

# International Funds Net Country Updates

February 2019



## EUROPE

### Luxembourg



#### Luxembourg - Hong Kong mutual recognition of funds MOU signed by CSSF and SFC

On 15 January 2019, the Commission de Surveillance du Secteur Financier (CSSF) agreed to a Memorandum of Understanding (MoU) with the Securities and Futures Commission (SFC) on the mutual recognition of funds. This MoU will allow Luxembourg-domiciled UCITS and Hong Kong public funds to be distributed, marketed and offered in each other's market.

The MoU will facilitate an easier system for funds in either country to register in the market of the other.

The process has been streamlined and it will now take between 1-2 months for standard application approvals. This significantly reduces the timeline allowing funds to be available to the public in an efficient manner.

For Hong Kong funds wishing to market to retail investors in Luxembourg they must meet the eligibility requirements set out in CSSF streamlining the requirements and process for mutual recognition of Hong Kong funds. Such funds would be considered alternative investment funds and so are subject to the marketing rules set out in Article 45 of the law of 12 July 2013 on alternative investment fund managers, as amended. Such funds must appoint a paying agent in Luxembourg. Following receipt of an application to be authorised to market in Luxembourg, the CSSF has 5 days to respond and one month from receipt of all documents to grant the authorisation to a Hong Kong fund.

The SFC in their circular Mutual Recognition of Funds between Luxembourg and Hong Kong outline the process for Luxembourg UCITS to market to retail investors in Hong Kong.

In addition to the fund having a firm in Hong Kong as its representative, the CSSF must provide the SFC with a certificate confirming eligibility.

The SFC and the CSSF may consider extending the regime to include other types of funds in the future.

### India



#### MCA releases amended rules on significant beneficial ownership

On 8 February 2019, the Ministry of Corporate Affairs (MCA) released the Companies (Significant Beneficial Owners) Amendment Rules, 2019 (New SBO Rules) to revise and amend the Companies (Significant Beneficial Owners), 2018 (Old SBO Rules).

The New SBO Rules have kick-started the process of requiring significant beneficial owners to start the reporting procedures.

#### Who needs to disclose?

Every individual, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in a reporting company shall be deemed to be a significant beneficial owner (SBO):

- holds indirectly, or together with any direct holdings, not less than 10% of the shares
- holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares
- has the right to receive or participate (by virtue of their indirect and/or direct holdings) in not less than 10% of the total distributable dividend or any other distribution or
- has the right to exercise, or actually exercises, significant influence or control (through their indirect holdings only) over the reporting company.

In addition, the New SBO Rules also lay down criteria for the determination of an individual's indirect holdings in the reporting company for the purpose of determining whether or not an individual is an SBO. For example, if the member of the reporting company is a company, the SBO is the individual who holds a majority stake in that member or holds a majority stake in the ultimate holding company of that member.

#### Filing obligations under the New SBO Rules

- every SBO is required to make a declaration in Form No. BEN-1 to the company in which he/she holds the significant beneficial ownership within 90 days of the New SBO Rules coming into effect and every time any



individual acquires significant beneficial ownership in a reporting company, the declaration in Form BEN-1 has to be filed within 30 days of acquiring such significant beneficial ownership

- once a declaration by an SBO is received by the reporting company, the reporting company is required to, within 30 (thirty) days of receiving such declaration, file a return in Form No. BEN-2 with the relevant registrar of companies in respect of each such declaration received by the reporting company
- each company is required to maintain a register of SBOs in Form No. BEN-3 which shall be available for inspection to the shareholders
- in addition, every reporting company, will be required to give notice in Form No. BEN-4 to all its members (who are not individuals) who hold more than 10% of the shares asking the members to, inter alia, disclose information of the SBO of the member.

In case no declaration is filed by the SBOs to the reporting company or where the information provided by the SBOs is deemed unsatisfactory by the reporting company, the reporting company is entitled to apply to the NCLT for imposing restrictions on the shares held by the SBOs.

