

**International Funds Net**  
Country updates

February 2022



## Europe

### Bosnia & Herzegovina



#### **Amendments to the Rulebook on Issuance of Business Licenses and Status Changes of Investment Fund Management Companies**

On 21 January 2022, the amendments to the "Rulebook on Issuance of Business Licenses and Status Changes of Investment Fund Management Companies" were adopted in the Republic of Srpska entity. These changes concern the necessary documentation for the submission of applications for the issuance of a license for the operation of an investment fund management company.

### France



#### **The AMF proposes measures to promote a wider adoption of liquidity management tools by fund managers**

On 8 February 2022, the Autorité des Marchés Financiers (AMF) launched a public consultation on measures to encourage the adoption of liquidity management tools, specifically those existing optional tools (gates, swing pricing, anti-dilution levies). The objectives are as follows:

- to rebalance the information asymmetry between the funds that do not have liquidity management tools and do not provide information on the lack of these tools and those that do have them and inform investors about them;
- to facilitate adoption by existing funds by opening a transitional period during which those that decide to adopt the ability to activate gates will be required to provide notification by any means, which could be provided as part of a statement covering several funds and no longer as individual notifications for each fund;
- make fund managers accountable for compliance with their professional obligations in terms of liquidity risk management, particularly those who have chosen not to use such tools, by requiring at least formal recognition of the risks incurred by the funds concerned in the event of exceptional

market circumstances.

#### **The AMF updates its policy on the marketing communications of collective investments**

Following the application of ESMA's Guidelines on marketing communications, the AMF is updating its Position-Recommendation DOC-2011-24 on the drafting of marketing materials and the marketing of collective investment undertakings in order to harmonise its policy for investment management companies and distributors. The AMF is making the following updates:

- adjusting the wording of current statements or positions that are similar in content to the Guidelines. The title of the position-recommendation will be adjusted, without affecting the substance;
- add new references provided for in the Guidelines. These include the display of disclaimers to clarify the marketing nature of the communication, the display of past or future performance or the increase or decrease in costs, if any, as a result of currency or exchange rate fluctuations.

Where they provide better investor protection, aspects of Position-Recommendation DOC-2011-24 that are not already covered by the Guidelines have been maintained. These include the presence in marketing communications of a warning when the prospectus of the collective investment is not translated into French, rules specifically applicable to communications relating to financial index and strategy index, and examples of assessment of the clear, accurate and non-misleading nature of the information.

### Montenegro



#### **Re-registration of investment funds and investment fund management companies**

On 17 January 2022, the Capital Market Commission (re)registered investment funds and investment fund management companies in accordance with the "Decision on the Register of Investment Fund Management Companies and the Register of Investment Funds" rendered on 8 December 2021.

## North Macedonia



### SEC adoption of new Rulebook and termination of rulebook

On 16 December 2021, the Securities and Exchange Commission of the Republic of North Macedonia (SEC) adopted a "Rulebook on the Manner of Operation of the Company for Management of Open and Closed Investment Funds, the Manner of Measurement and Risk Management Arising From the Work of the Open and Closed Investment Funds and the Methodology for Measuring the Risks of Investments in Financial Derivative Instruments", aimed at ensuring that the management companies operate in accordance with the Law on Investment Funds, as well as reducing the operating risk. The rulebook prescribes in more detail the requirements for investment fund management companies, including: organisational requirements, administrative and accounting policies, internal control mechanisms, monitoring compliance with relevant regulations, internal audit and risk management.

On 27 December 2021, the SEC terminated the "Rulebook on the Procedure for Undertaking the Activities of Investment Funds Carried Out by a Company for Investment Fund Management".

## UK overseas territories

### Guernsey



### Isle of Man



### Jersey



### Economic substance: guidance notes published

The governments of Guernsey, Jersey and the Isle of Man have published joint guidance notes on the scope and application of formal economic substance requirements to partnerships. The relevant legislation for Guernsey is the Income Tax (substance Requirements) (Implementation) Regulations, 2021 and for Jersey, the Taxation (Partnerships – Economic Substance) (Jersey) Law 2021.

From 1 July 2021, the economic substance test set out in the legislation must be met for partnerships established before that date, and

for all other partnerships, the test must be met from 1 January 2022. Funds structured as partnerships are not required to meet the test.

The guidance notes cover identifying the governing body and "place of effective management" of the partnership, and the exemptions where partnerships carry on solely domestic activities or where all the partners are individuals subject to income tax in the respective island.

