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EUROPE

Greece

Significant reforms of Greek capital markets legislation

Greek Parliament enacted Law 4706/2020, reforming the legal framework on corporate governance, transposing Shareholders Directive II into Greek law, introducing a new form of Greek Alternative Investment Fund and new publication requirements for certain public offerings.

The Law introduces a deep reform in corporate governance legislation and in the Greek capital market in general and is structured around two main pillars, i.e.:

- Part A (Articles 1 to 24), which introduces the new corporate governance framework applicable to companies listed on the Athens Exchange and replaces the existing corporate governance provisions of Greek law 3016/2002; and
- Part B (Articles 25 et seq.), which includes provisions on the modernisation of the Greek capital market. In this newsletter we briefly point out the most important changes regarding:
  - the transposition of EU Directive 2017/828 of the European Parliament and of the Council, as regards the encouragement of long-term shareholder engagement (Shareholders Directive II or SRD II), into Greek law;
  - the establishment and operation of a new form of Greek alternative investment fund (AIF) in the form of mutual fund; and
  - the publication requirements applying to securities offered to the public or admitted to trading on a regulated market, and the measures implementing EU Regulation 2017/1129 of the European Parliament and of the Council (Prospectus Regulation).

The Law is effective as of 17 July 2020 except for the provisions on corporate governance rules (part A of the Law), the majority of which will come into force twelve months following the publication of the Law in the Government Gazette, i.e. on 17 July 2021.

As mentioned above, the new Law introduces a number of changes, including a new form of a Greek alternative investment fund in addition to the existing Greek venture capital funds (in Greek "AKES"). The new form of the Greek AIF will be structured either as an open-ended collective investment scheme in the form of mutual fund or as a closed-ended collective investment scheme, in line with the respective AIF structures existing in other EU member states. The Law provides for the establishment, operation, distribution and transparency requirements of the Greek AIF.

Main characteristics of the new Greek AIF are the following:

- it is established following authorisation by the HCMC with Euro 1 million minimum asset value, whereas the minimum asset value for venture capital funds is Euro 3 million;
- it is managed either by Greek alternative investment fund managers (AIFMs) licensed by the HCMC or by AIFMs licensed by another EU member state in accordance with Directive 2011/61/EU of the European Parliament and of the Council on AIFMs (AIFMD);
- the AIF may consist of multiple investment compartments (sub-funds) that have to be separately authorised by the HCMC;
- it has to adopt a defined investment policy and its assets include also securities of listed companies, whereas venture capital funds may, in principle, invest in listed securities only if they acquire at least 15% of the listed company's total shares;
- other investment restrictions are applicable to the Greek AIF similar to the restrictions applicable to venture capital funds. For example, the Greek AIF cannot place more than 20% of its assets in securities of the same issuer and to real estate property;
- the AIF's rules are drafted by the AIFM with the approval of the AIF's depositary, which is assigned the responsibility of safekeeping the AIF's assets;
- regarding open-ended AIFs, their net asset value is valuated and published at least every six months and redemption of units/shares by the unitholders/shareholders takes place at least every six months. In the case of closed–ended AIFs, such valuation takes place at least once a year as well as when there is a change in AIF's assets;
- the distribution of AIFs to professional and

retail investors is allowed under the conditions set out in Greek law 4209/2013 implementing the AIFMD; however it is also subject to the specific requirements set out in the Law;
- participation in an AIF is evidenced through the registration of the respective units and the beneficiaries with the specific electronic registry of the unitholders held by the AIFM;
- although open-ended AIFs units are redeemed every 6 months, transfer of AIFs units is not allowed other than between first and second degree relatives and spouses or cohabitants; and
- Greek AIF is tax transparent as it is the case also with the venture capital fund, meaning that it is not subject to tax, and unitholders are taxed as joint-owners receiving income directly from the underlying assets of the fund.

Ireland

Beneficial Ownership Regulations – ICAVs and Unit Trusts

Statutory Instrument No. 233 of 2020 The European Union (Modifications of Statutory Instrument No.110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 (the 2020 Regulations) came into effect on 25 June 2020.