The following persons are exempt from making disclosures under the New SBO Rules:

- the Investor Education and Protection Fund
- the holding reporting company of the reporting company
- the Central Government, State Government or any local authority
- any entity controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments
- all investment vehicles registered with the Securities and Exchange Board of India (SEBI)
- investment vehicles regulated by the Reserve Bank of India or Insurance Regulatory and Development Authority of India or Pension

Fund Regulatory and Development Authority.

### **RBI relaxes the 20% concentration limit for FPIs to invest in the Indian debt market**

On 15 February 2019, the Reserve Bank of India (RBI) through its circular (RBI Circular) relaxed one of the restrictions imposed on foreign portfolio investors (FPIs) while investing in the Indian debt market.

On 15 June 2018, the RBI had introduced certain conditions for FPIs looking to invest through the bond route in India (2018 Circular). Although under the 2018 Circular, the RBI had relaxed the minimum maturity period requirements for FPIs (reducing the period from 3 years to 1 year), it had also imposed single/group investor-wise limits in corporate bonds. As such, after the 2018 Circular came into effect, FPIs were:

- restricted from having an exposure of more than 20% of its corporate bond portfolio in a single corporate (including exposure to related entities) and
- required to ensure that investment by any FPI (including related FPIs), shall not exceed 50% of any issue of a corporate bond.

Although these restrictions were introduced in an attempt to incentivise FPIs to maintain a diverse portfolio of assets in the Indian debt market, the RBI in its Statement on Developmental and Regulatory Policies, stated that upon analysing market feedback, it has observed that the restriction in fact resulted in discouraging FPIs from investing in India. In order to remove this roadblock and in an effort to attract long-term investors, the RBI, through the circular on 15 February 2019 has withdrawn the restriction that required FPIs to ensure that their corporate bond portfolio exposure in a single corporate entity (including related parties) does not exceed 20% (20% Restriction), thereby encouraging a wider spectrum of FPIs to access the Indian market. Despite this change, FPIs are still required to ensure that investment by any FPI (including related FPIs), shall not exceed 50% of any issue of a corporate bond.

### **Myanmar**



### **CBM Allows 35% foreign equity investment in local private banks**



In a recent order of the Central Bank of Myanmar (CBM), it was announced that foreign banks and financial institutions would be allowed to have 35% equity investment in local private banks. In turn, local banks having a foreign equity injection up to the above mentioned limit would now be allowed to operate in Myanmar, subject to reporting to the CBM.

Pursuant to this order, local banks must submit a copy of the agreement entered into with the foreign bank/financial institution together with the local-foreign equity ratio post the investment. Other necessary documents as informed from time to time by the CBM will also need to be submitted.

Additionally, in the event foreign bank branches or subsidiaries that are permitted to conduct banking activities in Myanmar are investing in the local banks, the local banks are required to comply with ensuing requirements of the Financial Institution Law (FIL). Particularly, the restrictions which apply to cross-holding as provisioned in the FIL must be obeyed.

Previously, in the financial sector, foreign shareholder participation (applicable to banks) was legally permissible under the Myanmar Companies Law (MCL), but not permissible in practice. Finally, through this order, the CBM has made it permissible for foreign banks to inject equity in a local bank which has further liberalized entailing restrictions in the banking sector.

## Taiwan



### Allowing ETF feeder fund

On 25 January 2019, the Financial Supervisory Commission (FSC) issued a ruling to allow a securities investment trust enterprise (SITE) managing the ETF may also apply for approval to launch a feeder fund (ETF Feeder Fund) which only feeds to the ETF managed by the SITE (Master Fund).

The Ruling also requires that the Master Fund be limited to ETF with domestic component securities and the investment shall be more than 90% of the fund's net asset value. The word "feeder" and the name of Master Fund should be indicated in the name of the ETF Feeder Fund.

In addition, the FSC also rules that under the manager of managers structure, the passive management funds that can be concurrently managed by fund managers include ETF Feeder Funds.

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:

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