, methodologies and representation of disclosures according to certain articles under SFDR, and the draft RTS with respect to the content and presentation of disclosures under the Final Report on draft Regulatory Technical Standards of 22 October 2022. The final report covers both of those draft RTS. The application date of the RTS is delayed until 1 January 2023 in order to provide financial market participants and financial advisers with sufficient time to adapt and adjust their practices (this in particular with regards to the product specific disclosures deriving from the TR).

The ESAs provided clarification on the following key areas of the final reports:

- Uses of sustainability indicators.
- Principal adverse impact ("**PAI**") calculation methodology.
- Look-through approach and investment instrument scope for PAI disclosures.
- Disclosures for direct and indirect investments in pre-contractual and periodic disclosures.
- Further guidance on the adverse impact indicators in tables 1-3 of Annex I.
- Guidance related to pre-contractual financial product disclosures.
- Guidance related to periodic financial product disclosures.
- Guidance related to taxonomy-related financial product disclosures.
- Guidance related to "do not significantly harm" disclosures.
- Guidance related to disclosures for financial products with investment options.

Application date of new rules for PRIIPS key information documents published

On 24 June 2022, the European Commission published in the Official Journal of the EU the Commission Delegated Regulation (EU) 2022/975 adopted by the Commission on 17 March 2022 and endorsed by the co-legislators following a scrutiny procedure that ended on 17 June 2022 (the **"Delegated regulation**").

The Delegated regulation concerns the application date of new rules for the Key Investor Information Document for packaged retail and insurance-based investment products ("**PRIIPs"**).

The Delegated regulation:

- Postpones the application date of certain PRIIPs-related disclosures to 1 January 2023 (instead of 1 July 2022 as initially foreseen in the Commission Delegated Regulation (EU) 2021/2268).
- Prolongs the application of Article 14(2) of Commission Delegated Regulation (EU) 2017/653 until 31 December 2022 (instead of 30 June 2022 as initially foreseen in the Commission Delegated Regulation (EU) 2021/2268). Article 14(2) allows PRIIP manufacturers to use the key investor information document drawn up in accordance with the UCITS Directive (Directive 2009/65/EC) to provide specific information required pursuant to Regulation 2017/563 where at least one of the underlying investment options is a UCITS or non-UCITS.

Bosnia & Herzegovina

Law on Amendments to the Law on Investment Funds of the Republic of Srpska published

In the Official Gazette of the Republic of Srpska, no. 64/2022, the Law on Amendments to the Law on Investment Funds of the Republic of Srpska was published. The possibility of establishing alternative investment funds is now introduced, together with the provisions on their establishment, operation, business restrictions and reporting, as well as additional misdemeanor provisions concerning the novelties introduced in the law.

Information kindly provided by Karanovic Partners in Bosnia & Herzegovina.

Croatia

Croatian Financial Services Supervisory Agency amends UCITS Rulebook

On 27 July, the Croatian Financial Services Supervisory Agency ("**HANFA**") adopted the Rulebook on Amendments to the Rulebook on Organizational Requirements for UCITS Fund Management Companies. The amendments add parts related to risk and sustainability factors in the management of UCITS funds.

Information kindly provided by Karanovic Partners in Croatia.

Czech Republic

Obligation on investment firms to take sustainability objectives of investment vehicles into account

By Decree No. 227/2022 ("**the Decree**") adopted on 21 July 2022, the Czech National Bank established the obligation of investment firms to take sustainability factors and sustainability objectives into account when determining the target market and type of target customers.

Investment firms are also obliged to present the sustainability factors of the investment vehicle to the investment vehicle distributor in a transparent manner so that any sustainability objectives of the client can be properly taken into account.

The Decree shall enter into force on 22 November 2022.

Information kindly provided by Karanovic Partners in the Czech Republic.

Luxembourg

CSSF issues press release on notification and de-notification procedures for marketing and pre-marketing on eDesk

On 12 May 2022, the CSSF published Circular 22/810, which informed Luxembourg UCITs and AIFMs that notification and de-notification procedures for pre-marketing and cross-border marketing will progressively be made available in the eDesk Portal.

Following this, the CSSF has issued a press release on 20 June 2022, informing the following entities that they must comply with the marketing notification and de-notification procedures, including any updates, via the eDesk from 1 July 2022:

1) Luxembourg AIFMs wishing to notify arrangements or de-notify arrangements made for marketing in Luxembourg of units or shares of an EU AIF that they manage;

2) Luxembourg AIFMs wishing to notify arrangements or de-notify arrangements made for marketing in another Member State of units or shares of an EU AIF that they manage; and

3) Managers of Luxembourg European venture capital funds or European social entrepreneurship funds wishing to market in Luxembourg or another Member State.

The AIFMs mentioned under point 1 and 2 also include Luxembourg AIFMs of European long-term investment funds ("**ELTIFs**") that wish to (de-) notify arrangements for marketing of units or shares of ELTIFs.

CSSF updates AML sub-sector risk assessment for the collective investment sector

On 31 May 2022, the CSSF updated its January 2020 Sub-Sector Risk Assessment ("**SSRA**") on money laundering/terrorist financing ("**ML/TF**") risks faced by the collective investment sector.

The CSSF highlighted the following evolutions in areas of risk:

- Threat Assessment Evolution - the SSRA report notes that the COVID-19 lockdown and the latest geopolitical crisis made it difficult in terms of anti-money laundering ("**AML**") communication and controls and that this can lead to an increase in the threat of cybercrimes. The year 2021 was also marked by a very sharp increase in total market capitalisation of cryptocurrencies and trading volumes of virtual assets such as non-fungible tokens. The underlying technology used by virtual assets can provide a level of anonymity which can be abused by criminals. In addition, the volatility of these assets may be perceived as an opportunity of a higher return of investments by money launderers and terrorist financiers.
- Vulnerability Assessment Evolution - the report notes that the Luxembourg collective investments' largest inherent vulnerabilities arise from UCITS management companies. Similar to the

2020 SSRA, within the UCITS management companies category, the Luxembourg Chapter 15 management companies present the highest inherent risk, primarily because of the volume of managed assets and because of the cross-border distribution of UCITS.