The purpose of the 2020 Regulations is to amend the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the Principal Regulations), which came into effect on 22 March 2019 and to set out the beneficial ownership requirements for "Relevant Entities" as defined under the Principal Regulations. These amendments relate to Applicable Financial Vehicles (AFVs) which include:

- Irish Collective Asset-management Vehicles (ICAVs);
- Unit Trusts; and
- Credit Unions.

Key amendments include:

- Establishment of a Central Register – the 2020 Regulations establish the Central Register of Beneficial Ownership of ICAVs, Credit Unions and Unit Trusts (the Central Register) which will be housed by the Central Bank of Ireland (CBI). The CBI has launched a webpage regarding the establishment of the Central Register and further information in relation to the process that will be in place for filing is expected. The webpage indicates that Investment Limited Partnerships and Common Contractual Funds registered under the Investment Limited Partnerships Act, 1994, will also be included on the Central Register in due course.

- Removal of verification requirement – the requirement for verification of information delivered to the registrar by way of a PPS number or Ben2 form does not apply for AFVs.

- Beneficial Ownership Definition of a Unit Trust – in the case of a Unit Trust there is a change to the definition of "beneficial owner" to introduce a 25% threshold follows:

  - a natural person who owns, or is ultimately entitled to control, more than 25% of the units in the entity; or

  - any other natural person exercising ultimate control over the entity by means of direct or indirect ownership or by other means, and shall be deemed to include any trustee under, or the settlor of, the arrangements that constitute the entity (whether or not falling within either or both of points 1) or 2) above).

The 2020 Regulations clarify that the obligation applying to corporate entities to list senior managing officials (e.g. directors) in the instance that no natural person is identified as a beneficial owner will not apply to Unit Trusts.

MMFR regulatory reporting

The Central Bank (CBI) has clarified us that the first returns (for Q1/Q2 2020) under the MMFR regulatory reporting regime should be filed on 2 October 2020. The IT infrastructure for filing the MMFR returns will not be available before this date. Thereafter, it is envisaged that returns will be filed 25 calendar days after each period end.

The CBI plans on conducting user testing on the MMFR regulatory reporting in early September and is seeking volunteers to participate.

Switzerland

First ombudsman's offices and client adviser register officially approved

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As from 1 January 2020, Swiss legislation provides for a new supervisory regime for activities that constitute a financial service (such as the acquisition and disposal of funds, covering any activity directly aimed at investors with the specific objective of selling a fund (which could include activities such as road shows etc.)). In such case, various conditions must be met, including affiliation of the financial service provider with an ombudsman's office and registration of the client adviser with a client adviser register in Switzerland. The first ombudsman's offices and client adviser register have now officially been recognised/admitted whereby the 6 months affiliation/registration deadlines are triggered.

The FDF has recognised the following first ombudsmans offices:

- Ombudsstelle für Finanzdienstleister (OFD), www.ofdl.ch/en/ueber-uns/ombudsstelle/;
- Swiss Banking Ombudsman Foundation (for Swiss banks only), www.bankingombudsman.ch;
- Finanzombudsstelle Schweiz (FINOS), www.finos.ch;
- OFS Ombud Finance Switzerland, www.ombudfinance.ch;

The list of approved ombudsman offices is available on the FDF website. Financial service providers now have six months, i.e. until 23 December 2020, to affiliate with an ombudsman's office, irrespectively of the obligation to register the client advisers in a client adviser register.

FINMA has admitted BX Swiss (www.regservices.ch) as the first client adviser register as of 20 July 2020. Client advisers have six months, i.e. until 19 January 2021, to register with a client adviser register. Please note that exemptions exist for client advisers of foreign financial service providers who are prudentially supervised abroad and exclusively render their services to professional or institutional investors in Switzerland or for client advisers who work for a financial institution supervised by FINMA.

Despite the above affiliation/registration deadlines, a general two years transition period (ending on 31 December 2021) still applies with respect to the adoption of the new duties of conduct and organisation.

UK OVERSEAS TERRITORIES

British Virgin Islands

BVI economic substance requirements update

The framework that the British Virgin Islands (BVI) government has created to enable BVI 'legal entities' to report prescribed economic substance information' is now operational. New reporting and (in some cases) economic substance requirements now apply for BVI 'legal entities' that conduct certain defined 'relevant activities' under the Economic Substance (Companies and Limited Partnerships) Act, 2018 and the Rules on Economic Substance (together the Economic Substance regime).

