

International Funds Net Country Updates

April 2020



EUROPE

European Union



Guidelines on performance fees in UCITS and certain types of AIFs

On 3 April 2020, ESMA published [guidelines](#) (‘the Guidelines’) on performance fees in UCITS and certain types of AIFs. The Guidelines apply to performance fees paid to managers and competent authorities of UCITS and certain AIFs.

The Guidelines will apply two months after their publication on ESMA’s website in all EU official languages (Date of Application). During this two month period National Competent Authorities (NCAs) must inform ESMA if they follow or will follow the Guidelines.

Managers of new funds (ie created after the Date of Application) with a performance fee, and any existing funds which introduce a performance fee after the Date of Application must comply with the Guidelines immediately for those funds.

Managers of funds with a performance fee existing before the Date of Application should apply the Guidelines by the beginning of the financial year following 6 months from the Date of Application.

The Guidelines cover:

- performance fee calculation method
- consistency between the performance fee model and a fund’s investment objectives, strategy and policy
- frequency for the crystallisation of the performance fee
- negative performance (loss) recovery
- disclosure of the performance fee model.

EBA issues further guidance and flags new risks

On 22 April 2020, the European Banking Authority (EBA) issued a [Statement](#) addressing how additional flexibility should guide supervisory approaches across a number of key areas during the COVID-19 pandemic. The Statement also highlights the importance of digital operational resilience, as the EBA calls on regulators and financial institutions to take “*stringent*” action.

The centre piece of the EBA’s statement is a proposal amending capital valuation standards on in light of the exceptional volatility triggered by COVID-19. In

particular, the EBA is proposing to introduce the use of a 66% aggregation factor to be applied until 31 December 2020 under the ‘core approach’.

The EBA has also set out a number of additional measures including:

- delaying the reporting deadline for the first FRTB-SA figures to September 2021
- taking a “*pragmatic approach*” to Supervisory Review and Evaluation Process assessments in 2020
- advice for National Competent Authorities (NCAs), highlighting the flexibility in the prudential requirements available for banks using internal VaR models;
- further guidance on the prudential application of the definition of default and forbearance and
- further clarification on how the EBA Guidelines on legislative and non-legislative moratoria on loan repayments apply to securitisations.

ECB supports macroprudential policy responses to COVID-19

On 15 April 2020, the European Central Bank (ECB) issued a [Press Release](#) unambiguously backing various macroprudential policy actions proposed by euro-area authorities to counter the unfolding COVID-19 crisis. Following a full review of the notifications submitted by national macroprudential authorities for each proposed measure in accordance with Capital Requirements Regulation and Directive, the ECB has issued a non-objective decision endorsing the proposals. According to the ECB, the measures should cumulatively free up “*more than €20 billion of Common Equity Tier 1 capital held by euro area banks*”. The measures include releases or reductions of the countercyclical capital buffer, systemic risk buffer and buffers for other systemically important institutions. Some authorities have also postponed or revoked previously measures announced to avoid placing pressure on banks to accumulate capital buffers in a downturn.

EIOPA issues new statement of principles in light of ongoing COVID disruption

The European Insurance and Occupational Pensions Authority (EIOPA) released a new [Statement of Principles](#) on 17 April 2020, to mitigate the impact of COVID-19 on the occupational pensions sector in Europe. The Statement focusses particularly on Institutions for Occupational Retirement Provision (IORPs), emphasising the stabilising role that these long term investors can play in volatile markets. EIOPA



urges European NCAs to apply its revised principles to ensure that IORPs are prepared to weather the current disruption from a variety of perspective, including:

- business continuity and operational risk
- liquidity position
- funding situation and pro-cyclicality
- protection of members and beneficiaries and
- communication.

EIOPA has confirmed that it will continue to work closely with NCAs to ensure the continued health of the insurance and occupational pensions sector.

ESMA issues Q&A on performance measures

On 17 April 2020, to address concerns surrounding the application of its Guidelines on Alternative Performance Measures (APMs) in the context of the COVID-19 pandemic, the European Securities and Markets Authority (ESMA) issued a [revised Q&A](#). The APM Guidelines were originally issued in 2015 and clarify what information should be disclosed when publishing APMs (Operating Results, EBIT, EBITDA, Free Cash-flows, etc.). In light of the continued disruption ESMA's revised Q&A:

- highlights the main principles of the APM Guidelines and
- offers guidance for issuers who are considering adjusting or including new APMs to address the impact of COVID-19.