The CSSF also highlighted positive evolutions in mitigating factors and residual risk assessment:

- For Luxembourg Chapter 15 management companies, the CSSF noted an improvement in terms of the implementation of a risk based approach both on the UCI's liability and asset side; in particular when it comes to the oversight of third parties performing AML/combatting the financing of terrorism ("**CFT**") controls on behalf of investment fund managers. The due diligence processes have been more precise and better documented but, in some cases, were still lacking an in-depth analysis and remediation of identified shortcomings.
- The CSSF noted the content and frequency of AML trainings have improved, which contributed to the overall improvement of the quality of mitigation measures.
- The CSSF noted significant improvements in the due diligence performed on assets, screening of Targeted Financial Sanctions and oversight on distributors, when applicable, for Luxembourg authorised AIFMs. Content and frequency of AML trainings have also improved.
- The CSSF noted improvements in Luxembourg-registered AIFMs' AML/CFT frameworks, notably through the set-up of tailor-made AML/CFT procedures and policies and the registration with the GoAML platform used by the Financial Intelligence Unit, but also, and more importantly, through a major review of their understanding of their exposure to the risks of ML/TF both on the UCI's liability and assets side.
- The CSSF also noted an improvement in terms of ongoing monitoring of third parties performing AML/CFT controls on behalf of Luxembourg-registered AIFMs, in particular investment advisors, distributors and registrar and transfer agents, as well as an improvement in the quality of their mitigation measures, notably through a better understanding of their exposure to the risks of ML/TF.

Overall, despite the fact that the CSSF noted an overall improvement of the quality of the mitigation measures implemented by the entities in scope, it also noted some areas requiring further attention, such as the outsourcing of the screening of the Targeted Financial Sanctions to non-European entities, IT components of AML/CFT systems, and improvement in the quality of Regulatory Compliance reports.

Information kindly provided by Bonn Steichen & Partners in Luxembourg.

Malta

New requirements introduced for shareholders acquiring a significant interest in locally licensed entities

From August 2022 onwards, shareholders who have significant and controlling interests within locally licensed entities, including collective investment schemes or investment services companies, need to complete a personal questionnaire upon becoming shareholders. This enables the authority to conduct due diligence on such person to ensure he/she is fit and proper and that he/she has the necessary qualifications to occupy such position.

Going forward, as part of this exercise such person will also need to submit a source of wealth/source of funds declaration which will also need to be updated in case of any material changes.

The source of wealth refers to the entire body of wealth of an individual. It is expected that the individual provides a comprehensive picture of all the different sources contributing to his/her net worth with the respective documentary evidence which an individual deems best supports the respective source of wealth.

The source of funds refers to the origin of the particular funds or assets which are the subject of the business relationship or the transaction about to take place. This will therefore need to be verified for every individual transaction, both at application stage and any ongoing basis thereafter. It is expected that an individual clearly identifies the source of any such funds and includes supporting documentation.

In both cases, the Malta Financial Services Authority ("**MFSA**") retains the discretion to require further information/documentation.

Information kindly provided by Conti Legal in Malta.

Amendments to the Investment Services Rules for Investment Services Rulebooks

The MFSA issued a circular incorporating various amendments to the Investment Services Rulebooks.

Several amendments were made to the Investment Services Rules for Investment Services Providers, Part BI: Rules applicable to Investment Services Licence Holders which qualify as MiFID firms. The amendments that were made are mainly related to the recovery and resolution plans, miscellaneous changes, and updates to cross references to correct inconsistencies.

Some pertinent changes include:

- The definition of "Professional Investor Funds" was included in the Investment Services Rules Glossaries for Alternative Investment Funds, Notified Alternative Investment Funds, and Professional Investor Funds.
- All instances of fees which include figures have been removed from Part A of the Investment Services Rules for Alternative Investment Funds, Investment Services Providers, Professional Investor Funds, and Retail Collective Investment Schemes. Other instances where fees are listed as a requirement, such as when submitting an application or supervisory fees, have been kept.

Information kindly provided by Mamo TCV Advocates in Malta.

Norway

Norwegian Financial Supervisory Authority proposes to ban kickbacks from UCITS management companies

On 17 August 2022, the Norwegian Ministry of Finance published an open hearing on the Norwegian Financial Supervisory Authority's proposal to ban kickbacks from UCITS management companies. The hearing period will end on 18 November 2022.

The ban will apply to all entities with a physical presence in Norway, including branches of foreign management companies. Hence, the ban will not apply to foreign management companies marketing funds in Norway on a cross-border basis.

Information kindly provided by Haavind in Norway.

Slovenia

Slovenian parliament adopts the Act on Forms of Alternative Investment Funds

On 14 July 2022, the Slovenian National Assembly adopted a new law – the Act on Forms of Alternative Investment Funds (Official Gazette of the Republic of Slovenia, no. 101/22) ("**ZOAIS**") that regulates the forms of alternative investment funds, which has entered into force on 10 August 2022. Prior to its enactment, the existing legislation did not provide specific rules on the form of AIFs, therefore, new AIFs could be established either as a separate pool of assets (without legal personality) or as one of the traditional forms of companies such as limited liability companies, limited partnerships, and joint-stock companies. From 10 August on, new alternative investment funds can only exist in one of three forms, namely:

1) as an alternative mutual fund, which is an AIF structured as a separate pool of assets (without legal personality) which are separated from the assets of the AIFM and the investors can purchase units of the alternative mutual fund;

2) as a special limited partnership, which is an AIF structured as a dual partnership; in which the AIFM is the general partner and the investors are limited partners

3) as an investment (public joint-stock) company, which is an AIF whose share capital is divided into shares, whereas the investors are shareholders and the AIF's assets are managed by the AIFM.