The reporting window is now open, and BVI companies and limited partnerships with legal personality can now comply with their obligations to report prescribed 'economic substance information'. Each entity must provide its registered agent with the prescribed particulars, which must now be reported to the BVI's International Tax Authority (ITA). Reporting is done through the Beneficial Ownership Secure Search system, now rebranded as BOSS(ES) to facilitate the secure reporting of Economic Substance information.

For entities incorporated or formed on or after 1 January 2019, declarations must be uploaded within six months after their incorporation or formation date. For entities incorporated or formed prior to 1 January 2019, the deadline for reporting is six months after 30 June 2020.

Entities that have successfully applied to the ITA to change their year-end for the purposes of the Economic Substance regime are subject to different deadlines.

All BVI companies, and limited partnerships with legal personality, must now provide their registered agent with the prescribed particulars. The exact information required will depend on whether a relevant activity is carried out, and where the entity is tax resident, but we should emphasise that all entities now have reporting obligations.

Entities that are not in good standing, or are in the process of solvent or insolvent liquidation, are still subject to the Economic Substance regime, and must urgently take steps to comply.

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BVI regulator issues guidance on regulation of virtual assets

On 13 July 2020, the Financial Services Commission (the FSC) of the BVI issued welcome guidance1 on the regulation of virtual assets in the BVI (the Guidance). The Guidance provides clarity and confirmation to the treatment of virtual assets and virtual asset-related activities, enabling virtual assets to be issued, held and traded with more certainty to their treatment under BVI law.

Certain types of virtual asset-related activity could constitute regulated investment business, which must be duly licensed in the BVI to be carried out.

The FSC have stated its position on virtual assets that their related products have value, exhibit the attributes of property and meet the definition of intangible property. As a result, when determining whether licensing is required for virtual asset-related activities in the BVI, an assessment of the following factors is relevant:

- the way the virtual asset is being utilised;
- the types of business activities being proposed or conducted;
- whether the business activities are analogous with those conducted through traditional businesses; and
- the characteristics and business activities (economic substance) relating to an offering / issuance.

Virtual asset products may be captured from a BVI regulatory perspective in one of two ways. First, when they are initially issued and second, when they are in the hands of a holder or the subject of an investment activity.

The Guidance clarifies that virtual assets and virtual asset-related products used as a means of payment for goods and services – for example, utility tokens which provide the purchaser with an ability to only purchase goods and services - would not be captured by existing BVI financial services legislation.

Where a virtual asset product or service provides a benefit or right beyond a medium of exchange, it may be captured under the BVI Securities and Investment Business Act (2013 Revision) (as amended) (SIBA). The Guidance provides a summary of a number of virtual asset-related products – including funds, Initial Coin or Token Offerings, and derivatives - and the FSC's views as to whether regulation is required under SIBA.

A compliance period of six months from the publication date of the Guidance (the Compliance Period) is provided for a virtual asset-related entity which:

- under any existing legislation outlined in the Guidance is conducting a regulated activity;
- failed to submit an application in accordance with applicable legislation; and
- submits an application within six months of the Guidance's publication.

The FSC reserves the right to take enforcement action where an entity is engaged in any regulated activity referred to in the Guidance and fails to submit an application for licensing within the Compliance Period.

Cayman Islands

Registration deadline for Cayman private funds and limited investor funds

Private funds and limited investor funds existing prior to 7 February 2020, as well as new private funds launched between 7 February 2020 and 6 August 2020, have until 7 August 2020 to register with the Cayman Islands Monetary Authority (CIMA).

Reduced annual fees for private fund partnerships

The Exempted Limited Partnership (Amendment) Regulations, 2020 were gazetted on 22 May 2020. With effect from that date, exempted limited partnerships (ELPs) which are regulated under the Private Funds Law, 2020 (the PFL) will benefit from the same annual fee saving as those ELPs regulated under the Mutual Funds Law (2020 Revision) (as amended, the MFL). The annual fees are as follows:

- CI$1,200 (US$1,463) for ELPs regulated under the MFL or PFL; and
- CI$2,000 (US$2,439) for unregulated ELPs.

