

International Funds Net Country Updates

December 2019



EUROPE

European Union



Long awaited regulation of sustainability-related disclosures in the financial services sector published

On 9 December 2019, the European Parliament and the Council published Regulation (EU) 2019/2088 (the Regulation) on sustainability-related disclosures in the financial services sector.

The Regulation applies to all financial market participants, including AIFMs, UCITS Management Companies, and investment firms, and to financial advisors and foresees new mandatory transparency requirements (TRs) at the following levels:

- entity
- asset manager, and
- product level.

These TRs include disclosures on:

- the integration of sustainability risks in the investment decision-making process or investment advice process
- how sustainability considerations impact an investment decision
- how remuneration policies are consistent with the integration of sustainability
- likely impacts of sustainability risks on the returns of the financial products made available.

Further disclosure requirements are expected for financial products promoting, inter alia, environmental or social characteristic, or with sustainable investment as their objective.

A wide range of documents will be affected by the new disclosure obligations, eg new environmental, social and governance (ESG) policies published on websites, pre-contractual documents, marketing communications, prospectuses, annual reports, and will need to include information on sustainability issues.

The Regulation will apply from 10 March 2021, with product rules to be implemented by 30 December 2022. However, the Luxembourg Regulator (the CSSF), is already asking asset managers that launch funds with sustainable investment or ESG strategies for evidence to

provide evidence of what has been done in line with these strategies.

Spain



Technical guide on authorisation procedures for new entities approved

On 28 November 2019, the National Securities Market Commission (CNMV) approved the Technical Guide 3/2019 (Technical Guide), which streamlines the processing of authorisation applications (Authorisation). Previously, this has been slowed by the complexity of regulatory requirements for entities regulated by the CNMV.

The Technical Guide has recommendations and good practices for improving the efficiency of Authorisation and is aimed at:

- investment firms, excluding investment advisors that are natural persons
- Management Companies of Undertakings for the Collective Investment in Transferable Securities (UCITS)
- Alternative Investment Fund Managers (AIFM), and
- Crowdfunding Platforms.

The Technical Guide introduces a 'pre-notification phase', giving applicants the possibility of meeting the CNMV and receiving guidance prior to the formal Authorisation. This standardises the already common practice of submitting projects to the CNMV in a meeting prior to the formal submission, by way of a Pre-Notification Form, which must be submitted via email. The Technical Guide also introduces the submission of a statement regarding the checks done on the required documentation submitted in the authorisation procedures.

According to the Technical Guide, the CNMV will provide, as soon as possible, updated forms on its website.

Switzerland



Changes to the advertising of financial instruments and collective investment schemes

On 1 January 2020, the requirement to designate advertising material as such enters in to force. Any



advertising document that refers to a financial instrument or collective investment scheme should state 'This is an advertising document'. All information within advertising materials should correspond with information in the fund documents, and should also be state where the fund documents may be obtained free of charge.

The above also applies to any advertising material displayed on websites or webpages showing advertising, although the wording may be changed to 'This website may contain advertising'.

The requirement to designate advertising material will also apply to the promotion of investment advisory and asset management services.

UK OVERSEAS TERRITORIES

British Virgin Islands



New regulatory regime for close-ended funds

On 31 December 2019, the British Virgin Islands (BVI) introduced a regulatory regime to regulate close-ended funds, which have previously been unregulated by the BVI, with the enactment of the Securities and Investment Business (Amendment) Act (SIBA Amendment Act). This is in response to requirements of the European Union for the BVI to regulate close-ended collective investment schemes.

The SIBA Amendment Act introduces the category 'private investment fund' (PIF). A fund will be classed as a PIF if it satisfies both of the following criteria:

- the fund collects and pools investor funds for the purpose of collective investment and diversification, and
- the fund issues fund interests, which entitle the holder to receive an amount of interest calculated by reference to the value of a proportionate interest in the whole or in a part of the net assets.