When publishing APMs during the current period ESMA also encourages issuers to provide, "*narrative information regarding the modifications made, the assumptions used and the impact of COVID-19*", and "*information on measures taken or expected to be taken by issuers to address the impact that the COVID-19 outbreak may have in their operations and performance*".

France



AMF extends ban on net short positions

On 15 April 2020, the *Autorité des marchés financiers* (AMF), issued a [Press Release](#) renewing its ban on net short positions (first announced on 17 March) until 18 May 2020. The ban prevents the creation of new short positions or increases to existing net short positions and applies to any person established or resident in France. The announcement will also apply outside of France when the position involves a share admitted to

a trading venue in France, where that share falls under a jurisdiction where the AMF is the relevant competent authority. Further guidance can be found in the AMF's [FAQ on the ban](#), which was re-issued alongside the announcement on 15 April 2020.

Ireland



Deadline extension for Form IU(3e)

30 June 2020 is the extended deadline imposed by the Office of the Revenue Commissioners for submission of Form IU(3e). This is to mitigate the difficulties caused by COVID-19 to certain compliance and filing obligations.

Luxembourg



CSSF issues countercyclical buffer rate regulation

On 24 April 2020, the *Commission de Surveillance du Secteur Financier* (CSSF) issued CSSF Regulation N° 20-01 of 15 April 2020 (in French language only) on the setting of the countercyclical buffer rate for the second quarter of 2020.

CSSF publishes Single Resolution Fund circular

On 24 April 2020, the CSSF published Circular CSSF-CODERES 20/10 on the Single Resolution Fund – Information on / announcement of raising 2020 ex-ante contributions according to Articles 69 and 70 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014.

Switzerland



FINMA issues further exemption for supervised institutions

On 14 April 2020, responding to COVID-19's profound effect on global markets, the Swiss Financial Market Supervisory Authority (FINMA) issued new guidance for supervised institutions ([Guidance 04/2020](#)). Guidance 02/2020 issues exemptions until 1 July 2020 concerning a number of backtesting exceptions that are relevant to the calculation of capital adequacy. FINMA has also welcomed the [joint statement](#) published on 3 April 2020 by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) extending the deadline for completing the final two implementation



phases of the margin requirements for non-centrally cleared OTC derivatives. FINMA has supplemented this announcement by offering a 12 month extension for the implementation of the margin requirements for non-centrally cleared OTC derivatives. The new deadlines will be 1 September 2021 for firms whose aggregated month-end average gross position of noncentrally-cleared OTC derivatives (at the group level) is greater than CHF 50 billion for each of the months of March, April and May 2021. Firms with an aggregated month-end average gross position greater than CHF 8 billion for each of those months will now have until 1 September 2022 to implement the margin requirements.

UK OVERSEAS TERRITORIES

Cayman Islands



New legislation for closed-ended funds

On 7 February 2020, the Cayman Islands Government enacted the Private Funds Law 2020 (PF Law) and the Mutual Funds (Amendment) Law 2020 (MFL Amendment Law) – an amendment to the Mutual Funds Law (2020 Revision) (MF Law). Certain European Union and other international recommendations prompted this new legislation so as to align the Cayman investment fund regulatory regime with other jurisdictions. The new legislation includes a six month transition period, ending 7 August 2020.

The PF Law applies to any Cayman Islands closed-ended fund defined as a 'Private Fund' and requires such funds to be registered with, and regulated by, the Cayman Islands Monetary Authority (CIMA). By 7 August 2020, Private Funds must be registered, whether they were carrying on business on 7 February 2020 or will commence business within the transition period. Private Funds that launch on or after 7 August 2020 will have to follow the registration timing requirements in the PF Law.

The PF Law includes the requirement for Private Funds to submit to CIMA audited financial statements, signed of by Cayman auditor, within 6 months of its financial year end. The legislation also specifies valuation, custody, cash monitoring and securities identification requirements which is intended to give transparency about Private Funds' core operations and processes.

Amendments to the Beneficial Ownership regime

In February 2020, amendments to the Company Law (Revised) and the Limited Liability Companies Law (Revised) were published. These clarified the corporate

services provider's (CSP) role in maintaining the beneficial ownership register for an entity. Additionally, a competent authority may now only search the beneficial ownership register to verify the accuracy of information provided by an entity, although that competent authority may request further information from the CSP.