Existing AIFs will have to be aligned with the ZOAIS within 2 years from the Act coming into force (with some exceptions to time-limited AIFs).

In addition, the Act ZOAIS also regulates two specific types of alternative investment funds, namely a special investment fund (which can take any of the forms listed above), and a real estate investment company.

The main change in fund marketing paradigm pertains to the real estate investment company as a type of AIF. Before 10 August 2022 (entry into force of the new regime under the ZOAIS), only units of special investment funds and EU AIFs could be marketed to only those non-professional investors who committed to invest at least EUR 50,000 and confirmed in writing that they are aware of all risks associated with the investment. All other

AIFs could only be marketed to professional investors in Slovenia.

As of 10 August 2022 onwards, however, units of real estate investment companies may be marketed to non-professional investors notwithstanding the above restrictions. In addition, units of a closed-end EU AIF with an investment strategy focused on real estate may also be marketed to non-professional investors in Slovenia, if they may also be marketed to non-professional investors in the home Member State of the AIF.

Information kindly provided by Rojs, Peljhan, Prelesnik & Partners in Slovenia.

Sweden

Memorandum on improved possibilities to handle liquidity risks in funds sent for referral

On 23 June 2022, the Swedish Ministry of Finance ("**Finansdepartmentet**") sent a memorandum for referral with proposals that is aimed at improving fund companies' abilities to manage liquidity risks in funds and contribute to reducing the risks of financial instability. The proposals entail, *inter alia*, that the possibility of using variable fund share prices (so-called swing pricing) is regulated, which for Swedish funds has previously been unregulated. The changes are proposed to enter into force on 1 April 2023.

Swedish translation of the delegated regulation to the disclosure regulation

The Swedish translation of the EU Commission delegated regulation supplementing EU Regulation 2019/2088 on sustainability-related disclosures in the financial services sector and annexes are now available on the EU Commission's website.

The regulation enters into force on 1 January 2023, and the Swedish Financial Supervisory Authority (the "**SFSA**") emphasises the importance of working actively with the implementation.

Sweden and India enter into a MoU to strengthen their financial cooperation

On 29 July 2022, the SFSA formally exchanged a Memorandum of Understanding ("**MoU**") with India's International Financial Services Centres Authority (the "**IFSCA**"). The aim of the mutual cooperation is to formalise and strengthen the already existing collaboration between the SFSA and the IFSCA in order to increase the joint cross-border supervision of the financial market. The MoU is also aimed at facilitating information exchange, meaning that the SFSA and the IFSCA shall exchange information about financial products, financial services and financial institutions.

Information kindly provided by our Eversheds Sutherland Sweden office.

UK overseas territories

Bermuda

Enhancements made to the investment business regime in Bermuda

On 27 July 2022, the enhancements to the business licensing framework, proposed by the Bermuda Monetary Authority (the "**BMA**"), came into effect. These changes modernise and streamline the regulatory and supervisory framework of the investment business regime in Bermuda, to further safeguard and promote Bermuda's reputation as a leading international financial services centre.

The Investment Business (Amendment) Act 2022 (the "**Amendment Act**"), which provides for the legislative amendments to the Investment Business Act 2003, as amended (the "**IBA**") was passed in the House of Assembly and Senate in March 2022 and received royal assent on 1 April 2022. As at the effective date, the IBA will be supported by complimentary revisions to the codes of conduct, the statement of principles and the guidance notes as well as introduce new rules relating to capital, net assets, liquidity and statutory returns. The BMA will also be releasing new application forms for licensing and registration under the IBA, as well as statutory reporting forms to support the new licensing and registration framework.

In order to promote a more effective monitoring of the regulatory perimeter and to bring investment providers under the regulatory and supervisory scope of the BMA, the Amendment Act introduces a number of significant changes, which include but are not limited to:

1) expanding the definition of "carrying on business in or from Bermuda" to remove the principle of "maintaining a place of business" as the criterion for licensing under the IBA;

2) the introduction of a "Class A Registered Person" which is an entity that is formed or incorporated in Bermuda that carries

on investment business exclusively outside of Bermuda but that is licensed, authorised or registered by a 'recognised regulator' in one or more foreign jurisdictions and does not wish to be licensed to carry on investment business in Bermuda;

3) the requirement for persons who currently qualify for an exemption under paragraphs 1 to 3 of the Schedule to the Investment Business (Exemptions) Order 2004, to be registered as a 'Class B Registered Person';

4) the introduction of a new sandbox license for investment business related innovation, which will allow persons to apply for a Class T (testing license) or a Class F (full-term license) that will permit the testing of new technologies and delivery mechanisms within the parameters of a limited-term sandbox license;

5) the introduction of a new investment activity, namely the "promotion of investments to the public"; and

6) streamlining convergences between the IBA, the Digital Asset Business Act 2018 (as amended) and insurance market place providers registered under the Insurance Act 1978 (as amended) to the extent they arrange deals in investments in connection with their insurance business.

Persons who are currently exempt from the licensing requirements under the IBA have a 12-month grace period, until July 2023, to complete the appropriate registration or license with the BMA.

Information kindly provided by Walkers in Bermuda.

Cayman Islands

Unexpired passport information required for beneficial ownership

On 10 June 2022, the Ministry of Financial Services and Commerce issued a media release notifying industry of the publication of three sets of regulations confirming that beneficial ownership information under the Cayman regime must include details of the individual's unexpired and valid passport. Accordingly, this aspect of beneficial owner information must be updated on an ongoing basis.