New Rules and updates private fund FAQs

CIMA has published new Rules relating to regulated mutual funds and private funds, including in relation to the content of offering documents/ marketing materials and cybersecurity. The new Rules can be accessed at CIMA's website here.

CIMA's private funds FAQs were also updated in May 2020 and can be found here.

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Economic substance notifications and annual returns

The deadline for filing economic substance notifications (ESNs) and the 2020 annual return (without penalties) expired on 30 June 2020.

Any company or limited liability company (LLC) which has not filed its ESN and annual return for this year will be subject to penalties as of 1 July 2020. The penalty fee in effect will be one third of the applicable annual return fee due.

Any outstanding filings should be made as soon as possible to avoid incurring further late filing penalties.

New DITC Portal

The Cayman Islands Automatic Exchange of Information (AEOI) Portal is currently offline and the Cayman Department for International Tax Co-operation (the DITC) is currently developing a new DITC Portal for registration (notification) and reporting purposes, which will eventually encompass all legislative frameworks, including economic substance. The launch date for the new DITC Portal will be provided in due course.

New CRS compliance form released

On 15 April 2020, the DITC released a new CRS Compliance Form, together with Notes for users of that form. A more detailed user guide is expected to be published in due course.

The CRS compliance form must be completed annually by each Cayman Reporting Financial Institution (as well as Trustee Documented Trusts) in relation to the same period as the relevant CRS return and can only be completed via the DITC's online portal. Going forward, the deadline for submission of the form will be 15 September in each year. However, the deadline for submission of the first CRS Compliance Form, relating to the 2019 reporting period, is 31 December 2020. Automatic fines will be imposed in respect of any failure to meet the filing deadline.

The purpose behind the CRS compliance form is to enable the Tax Information Authority (TIA) to use the information collected to analyse and assess compliance with, and effective implementation of, the CRS within the Cayman Islands.

Cayman introduces Virtual Asset (Service Providers) Law, 2020

The Cayman Islands Government introduced the Virtual Assets (Service Providers) Law, 2020 (the VASP Law) in late May 2020, relating to the supervision and regulation of virtual asset services taking place within, or originating from, the Cayman Islands.

The VASP Law was accompanied by a suite of amendment legislation making the following (amongst other) consequential amendments:

- the Monetary Authority Law (2020 Revision) has been amended to include the VASP Law within the definition of 'regulatory laws';
- the Securities Investment Business Law (2020 Revision) has been amended to, amongst other things, include virtual assets within the definition of 'securities' thereunder;
- the Mutual Funds Law (2020 Revision) has been amended so that the definition of 'equity interest' includes shares, partnership interests and any other representation of an interest;
- the Stock Exchange Company Law (2014 Revision) has been amended to reflect that the Cayman Islands Stock Exchange will not have the exclusive right to operate the securities markets trading in virtual assets
- the Anti-Money Laundering Regulations (2020 Revision) have been amended.

Amendment of trusts law

The Trusts (Amendment) Law, 2020 was adopted in May 2020. The main changes effected by this amendment legislation were to:

- permit the Customs and Border Control Service and any 'competent authority' as defined under the Proceeds of Crime Law (2020 Revision) (as well as CIMA, the TIA, the Financial Reporting Unit and the Financial Crimes Unit of the RCIPS) to request information on trusts from the Registrar of Trusts; and

- provide that where an entity that is authorised to request information from the Registrar of Trusts has reasonable grounds to believe that a person who is a trustee, or any other person exercising ultimate effective control of a trust, is acting in contravention of certain AML/anti-corruption and transparency laws, the entity may direct that person to provide such information in relation to the trust or its activities as may be required. A person who

knowingly fails to comply commits an offence and is liable on summary conviction to a fine of CI$50,000 (US$60.976) and, if the offence is a continuing one, to a fine of CI$10,000 (US$12,195) per day (up to a maximum of CI$50,000) (US$60,976).

Private funds law – expanded scope

The Cayman Islands Government has approved an important amendment to the Private Funds Law 2020 (PF Law) that will increase the number and categories of closed-ended Cayman investment vehicles required to register with the Cayman Islands Monetary Authority (CIMA). As the deadline for registration remains 7 August 2020, all Cayman investment vehicles must promptly be re-assessed to achieve compliance. Open-ended mutual funds and hedge funds are unaffected.