From 15 May 2020, the definition of 'Beneficial Owner' includes all holders of 25% or more of the shares and/or voting rights of a company rather than in excess of 25%. A similar threshold will apply for limited liability companies. Corporate entities should contact their CSP to ensure compliance.

From 20 April 2020, all beneficial ownership filings must be made by a CSP through the Registrar of Companies (ROC)'s electronic filing system, CAPS.

Economic substance legislation update

In February 2020, the International Tax Co-operation (Economic Substance) (Amendment) Law 2020 came into force.

The Amendment Law made the following key changes to economic substance legislation:

- All Cayman companies, LLCs and LLPs must now file an annual economic substance notification. This is a prerequisite to filing the entities' annual return, late filing of which is subject to penalties and potential striking from the relevant register. 31 March 2020 was the initial deadline for filing, but in light of COVID-19 this has been extended to 30 June 2020.
- The Tax Information Authority (TIA) can impose a fine of KYD 5,000, with an additional KYD 500 for each day the breach continues, if an in-scope relevant entity does not submit its annual report on time.
- Entities claiming tax residence outside of Cayman must provide the TIA with information on its immediate parent, ultimate parent and ultimate beneficial owner. The TIA must then exchange that information with the relevant competent authorities.

Changes to Fund Annual Return Form

In mid-March 2020, changes were made to the Fund Annual Return (FAR) form which open-ended vehicles regulated under the Mutual Funds Law (2020 Revision) must file.

The new FAR form requires additional information, including on:



- investors' jurisdictions
- total side letters with investors
- independence and regulation of the investment manager, NAV calculation agent and registrar and transfer agent.

AMERICAS

Chile



Increased limits for pension fund investment in alternative assets

In its extraordinary session N° 2301E, the Central Bank of Chile increased the maximum structural limit for investment by Chilean Pension Funds in alternative assets, as defined in the Decree Law 3.500 (D.L. 3.500).

The change in limits is as follows:

	Previous limit	New limit
Portfolio A	10%	13%
Portfolio B	8%	11%
Portfolio C	6%	9%
Portfolio D	5%	6%
Portfolio E	5%	5%

ASIA PACIFIC

Australia



AFSL application and variation process changes

On 18 February 2020, the Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2019 Measures)) Act 2020 (the Act) amended the Corporations Act with a view to strengthening the regulatory tools available to the Australian Securities & Investments Commission (ASIC).

All changes are detailed in [Information Sheet 240](#). The two main changes are the updates to individuals covered by 'fit and proper persons' and the requirement for additional non-core proof documents.

'Fit and proper persons'

Now, when assessing applications for either a new or varied Australian financial services licence (AFSL),

ASIC must assess a wider range of persons under the 'fit and proper person' test set out in section 913BA of the Corporations Act 2001 when assessing AFSL applications. They must consider if the applicant, or any persons in following list, are not fit and proper to perform any of their functions:

- officers of a body corporate applicant
- partners or senior managers of a partnership applicant
- trustees

ASIC need additional information to be satisfied that there is no reason to believe that the applicant or any of the relevant persons listed above are not fit and proper persons.

Providing additional non-core proof documents

Applicants that are planning to provide certain financial services and products must provide additional non-core proof documents as set out in Information Sheet 240.

Applicants that have specified particular circumstances may need to provide additional non-core proofs when making the application.

Cambodia



Update on Annual and Monthly Tax Filing

On 19 March 2020, the General Department of Taxation (GDT) issued Instruction 7705, giving information on how taxpayers may scan and send their annual and monthly tax returns from February 2020 to June 2020 via the GDT's e-Tax service. Instruction 7705 came into force on 19 March. This is a measure to help prevent the spread of COVID-19 as taxpayers will not need to physically go to a GDT office to submit their returns.

Taxpayers should go to www.tax.gov.kh to register for the service. They must keep the original of their 2019 tax return or monthly tax return and deliver them to the GDT within 3 months of submitting them on the e-Tax service.

Implementation of Tax Incentives for Listing Entities

On 4 January 2019, Sub-Decree 01 ANKR.BK (Sub-Decree) introduced new tax incentives for entities listing on the Cambodian Stock Exchange (CSX). The



Tax on Income incentive (TOI incentive) which Sub-Decree 01 introduced was implemented by Prakas no. 183 dated 25 February 2020 (Prakas 183).