The relevant regulations are listed below and were introduced with immediate effect on 10 June 2022:

- The Companies (Amendment of section 254) Regulations, 2022;
- The Limited Liability Companies (Amendment of section 80) Regulations, 2022; and
- The Limited Liability Partnership (Amendment of section 61) Regulations, 2022.

The Press Release also confirmed that the Competent Authority will issue updated guidance on this point soon.

EU confirms no additional AML/CFT measures for Cayman

On 7 June 2022, the Ministry of Financial Services issued a media release informing industry that the Minister of Financial Services and Commerce, the Hon. André Ebanks, had received confirmation from the European Commission's Directorate-General for Financial Services and Capital Markets Union ("**DG FISMA**") that the EU does not require additional AML/CFT measures to be adopted to remove Cayman from the EU's AML/CFT list, over and above those required by the Financial Actions Task Force ("**FATF**") action plan. Accordingly, once the FATF removes the Cayman Islands from its list of jurisdiction under increased monitoring, the EU will initiate steps to delist the Cayman Islands.

The FATF action plan initially comprised three actions points, of which the following two action points are outstanding:

- the imposition of adequate and effective sanctions in relation to the filing of inaccurate, incomplete and outdated beneficial ownership information; and
- demonstrating the prosecution of money laundering cases and that such prosecutions result in the application of dissuasive and effective sanctions.

The Cayman Islands will report on the status of these two outstanding points at the FATF's October 2022 plenary meeting.

CIMA Circular on ESG and sustainable investing

On 13 April 2022, the Cayman Islands Monetary Authority ("**CIMA**") issued a Supervisory Issues and Information Circular recognising the growth of environmental, social and governance ("**ESG**") considerations, or 'sustainable investing', as an investment strategy. The Circular notes the

need for ESG and sustainable funds, and their investors, to understand the risks and issues arising out of an ESG focus, stating that the persons charged with governance of regulated funds should:

- have clear roles and responsibilities, and start establishing procedures, to identify, manage and mitigate the risks arising out of the fund's investment strategy; and
- ensure clear and ongoing disclosures in the context of their reporting requirements.

The Circular confirms that CIMA will assess the information that it receives, as well as look at other jurisdictions, in order to formulate a suitable regulatory and supervisory approach for climate-related and other ESG-related risks.

CRS/FATCA filing deadlines

31 July 2022 is the deadline for filing CRS and FATCA reports relating to the 2021 financial year in the Cayman Islands is. In addition, the deadline for the Cayman Islands CRS Compliance Form for the 2021 financial year is 15 September 2022.

CIMA issues Supervisory Circulars on third party CDD and TCSP sanctions compliance

On 19 May 2022, CIMA released a Supervisory Circular relating to the requirement to test the simplified due diligence arrangements permitted under the Anti-Money Laundering Regulations (2020 Revision) (the "**AMLRs**").

As provided by the Guidance Notes, testing of eligible introducer ("**EI**") relationships must be conducted on a random and periodic basis to ensure that identification and verification ("**IDV**") information is produced by the EI upon demand and without undue delay. Records are also required to be kept in respect of such testing.

With nominee/agent arrangements, a written assurance letter must be provided confirming, amongst other things, that the nominee entity will also provide IDV information upon request and without delay.

CIMA also issued a Supervisory Circular on 17 June 2022 setting out the findings from a review of trust and corporate services providers' ("**TCSPs"**) compliance with Regulations 5 and 12 of the AMLRs undertaken in 2021, together with the controls required to address the deficiencies identified in relation to targeted financial sanctions ("**TFS**") policies and procedures.

The Circular sets out CIMA's conclusion and recommendations, highlighting:

- the need to understand the TFS obligations under the AMLRs;
- the need to document all actions taken to comply with TFS, as well as the rationale for each action;
- the importance of providing TFS-related training to staff; and
- the requirement that TCSPs review and assess their AML/CFT compliance programmes on an ongoing basis to ensure that they meet the prescribed standards and are commensurate with the nature, size and complexity of the business.

All regulated entities should note that failure to comply with provisions of the AMLRs and Guidance Notes may result in CIMA taking action, including enforcement action which may include the imposition of an administrative fine.

Information kindly provided by Mourant in the Cayman Islands.

Cayman court revisits winding up petitions against general partners

In the recent decision of *Re Formation (Cayman) Fund I, L.P* (unreported, 21 April 2022), Justice Kawaley held that a limited partner may petition to wind up an exempted limited partnership ("**ELP**") on the just and equitable ground by presenting a petition against the ELP directly (rather than against the general partner), notwithstanding the earlier decision of Justice Parker in *Re Padma Fund L.P.* (unreported, 8 October 2021) in respect of a creditor's petition, and that an ELP may be wound-up in the same manner as a company pursuant to Part V of the Companies Act.

This restores the previously understood legal position and thereby preserves the historic dynamic among the general partner, the limited partners and the ELP.

CIMA publishes revised regulatory procedures for the deregistration of Cayman Islands regulated funds

Following consultation with industry, the CIMA has issued new regulatory procedures for Cayman Islands open-ended funds regulated under the Mutual Funds Act (Revised) ("**mutual funds**") and for closed-ended funds registered under the Private Funds Act

(Revised) ("**private funds**") regarding their deregistration with CIMA, either at the end of the life of the fund or in certain limited circumstances where their regulatory status has changed (including a mutual fund re-registering as a private fund and vice versa).

In addition to several conforming changes to reflect amendments to the Cayman Islands mutual fund and private fund registration regime made in 2020, the principal changes in the new deregistration procedures relate to the timing of the deregistration process and the elimination of the option to place a fund in "License under Termination" ("**LUT**") or "License under Liquidation" ("**LUL**") status with CIMA.