The amendment changes the definition of 'private fund' so that it now includes any company, unit trust or partnership that offers or issues or has issued its non-redeemable investment interests, the purpose or effect of which is the pooling of investor funds with the aim of enabling investors to receive profits or gains from such entity's acquisition, holding, management or disposal of investments, where (a) the holders of investment interests do not have day-to-day control over the acquisition, holding, management or disposal of the investments; and (b) the investments are managed as a whole by or on behalf of the operator of the private fund directly or indirectly.

The following entities remain outside the scope of this definition:

- certain single investor vehicles;
- mutual funds such as open-ended hedge funds;
- entities whose interests are held only by promoters, operators (eg directors) or by the founders, principals, owners or stakeholders of the entity or the entity's manager or adviser;
- securitisation special purpose vehicles, structured finance vehicles, debt issues and debt issuing vehicles, preferred equity financing vehicles;
- sovereign wealth funds and single family offices;
- joint ventures, proprietary vehicles, holding vehicles;
- officer, manager or employee incentive, participation or compensation schemes, and programmes or schemes to similar effect;
- individual investment management arrangements;
- arrangements not operated by way of business

Certain vehicles may previously have been classified as being out of scope under elements of the definition that have now been amended. These may now be required to register with CIMA as private funds. Such entities may include vehicles set up to hold only a single investment, co-investment vehicles, AIVs and master funds.

Guernsey

Cannabis funds

The GFSC has been approached by a number of organisations regarding its appetite to register or authorise collective investment schemes (CIS) which would make cannabis related investments under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

The GFSC would never countenance an authorised or registered CIS investing in something which would be illegal either in the jurisdiction of the asset or in the Bailiwick of Guernsey. Further, the GFSC expects the directors of such funds, the administrator and the promoter to give careful consideration to, and obtain legal advice on, both the legality of the investment in the jurisdiction where the investment is made and, in particular issues relating to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974.

Subject to the GFSC's normal requirements and processes in relation to the authorisation or registration of CIS, the GFSC would be willing to consider applications for registration or authorisation of a CIS which invested in the following classes of cannabis related investments:

- synthetic or biosynthetic production of cannabinoids;
- pharmaceutical research, development and sales;
- medical research, development and sales;
- production solely for the purposes of medical, pharmaceutical or wellness sectors;
- wellness CBD products.

The GFSC would not consider CIS where one of the investment classes was the production, sale or marketing of recreational cannabis products.

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New fast-track application regime for managers of overseas collective investment schemes

The GFSC has launched a new fast-track application regime for managers of overseas CIS. The intention is to make the process as simple as possible for such managers looking to apply for a Guernsey licence. The regime caters for fast-track applications for managers migrating to Guernsey, as well as those managers looking to establish a new Guernsey entity.

Applications under the fast-track regime are subject to a 10 day review period. For managers looking to migrate to Guernsey, the Commission has helpfully combined its consent to migrate along with the licensing process.

Jersey

JFSC consultation on changes to fund fee rates

On 22 May 2020, the JFSC issued a consultation paper which sets out proposals for fund fee rate changes. Although the period to provide comments closed on 22 June 2020, industry should be aware that the JFSC is proposing to increase FSB, AIF and CIF, CoBO and QSMA fees by 12.5% (with 2.7% being the most recent Jersey RPI). The main driver of this above-inflation increase is the JFSC's aim to significantly enhance its supervisory and compliance function and to provide some additional capital for investment in technology.

Further detail is in the consultation paper and the feedback paper, which can be found here:

Fund fee rates from 1 July

Migration of foreign limited partnerships into Jersey

The States of Jersey Assembly has adopted regulations permitting foreign limited partnerships to migrate (continue) into Jersey using the statutory migration process set out in the Limited Partnerships (Continuance) (Jersey) Regulations 2020 (the Regulations).

- Migration into Jersey is permitted for a foreign limited partnership which is formed in a jurisdiction which does not prohibit continuance overseas, does not have legal personality, is solvent and makes an application to the Jersey Financial Services Commission (JFSC) for continuance as a Jersey limited partnership which is registered under the Limited Partnerships (Jersey) Law 1994 (the LP Law).