New funds that are caught by the above definition will have to submit an application to the BVI Financial Services Commission (FSC) for recognition as a PIF within 14 days of starting business. Such funds may operate for up to 21 days, during which time they will be deemed to have been recognised as a PIF. The fund must also satisfy the following eligibility criteria:

- be lawfully incorporated, formed or organised (in the BVI or elsewhere)
- have constitutional documents that specify that:
 - it is not authorised to have more than 50 investors, or
 - it must make invitations to subscribe or purchase fund interests on a private basis only, or
 - the fund interest shall only be issued to professional investor, with an initial investment of each professional investor, except for an exempted investor, of no less than USD 100,000
- such other criteria as may be specified for recognition of a PIF in the PIF Regulations
- on being recognised, be compliant with the SIBA Amendment Act, the PIF Regulations and any practice direction applicable to the fund, and
- recognising the fund as a PIF is not against the public interest.

There is a six month transition period – ending 1 July 2020 – which will apply to existing close-ended funds that fall within the definition of a PIF, by the end of which they must have applied to the FSC.

Now that close-ended funds need to become recognised as PIFs they must comply with the following ongoing obligations:

- to have as all times 'appointed persons' responsible for:
 - management of fund property
 - valuation of fund property, and
 - safekeeping of fund property
- have at all times an 'authorised representative' in the BVI
- if structured as a company, to have at all times at least 2 directors
- its offering terms must contain the regulatory disclosures required by the PIF Regulations
- maintain a clear and comprehensive policy for the valuation of fund property, to be followed by the 'appointed person' responsible for the valuation of fund property
- prepare audited yearly financial statements and file a copy with the FSC within 6 months of the relevant financial year



- notify the FSC within 14 days of certain key changes, and
- maintain financial records that:
 - are sufficient to show and explain its transactions
 - enable its financial position to be determined with reasonable accuracy
 - enable it to prepare financial statements and make such returns as required by the SIBA Amendment Act and PIF Regulations, and
 - maintain such financial records for at least 5 years after completion of the transaction to which they relate.

Cayman Islands



Economic substance declaration requirement

By 31 January 2020, all Cayman companies, limited liability companies and registered foreign companies (excluding trusts and exempted limited partnerships) are required to make a notification (Notification) to the Cayman Islands General Registry (the Registry), under the newly introduced economic substance legislation (ECL).

An in-scope entity (Entity) must confirm on what basis it is exempt or not from the ECL, regardless of whether it is conducting any Relevant Activity under the ECL, together with other mandatory information.

As the Notification is made through a company's Registered Office Service Provider (ROSP), companies may already have received a request from their ROSP to supply it with the necessary information. Companies that have not yet heard from their ROSP may want to contact them for an update.

AMERICAS

Chile



Changes to minimum AUM for alternative fund managers

On 17 December 2019, the Comisión Clasificadora de Riesgo (CCR) published an amendment to its rule on minimum Assets Under Management (AUM) requirements for alternative asset managers (AAMs) that target Chilean pension funds as investors. The

minimum has been reduced from USD 5 billion to USD 2 billion. This means that from 17 December 2019 onwards, AAMs must maintain at least USD 2 billion AUM in the relevant asset class (infrastructure, private debt, private equity, or real estate).

ASIA PACIFIC

Hong Kong



Annual filings and notifications with the SFC

By 31 January 2020, corporations licensed (LCs) by the Securities and Futures Commission (SFC) with 31 December as their financial year end must file annual returns for themselves and their licensed individuals and pay the annual licensing fees for themselves and their licensed individuals. By 30 April, LCs must submit their financial statements and business and risk management questionnaire (BRMQ) for 1 January 2019 to 31 December 2019.

LCs must notify the SFC of a change in any of the events listed in the Securities and Futures (Licensing and Registration) (Information) Rules within 7 business days after such change, and before the submission of annual returns if any un-notified changes are discovered during the preparation of the annual returns. Such events include (but are not limited to):

- closing or opening of bank accounts
- outsourcing a new function to a third party / termination of an outsourced relationship.

From 11 April 2019 onwards, annual returns, and notifications, must be submitted via the Online Portal.

Annual licencing fees waived

On 4 December 2019, the SFC announced a waiver of annual licensing fees for the new financial year (1 April 2020 – 31 March 2021). However for annual licensing fees payable before 1 April 2020, the 50% concession rate will continue to apply.

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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