Under the prior deregistration procedure a fund could be placed in LUT or LUL once it had determined to cease trading or to liquidate but before it had completed its final distributions and filed its final audit. Provided that this was done on or before 31 December in any year, the fund would benefit from either a reduction in, or complete waiver of, the CIMA annual fund registration fees for the following year. The fund would then have a prescribed period of time to complete its audit and file its deregistration documents.

Under the new deregistration procedures, although CIMA should be notified of a fund's intention to deregister within 21 days of that determination, the fund must complete and file its final audit (or seek and be granted an audit waiver from CIMA), and be in good standing, before the deregistration documents may be filed. Provided that the deregistration documents are complete and in good order, it is anticipated that the deregistration processing and approval will be a relatively quick and straightforward procedure.

Following their publication on 17 August 2022, the new deregistration procedures will apply to any new deregistration applications with effect from that date. CIMA have confirmed, however, that any funds that had previously submitted LUT or LUL applications under the old procedures will still be able to take advantage of the fee concessions under those procedures, provided that they meet the filing requirements associated with their LUT or LUL status.

Information kindly provided by Ogier in the Cayman Islands.

Americas

Canada

Alberta and Saskatchewan securities regulators expand the self-certified investor prospectus exemption

The self-certified investor prospectus exemption (originally adopted on 31 March 2021 for a three-year pilot period expiring on 31 March 2024) is intended to allow purchasers in the participating jurisdictions who do not meet the financial thresholds or other criteria required to qualify as an accredited investor to invest alongside accredited investors, provided they self-certify that they meet other criteria intended to demonstrate their financial and investment knowledge.

On 28 July 2022, following market feedback, the Alberta Securities Commission and the Financial and Consumer Affairs Authority of Saskatchewan effected amendments to the prospectus exemption to allow for the sale of securities by a business and for a resale by an existing security holder to a self-certified investor. The amendments also allow businesses to sell their securities to certain qualifying special purpose vehicles, in which both accredited investors and self-certified investors participate, without being subject to the investment limits that apply when selling securities to other self-certified investors.

Information kindly provided by McMillan in Canada.

Chile

Chilean securities regulator changes its criteria regarding the cap on registration fees for non-Chile funds

The law governing the Chilean securities regulator ("**CMF**") provides a maximum (i.e. cap) on registration fees for foreign funds that register for public offer in relation to applications corresponding to the same sponsor. The CMF charges a one-time registration fee of approx. US$ 780 per share class/ISIN with an aggregate cap of 25 ISINs (approx. US$ 20,000). This cap does not apply to recordal fees for events such as mergers, changes of fund names, etc. Up until recently the criteria adopted by the CMF was to consider as a sponsor for the purpose of the cap on fees any fund promoter located abroad, apart from certain Chilean registered managers, intermediaries and exchanges.

However, this criteria has changed as a result of a new interpretation by the CMF of its own regulations on the occasion of the latest approval in early August 2022 of an application for registration of a Luxembourg UCITS sub-fund. The new criteria of the CMF

is that the cap on registration fees will only apply if the application is sponsored by a locally registered fund management firm, a locally registered broker-dealer or a local exchange.

Nonetheless, foreign fund promoters will continue to able to register funds by appointing their own local process agent in order not to be subject to the commercial risk of having the application for registration sponsored by a local third party entity that may require exclusivity, or the legal risk of losing control over the registration and its updates.

Information kindly provided by Alessandri Legal in Chile.

Asia Pacific

Australia

New fee and cost disclosure requirements for superannuation and managed investment scheme products

On 30 September 2022, the transition period will end for adoption of the fee and cost disclosure requirements introduced for Product Disclosure Statements ("**PDSs**") and periodic statements under ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070, on which further guidance was provided in an updated Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements (released in November 2019, re-released September 2020) ("**RG97 regime**").

The new RG97 regime applies to PDSs given on and from 30 September 2022. Some of the changes made to the fee and cost disclosure requirements that issuers will need to be mindful of are:

- For the "Fees and costs summary" (previously the "Fees and costs template"), fees and costs are split into "Ongoing annual fees and costs" and "Member activity related fees and costs".
- For managed investment schemes, there are separate line items now appearing for "Management fees and costs", "Performance fees", "Transaction costs" and "Buy-sell spread". Performance fees also need to be disclosed on a particular basis (for example, "averaged over the previous 5 financial years").
- For superannuation products, administration and investment fees are now referred to as "Administration fees and costs" and "Investment fees and costs" (and have changed order), with a separate line item for "Transaction costs" also appearing. There have also been some changes under the "Member activity related fees and costs", with "Advice fees" and the "Indirect cost ratio" line items being removed (the latter given such costs are to be disclosed in the "Ongoing fees and costs" section). "Buy-sell spreads", "Switching fees" and "Other fees and costs" remain.
- There have been some changes to the "Example of Annual Fees and Costs" to reflect the above amendments made to the "Fees and costs summary".
- Where the product relates to more than one product or investment option, a table headed "Cost of Product" must be included in the "Fees and other costs" section of a full PDS following the "Example of Annual Fees and Costs". This table contains a single amount showing how ongoing annual fees and costs can affect an investment over a 1-year period.
- There have also been some minor amendments made, for example, to the "Consumer Advisory Warning" and the preamble to the "Fees and costs summary" preamble, as well as some consequential amendments made to definitions.

These differences will vary slightly between full and shorter PDSs.

ASIC extends transitional relief for Foreign Financial Services providers

On 2 August 2022, ASIC announced that it would extend the transitional period of relief for foreign financial services providers ("**FFSPs**") by a further 12 months (under ASIC Corporations (Amendment) Instrument 2022/623). As a result, the current relief regime will now remain in place until 31 March 2024.