- The application process for continuance is straight-forward. It includes the submission of a declaration signed by the general partner of the foreign limited partnership that the partnership meets the eligibility criteria and an application for a consent in respect of the partnership under the Control of Borrowing (Jersey) Order 1958.

  Consideration will need to be given to whether the approval of the limited partners in the foreign limited partnership is required in order for the migration to proceed and what necessary changes are required to the limited partnership agreement to ensure that it complies with Jersey law.

  There is no requirement in the Regulations for the general partner of the foreign limited partnership to be a Jersey entity (see however, Investment Funds below). However, should this be desirable, the Companies (Jersey) Law 1991 already provides a statutory continuance process for foreign companies into Jersey.

  Once the application for continuance has been approved by the JFSC, the Jersey registrar of limited partnerships will register the limited partnership under the LP Law and issue a certificate of continuance under the Regulations.

- The issue of the certificate of continuance by the Jersey registrar is conclusive evidence that a foreign limited partnership has complied with the requirements of the Regulations and that it has continued as a limited partnership within Jersey.

  From the date of the certificate of continuance, the limited partnership is not treated as a limited partnership formed under the laws of a foreign jurisdiction and all assets and other property (including choses in action and rights to make capital calls) previously held or acquired by or on behalf of the limited partnership are taken to be the property of the limited partnership, held in accordance with the LP Law.

- Where a foreign limited partnership is an investment fund (or will be treated as an investment fund upon migration into Jersey), it

will be necessary to seek any further consents that may be required from the JFSC under applicable legislation, contemporaneously with the application for continuance.

For regulatory purposes, depending on the nature of the investment fund, it may be necessary for the general partner of the investment fund to migrate to Jersey or to transfer its interests to a Jersey entity prior to migrating into Jersey.

AMERICAS

Chile

New Maximum TERs for Chilean Pension Fund investments

Annually, the Chilean pension regulator (Superintendencia de Pensiones – SP) jointly with the Chilean securities, banking and insurance regulator (Comisión Para El Mercado Financiero – CMF) sets the maximum fees and expenses (Max TER) that Chilean pension fund managers (AFPs) can pay in respect of the investments they hold in funds (including foreign funds) on behalf of the pension fund portfolios they manage. To the extent the fees and expenses of a fund that an AFP has invested in exceed the Max TER, the AFP is required to reimburse the pension fund the excess (i.e. not out of the pension fund assets).

The CMF jointly with the SP have published on 1 July the terms for Max TERs effective from 1 July 2020 to 30 June 2021 (TER rule). The new TER rule appears to impose reduced fees on registered funds, while imposing more stringent terms on private funds, notwithstanding that rates for the latter remain unchanged.

The new Rule clarifies that domestic private debt funds will have the same Max TER as foreign private debt funds, thus creating a level playing field between these two categories. It must be noted that domestic private debt was recently introduced into the Chilean pension fund investment regime and was characterised as forming part of the alternative asset bucket of investments.

Another new asset type that is subject to the Max TER is that of Gold ETFs, which were also recently introduced as an eligible investment.

One improvement in terms applicable to private funds is that private equity and private debt feeder funds will now be allowed to calculate their TERs based on the same frequency as the underlying master funds. This is welcome relief given it reduces costs associated with feeder funds.

Some clarification was introduced to the part of the Max TER rule that allows amortisation of past and future expenses over the remaining life of the fund (i.e. the original term of the fund, not fund term extensions) if these are expenses that, due to their nature, should be distributed over more than one period. The rule now specifies that eligible expenses will only be those related to the structuring or to the investments of the relevant vehicle.

However, not all is good news for private equity and private debt funds. Indeed, additional fees charged to Chilean pension funds for investing in alternative funds after the first close will have to be borne by the relevant AFP. In practice this means that an AFP will not invest after the first close if it will be charged an additional or penalty fee. Furthermore, though the text of the new rule is unclear, AFPs would also have to bear the excess TER over the one informed at the time of subscription of commitments if the pension fund, having entered the fund after the first close, is required under the LPA to bear expenses incurred prior to the first close. These will probably be new matters for discussion in side letters to limited partnership agreements.