The Sub-Decree applies to entities that list and offer either stock or debt securities on the CSX to public investors, non-resident or resident. Entities approved by the Securities and Exchange Commission of Cambodia (SECC) and registered with the CSX to make an initial public offering of equity and/or debt securities within three years from the Sub-Decree must submit an application to the GDT through the SECC to benefit from the incentives.

One of the incentives under the sub-decree is a 50% reduction of the annual TOI liability for three years for qualifying entities. The TOI incentive starts at the beginning of the tax year when the approval was given if the securities were issued before 30 June of that year. The TOI incentive takes effect from the following year for Securities issued after 30 June and before 31 December.

Prakas 183 has clarified that:

1. the TOI incentive applies to taxpayers subject to the self-assessment tax regime in Cambodia that issue stock and/or debt securities for the first time on the CSX
2. enterprises that issue their first public security which
 - is equal to more than 20% of the enterprise's voting rights; and/or
 - issue debt securities of more than 20% of the value of total assets which have a maturity of at least 7 years
 will receive the TOI incentive for the first three years
3. enterprises that issue their first public equity security that:
 - is equal to or less than 20% of the voting rights of the enterprise; and or
 - issue debt securities equal to or less than 20% of the total asset value of the enterprise
 will be granted the TOI incentive for 3 years following a declining proportion basis by taking 20.001% as a base.

and trustees of SFC-authorized funds about the obligations to correctly manage fund liquidity and ensure the fair treatment of investors in current market conditions.

The SFC provided guidance on its expectations if managers are to temporarily apply a swing factor or antidilution levy that exceeds the maximum level set out in their funds' offering documents.

The SFC has increased its monitoring of funds and reporting requirements, and introduced temporary relief measures for new fund applications and post-authorisation matters to reduce the administrative burden managers may be facing.

SFC concerned over secondary market liquidity of ETFs

On 17 April 2020, the SFC issued a circular to managers and market makers of SFC authorised exchange traded funds (ETFs), to remind them that ETFs must be managed in the best interests of investors. This followed the suspension of market making activities by the sole market maker of an ETF as a result of some of its trading staff being quarantined.

Market making is critical to the liquidity of ETFs, and for retail products maintaining liquidity is one of the SFC's key concerns.

In light of the above, ETF managers should:

- conduct due diligence and ongoing monitoring on market makers' competence and performance
- monitor ETFs' secondary market trading and liquidity
- manage the risks of a sole market maker, eg by appointing additional market makers or an alternate market maker that can step in if the sole market maker's operations are suspended or interrupted
- if cessation, disruption or suspension of market making activities occur, inform the SFC and investors
- notify the SFC as soon as possible of any untoward circumstances relating to ETFs under management

ETF market makers should:

- identify likely scenarios involving disruptions within their business continuity plan and have appropriate back-up facilities and enough

Hong Kong



COVID-19 and authorised funds

On 27 March 2020, the Securities and Futures Commission (SFC) issued a circular to all managers



- personnel to continue market making
- enact contingency measures quickly
- inform the ETF manager, SFC and the Stock Exchange (SEHK) immediately if they anticipate a disruption to its operations

Singapore



MAS and ESMA sign MOU on Singapore's financial benchmarks

On 17 April 2020, the Monetary Authority of Singapore (MAS) and the European Securities and Markets Authority (ESMA) [announced](#) they had signed a Memorandum of Understanding (MOU) to allow the use of Singapore's financial benchmarks in the EU. MAS and ESMA will share information and supervisory activities on Singapore-regulated financial benchmarks.

This follows the European Commission's equivalence decision, which recognised Singapore's regulatory framework on financial benchmarks as equivalent to those required by the EU's Benchmarks Regulation. EU financial institution will be able to continue using as reference rates in their contracts both SIBOR and the Singapore Dollar Swap Offer Rate (SOR).

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

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



Michaela Walker
Product Group Head

Dir: 0207 919 0541
Int: +44 20 7919 0541
michaelawalker@
eversheds-sutherland.com



Ronald Paterson
Partner

Dir: 0207 919 0578
Int: +44 20 7919 0578
ronaldpaterson@
eversheds-sutherland.com



Lindi Rudman
Legal Director

Dir: 0207 919 0837
Int: +44 20 7919 0837
lindirudman@
eversheds-sutherland.com

[eversheds-sutherland.com](https://www.eversheds-sutherland.com)

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