Given that it remains unclear what the government intends to introduce at the end of the transitional period, this extension is welcome news, allowing more time for FFSPs to appropriately prepare to comply with an updated regime once it is introduced.

The extension's main effects are as follows:

- Limited Connection Relief – FFSPs will now be able to rely on the Limited Connection Relief until 31 March 2024. This relief does not require an application to ASIC.

- Sufficient Equivalence Relief – FFSPs who had the benefit of a Sufficient Equivalence Relief instrument as at 31 March 2020, will now be able to continue to rely on this until 31 March 2024, without needing to notify ASIC.
- Individual Temporary Licensing Relief – ASIC will consider applications for Individual Temporary Licensing Relief from FFSPs who cannot rely on the transitional relief. FFSPs who currently rely on Individual Temporary Licensing Relief should check that the cessation date allows for the relief to continue to be relied on for the duration of the updated transitional period.
- The Funds Management Relief – the commencement of this instrument is delayed until 1 April 2024.
- The Foreign AFSL – ASIC will consider applications for Foreign AFSLs from FFSPs who cannot rely on the transitional relief. FFSPs that have been, or are granted a Foreign AFSL, can continue to operate their financial services business in Australia under the license granted by ASIC.

Information kindly provided by Clayton Utz in Australia.

China

Securities Investment Trust and Consulting Association issues new ESG guidelines

On 30 June 2022, the Securities Investment Trust and Consulting Association of the R.O.C. ("**SITCA**") announced the Securities Investment Trust and Consulting Association Practical Guidelines for Operational Procedures of Environment, Society and Governance ("**ESG**") Investment and Risk Management and ESG Information Disclosure of Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises ("**ESG Guidelines**"). The main points are summarised below:

1) Scope of Application – the ESG Guidelines apply to the securities investment trust enterprises and securities investment consulting enterprises engaging in discretionary investment management accounts (collectively SITE/SICE).

2) Guidelines – the ESG Guidelines are provided as guidelines for SITE/SICE to establish relevant internal rules and mechanisms which the SITE/SICE shall review on a regular basis and ensure that the company fully executes the same.

3) Governance – the board of directors and senior management shall ensure that the SITE/SICE takes into account the identified ESG investment and risk management factors in the formulation of the investment policy, risk appetite, strategy and business plan, and continuously supervises the management and disclosure of ESG-related investments and risks. The implementation of the ESG-related investment and risk management shall be reported to the board of directors on a quarterly basis, and an immediate corresponding measure shall be taken in response to any major abnormalities or special circumstances found in accordance with internal rules which shall be submitted to the board of directors.

4) Investment Management – the SITE/SICE shall incorporate ESG factors into the investment management operation process, and take reasonable steps to assess the impact of ESG-related risks on investment assets in accordance with the correlation between the investment policy and the ESG factors, and conduct regular investment reviews.

5) Risk Management – including:

- **i)** establishing ESG risk benchmarks and evaluation methods;
- **ii)** establishing management and on-going supervision mechanism for ESG-related risk exposures; and
- **iii)** establishing a reinforced control and management mechanism for investment objects with higher ESG related risks.

6) Information Disclosure – the SITE/SICE shall at least produce a sustainability report once a year or disclose regular evaluation report on the company's website.

7) Grace Period – the SITE and SICE are required to adjust their practice accordingly in 6 months and 1 year respectively after the implementation of the ESG Guidelines.

Amendment to SITCA Guidelines for Advertisements and Business Activities Performed by Members and Their Sales

Agents

On 14 July 2022, the SITCA issued a ruling to amend the SITCA Guidelines for Advertisements and Business Activities Performed by Members and Their Sales Agents ("**Guidelines**"). The main points are summarised below:

1) Where a securities investment consulting enterprise ("**SICE**") cooperates with an internet service business to have such internet service business to establish a platform to consolidate general information and information of different SICEs is consolidated, and the SICE will in turn provide online service regarding the approved business, the following regulations shall be complied with:

a) The payments paid by SICEs to the internet service business shall not be the sharing of fees paid by the investors regarding the securities investment consulting service.

b) The agreement between SICE and the client, and the KYC procedure shall be conducted by SICE itself.

2) SICE shall report the agreement between SICE and the internet service business to the SITCA within 10 days after such agreement is signed, amended, or terminated. The agreement shall include the required items of stipulated by the Guidelines.

3) SICE shall review whether the service provided by the internet service business complies with the regulations required by the Guidelines periodically (at least once per quarter), and keep the review data for at least 5 years.

Information kindly provided by Lexcel Partners in China.

Hong Kong

District Court holds that Limited Liability Partnerships may be associated bodies corporate for s.45 intra-group relief

On 15 July 2022, the District Court of the Hong Kong Special Administrative Region gave its decision in the case of John Wiley & Sons UK2 LLP & Anor v The Collector of Stamp Revenue [2022] HKDC 716. One of the issues in this case was whether Limited liability partnerships ("**LLPs**") and limited liability corporations ("**LLCs**") are associated bodies corporate for the purposes of Section 45 of the Stamp Duty Ordinance ("**SDO**").

LLPs and LLCs are bodies corporate that have certain partnership-like characteristics. Whereas they have unlimited capacity and are legal persons separate from their members, unlike classic English or Hong Kong law partnerships, they do not have issued share capital, as such, but instead issue participation interests, which may variously be described as partnership capital or membership capital. S. 45 SDO provides for relief from ad valorem stamp duty where the transferor and transferee of the property, the transfer of which would otherwise be dutiable (such as Hong Kong immovable property or Hong Kong stock), are associated bodies corporate. This is where one beneficially owns, directly or indirectly, at least 90 per cent of the issued share capital of the other, or a third body corporate beneficially owns, directly or indirectly, at least 90 per cent of the issued share capital of each of the transferor and the transferee.