The drop in the caps on fees is explained in part by a change in the methodology to calculate the Max TERs. A further change will be applicable next year which may lead to further drops. Indeed, for registered funds there has been a transition from the 90th percentile to the 75th percentile (which is an average between 90 / 75) relating to TERs found in the Morningstar Direct United Sates Mutual Funds as at May 2020 data base, causing the reduction of the Max TERs this year. Next year the Max TER of registered funds will be based on the 75th percentile only, so there may be another drop for the 2021-2022 period. The drop will of course depend on where the market moves as captured in the applicable databases that will be used next year (possibly the ones as at May 2021). However, this change in methodology will not apply to alternative funds (private equity, private debt, infrastructure and real estate) and Gold ETFs whose Max TERs shall continue to be calculated on the basis of the 90th percentile of the TERs contained in the relevant most recently available databases (this year the ones used were Prequin Private Capital Fund Terms Advisor 2018, Morningstar Direct United states Mutual Funds – for infra and real estate- and Bloomberg as at May 2020- for Gold ETFs).

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ASIA PACIFIC

Myanmar

MOPFI To Allow Input CT on fixed assets and capital purchases

On 15 May 2020, the Ministry of Planning, Finance and Industry (MOPFI) issued Notification 56/2020 amending the Commercial Tax (CT) Regulations in Myanmar. This Notification removes the input CT qualification on fixed assets/capital purchases under Section 42(d) of the CT Regulations.

Section 42(d) of the CT Regulations provides that "Input CT paid for the purchase or construction of fixed assets and capital assets cannot be offset against output CT."

Prior to this amendment, taxpayers were not allowed to offset the CT paid on fixed assets and capital purchases against their output CT on sales of goods or provision of services. The CT paid on these purchases was normally capitalised as part of the cost of an asset and subject to depreciation on a yearly basis. However, under this latest amendment to the CT Regulations, taxpayers can offset the CT paid on fixed assets and capital purchases against their output CT throughout the year.

This Notification is effective from 1 October 2019 or the beginning of fiscal year 2019-2020.

Thailand

Thailand becomes the 137th signatory state to the multilateral convention on mutual administrative assistance in tax matters

On 3 June 2020, Thailand signed an amended version of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention), thus making it the 137th State to sign this agreement.

As a signatory state to the Convention, Thailand has agreed to legislated, implement, and follow the automatic exchange of information requirements known as The Common Reporting Standard (CRS) and Country-by-Country Reporting (C-b-C). These require the automatic exchange and reporting of certain taxpayer information on accounts of individuals and operations of international countries to other country revenue departments. The process for formalising these automatic collection and reporting processes will begin in earnest once Thailand ratifies the agreement and deposits the instrument of ratification with the OECD.

Thailand has been given until 30 August 2021 to ratify the agreement or face being placed on the EU blacklist, which could result in significant tax related issues for Thai residents having investments outside Thailand. It is anticipated that Thailand will ratify the agreement by this deadline and then proceed to implement the collation and exchange procedures required thereunder.

While the actual timing of the initial exchanges of information are uncertain, we will continue to monitor for future developments.

Vietnam

New law on investment and enterprises 2019

The National Assembly of Vietnam on 17 June 2020 passed the Law on Investment 2019 (the LOI 2019) and the Law on Enterprises 2019 (the LOE 2019). Both the LOI 2019 and LOE 2019 are effective from 1 January 2021 and replace the Law on Investment no. 67/2014/QH13 issued by the National Assembly of Vietnam dated 26 November 2014 (LOI 2014) and the Law on Enterprises no. 68/2014/QH13 issued by the National Assembly of Vietnam dated 26 November 2014 (LOE 2014).

Key changes to the law on investment include:

- updated list of conditional business lines;
- new foreign ownership threshold;
- foreign investment M&A approval;
  investment projects subject to investment policy decisions.

Key changes to the law on enterprises include:

- removal of corporate seal notifications and reports on managers;
- minority shareholder protection – reduced threshold;
- removal of required inspector in single member LLCs.

It is expected that the Government of Vietnam will amend the relevant decrees to provide guidance for the implementation of these new laws.

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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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