As a prior matter in its decision, the Court began by observing that it was well-established by case law at the House of Lords and Court of Final Appeal levels that the legislative purpose of s.45 relief was to exempt from stamp duty intra-group reconstructions where there was no change in the ultimate beneficial ownership of shares or immovable property, as the case may be, but merely a reconfiguration in the manner in which such property was held within the same group.

Having ascertained the purpose at which s.45 relief was directed, the Court summarised the orthodox approach to the statutory interpretation: that is, the words of the statute must be interpreted in light of their object, purpose, and context; consequently, the Court is not limited to a strictly literal interpretation of the same. In the opinion of the Court, the words "issued share capital" in the SDO were not a term of art: they did not refer in their narrow sense to the issued share capital of a company incorporated in Hong Kong. That interpretation would be too narrow, and would be inconsistent with the legislative history of s.45, from which it was apparent and, indeed, common ground with the Collector, that the Legislature had wished to expand the class of bodies corporate falling within the ambit of that section from companies with limited liability to, among others, bodies corporate incorporated in jurisdictions other than Hong Kong.

The Court reasoned that the natural corollary of that conclusion was that "issued share capital" was not used in a narrow, technical

sense in s.45, but in reality designated a class of participation rights or interests in a body corporate that were materially analogous to issued share capital, as understood at Hong Kong law.

It should be noted that this decision is still open to appeal. However, the law as it currently stands is that LLPs and LLCs (and other bodies corporate issuing participation interests analogous to issued share capital, albeit not so designated) are bodies corporate capable in principle of being associated within the meaning of s.45 and their presence within a corporate group should not, itself, operate as a bar to relief.

Information kindly provided by Deacons in Hong Kong.

India

Securities and Exchange Board of India (Alternative Investment Funds) (Third Amendment) Regulations 2022

On 25 July 2022, Securities and Exchange Board of India ("**SEBI**") via the SEBI (Alternative Investment Funds) (Third Amendment) Regulations 2022 introduced the definitions of 'social impact fund', 'social units', 'not for profit organisation', 'social enterprise' and 'social stock exchange'. The term 'social venture funds' have now been replaced by the term 'social impact funds'.

The amendment has widened the investments that can be made by social impact funds and has reduced the minimum contribution amount for such fund to Rs 10 lakh as opposed to Rs 25 lakh earlier. Social impact funds or schemes of social impact funds are allowed to issue social units provided each scheme of social impact fund needs to have a minimum corpus of Rs 5 crore.

Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations 2022

On 1 August 2022 SEBI, via SEBI (Intermediaries) (Amendment) Regulations 2022, introduced the definition of "competent authority" and stated that the term "designated member" shall be substituted by "competent authority". The Board is now empowered to initiate proceedings in case of default which was previously provided to a "designated member".

Guidelines for overseas investment by Alternative Investment Funds (AIFs) / Venture Capital Funds (VCFs)

On 17 August 2022, SEBI provided a circular on Guidelines for overseas investment by Alternative Investment Funds (AIFs) / Venture Capital Funds (VCFs), which relaxed the framework for overseas investments by AIFs and VCFs. It has removed the requirement of the overseas investee company to have an Indian Connection. Further, the circular also states proceeds from the sale of an overseas security held by an Indian AIF shall become available to all AIFs for re-investment to the extent of investment made in the said overseas investee company.

Information kindly provided by Khaitan & Co. in India.

Singapore

Monetary Authority of Singapore publishes Circular on Disclosure and Reporting Guidelines for Retail ESG Funds

On 28 July 2022, the Monetary Authority of Singapore ("**MAS**") issued a Circular on Disclosure and Reporting Guidelines for Retail ESG Funds. The guidelines in the Circular are due to take effect on 1 January 2023.

The guidelines in the Circular will apply to prospectuses of ESG Funds lodged with MAS on or after the Effective Date. The responsible person of an ESG Fund should indicate in the respective form on the MAS OPERA public portal that the firm is an ESG fund, and ensure any additional disclosures required are made on the manager's website or by other appropriate means by the date the prospectus is lodged.

Information kindly provided by Allen & Gledhill LLP in Singapore.

Information paper strengthens Anti-Money Laundering/Combating the Financing of Terrorism Name Screening Practices

On 28 April 2022, the MAS issued an information paper regarding the strengthening of AML/CFT Name Screening Practices for Financial Institutions ("**FIs**").

FIs typically perform name screening during customer onboarding, periodic Know-Your-Customer ("**KYC**") reviews, ongoing batch screening, and transactions processing.

In the information paper, MAS sets out the observations and good practices, as well as its supervisory expectations. FIs should benchmark themselves against the practices and supervisory expectations set out in the paper in a risk-based and proportionate

manner.

MAS observed that FIs generally had adequate management oversight and formalised policies and procedures ("**P&P**") on the use of systems and resolution of alerts, to facilitate consistent implementation. However, the robustness of name screening practices was uneven across FIs.

Senior management of some FIs did not exercise adequate oversight, leading to deficiencies in P&P and poor checks and balances over alert resolution. These resulted in lapses in the execution of name screening controls and, in some cases, potential regulatory breaches. MAS also observed that several FIs placed undue reliance on system vendors to set the parameters in their name screening systems, without adequately understanding how the settings impact the accuracy and effectiveness of the screening results.

MAS looks to an FI's Board and Senior Management ("**BSM**") to exercise oversight of the governance and implementation of effective name screening processes, as part of the FI's overall AML/CFT frameworks and controls. BSM should set an appropriate tone-from-the-top on the importance of these controls, and ensure that:

1) Adequate frameworks and P&P on name screening controls are established.

2) Relevant staff have a good understanding of the strengths and limitations of the FI's name screening systems (and their corresponding parameters) and have processes to assess if the systems are performing as intended.

3) Effective checks and balances, such as maker-checker controls and quality assurance ("QA") processes, are implemented for alert resolution.

Some of the key expectations MAS has for FIs are:

- Senior Management Oversight
  - Senior management are to exercise active oversight of FIs' name screening frameworks, policies, processes and compliance;
  - Senior management or management committees responsible for overseeing ML/TF/PF risks are to have access to relevant information to monitor and deliberate follow-up actions;
  - FIs to put in place established processes to track the ageing of unresolved name screening alerts, including details such as days outstanding, functions responsible and weekly trends.
- Frameworks, Policies and Procedures
  - FIs to establish adequate frameworks, P&P on name screening for customer onboarding, periodic KYC reviews, ongoing batch screening and transaction processing;
  - there should be wider scope of identified parties for screening beyond baseline regulatory requirements;
  - FIs should conduct regular batch screening of customers and relevant parties to identify new ML/TF/PF information in a timely manner;
  - FIs should implement structured processes to track parties for screening to prevent/detect omissions and delays.
- Screening parameters and databases
  - FIs in implementing name screening systems should adequately assess and test that the screening parameters applied are effective for generating name matches;
  - FIs should perform regular reviews of their screening parameters to assess whether they are effective in highlighting ML/TF/PF risks;
  - FIs should establish controls to regularly review the completeness of their screening databases;
  - FIs should incorporate fuzzy logic matching capabilities to perform more effective name screening.
- Alert resolution
  - FIs should perform robust and timely assessment of name screening alerts, and maintain adequate documentation of the assessment;
  - FIs should establish clear P&P for the resolution of alerts, and include detailed guidance and examples on criteria to assess, types of identifiers to consider and documentation requirements, such as justification

for dismissing screening alerts;

- FIs should not exclude (i) adverse news from regional and local news sources, or (ii) past adverse news; and
- FIs should not dismiss (i) a group of alerts on a consolidated basis without addressing the specific unique information in each individual alert, or (ii) alerts with generic explanations that were inadequate to justify the conclusions.

FIs should take MAS's expectations seriously. Adequate name screening processes will be required to ensure compliance with the requirements under the relevant notices and guidelines. MAS has on previous occasions taken enforcement actions against FIs who have failed to comply with their AML/CFT requirements.

Information kindly provided by Harry Elias in Singapore.

Thailand

Thailand strengthens supervisory framework for investments by insurance companies

On 2 June 2022, Thailand's Office of Insurance Commission ("**OIC**") issued Notification No. 6 Re: Investments in Other Business Operations for both life and non-life insurance companies. The two notifications, which took effect upon issuance, strengthen the OIC's supervision of investments by insurance companies, with a focus on basic infrastructure relevant to the promotion of business competition and sustainability, and also allow and regulate additional investment types:

- Changes to internal governance of investment activities – an insurance company's board of directors is required to appoint a credit committee when engaging in credit activities. The credit committee has the following duties:
  - **i)** preparing the credit policy framework for the credit activities described above for further board approval;
  - **ii)** supervising the credit activities;
  - **iii)** overseeing good corporate governance, transparency, and prevention of conflict of interest in relation to credit activities;
  - **iv)** ensuring that the work system, manpower, and data in relation to credit activities are sufficient; and
  - **v)** regularly reporting to the board of directors regarding credit activities.

  Credit policies must at least cover:
  - Procedures and conditions for credit transactions, including risk management, internal controls, data storage, and written reporting requirements.
  - Persons responsible for operations relating to credit work, risk management for credit transactions, and verification of credit transactions, including the credit analyst, the person who approves appropriate credit transactions, the verifier of work accuracy after a credit transaction is approved, the person in charge of reporting credit transaction risks, and the person responsible for verifying credit transactions and reporting this to the board of directors. Roles (i), (ii), and (iv) must not be the same person, and the team in charge of roles (i) and (ii) must not be the same as the team handling roles (iii), (iv), and (v).
- Permitted investments – the notifications allow the following additional types of investment:
  - Units in real estate mutual funds
  - Trust certificates of real estate investment trusts
  - Units in infrastructure mutual funds
  - Trust certificates of infrastructure trusts registered in a foreign country
  - Venture capital registered in a foreign country
  - Mutually providing syndicated loans with commercial banks for infrastructure businesses, with the borrower located in a foreign country

  The aggregated amount of investment in the products listed above is capped at 30% of the total investment assets of the company.
- Investment in Syndicated Loans – the OIC

notifications introduce syndicated loans as a new type of permitted investment, and prescribe certain conditions for the investment in syndicated loans for infrastructure businesses. In this case, "infrastructure businesses" refers to Thai government-owned infrastructure businesses and infrastructure businesses located in the ASEAN region.

Insurance companies are permitted to invest in syndicated loans for the following types of infrastructure businesses:

- rail or pipeline transportation systems;
- electricity supply;
- water supply;
- airports or aerodromes;
- deep water ports;
- telecommunications or basic information and communication technology infrastructure;
- alternative energy;
- water management systems;
- natural disaster prevention systems, including alarm and management systems for mitigation of natural disasters;
- waste disposal; and
- combinations of the infrastructure businesses listed above.

To invest in syndicated loans, an insurance company must possess the following characteristics:

- capital surplus of at least THB 1 billion;
- asset ratio of 110%;
- capital adequacy ratio (CAR) for the latest four quarters of at least 200%; and
- sufficient systems to support credit-related transactions.

Insurance companies that invested in loans, car leasing, avals, or guarantees before the issuance of the OIC notifications must also comply with the new rules within 180 days of the effective date of the OIC notifications (i.e. late November 2022).

Information kindly provided by Tilleke & Gibbins in Thailand.

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.

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