## Jersey



### Amendments to the Limited Partnerships (Jersey) Law 1994

Draft amendments to the Limited Partnerships (Jersey) Law 1994 have been published for feedback. The key changes are expected to include:

- expanding the list of "safe harbour" activities which a limited partner may undertake without being deemed to participate in management of the partnership (therefore risking its limited liability);
- clarifying the procedure for the winding up and dissolution of a limited partnership;
- enabling a limited partnership agreement to govern the access which limited partners may have to partnership records;
- enhancing reporting obligations, with powers for the Registrar to strike off non-compliant partnerships (with a new reinstatement process also being introduced).

The final date for feedback was 21 January 2022.

### New prospectus regime for corporate issuers

The Companies (Jersey) Law 1991 imposes requirements on securities issuers where they make an offer constituting a "prospectus" for the purposes of the law, including requiring JFSC consent to the offer, imposing content requirements, and deeming the issuer a public company. These requirements do not apply to corporate collective investment funds, which are excluded by way of the Companies (General Provisions) (Jersey) Order 2002.

The Companies (Amendment of Law) (No. 2)

(Jersey) Order 2021 came into force on 19 October 2021, amending the definition of “prospectus” to align more closely with market expectations. Issuers may now be exempt from Companies Law prospectus requirements on a number of grounds, including status of investors, minimum investment amounts, and making an offer to no more than 50 persons in Jersey or 150 elsewhere.

## Guernsey



### Consultation on Ancillary Vehicles

The Guernsey Financial Services Commission (GFSC) is conducting further data collection and analysis following feedback to its Consultation Paper on Ancillary Vehicles. Therefore, since the new and amended regulatory laws came into effect on 1 November 2021, the notification regime for Ancillary Vehicles and the associated exemption under The Regulation of Fiduciaries, Administration Businesses and Company Directors Law 2020 will not be activated. However, exemption provisions equivalent to those available under The Regulation of Fiduciaries, Administration Businesses and Company Directors Law 2000 will continue to be available.

## Americas

### USA



### SEC proposes cyber rules for investment funds and advisers

The U.S. Securities and Exchange Commission (SEC) has published proposed new rules on cyber security, including:

- registered investment advisers and registered investment companies (including business development companies) to adopt and implement (and review at least annually) written cyber security policies and procedures reasonably designed to address cyber security risks, which would be required to cover several specific elements, including:
  - risk assessment;
  - user security and access;
  - information protection;

- cyber security threat and vulnerability management; and
- cyber security incident response and recovery;
- registered investment advisers to report ‘significant’ cyber security incidents affecting the adviser, or its fund or private fund clients, to the SEC on a newly-proposed Form ADV-C (which would be a confidential rather than public report) no later than 48 hours after having a reasonable basis to conclude that an incident occurred/is occurring;
- registered investment advisers and registered investment companies (including business development companies) to make enhanced disclosures related to cyber security risks and incidents. This would be in Form ADV Part 2A for registered investment advisers and in the registration statement for funds;
- registered investment companies’ (including business development companies) boards of directors to approve the cyber security policies and procedures, as well as to review the written report on cyber security incidents and material changes to the cyber security policies and procedures; and
- registered investment advisers and registered investment companies (including business development companies) to maintain, make and retain certain cyber security-related books and records.

### SEC proposes additional private fund manager requirements

The SEC has published proposed new rules and rule amendments principally affecting investment advisers registered with the SEC (RIAs) that advise one or more private funds. Some of the new requirements would affect all investment advisers advising private funds regardless of their registration status and one of the new requirements will affect all RIAs regardless of the types of clients they advise.

## Asia Pacific

### Australia



#### Foreign investment threshold reduced to 10% for expanded list of Australian businesses deemed to be "critical"

Amendments to the Security of Critical Infrastructure Act 2018 (Cth) (SOCI Act) which came into effect on 14 December 2021 have expanded the scope of what is considered a "national security business" under Australia's foreign investment laws. This means that all foreign investors must obtain prior approval from the Foreign Investment Review Board (FIRB) for investments of 10% or more in this expanded list of Australian companies, regardless of the value of the investment. These changes apply to any investments made after 14 December 2021 in a significant number of "critical" Australian businesses in sectors including financial services and banking.

The amendments to the SOCI Act have significantly expanded the list of "critical infrastructure assets". This expanded list of assets (and the businesses that own and operate them) are deemed to be "national security businesses". Since 1 January 2021, under the Foreign Acquisitions and Takeovers Act 1975 (Cth) (the FATA Act), Australia has had a mandatory pre-approval regime for any proposed acquisition of a direct interest (10% or greater) by a foreign person in a "national security business", regardless of the value of the investment. The amendments to the SOCI Act mean that any proposed acquisition of a direct interest (10% or greater) by a foreign person in any of those business now requires prior FIRB approval, regardless of the value of the business.

The amendments to the SOCI Act also mean that a significant expanded class of offshore investments that were previously notifiable on a voluntary basis are now subject to the mandatory pre-approval regime.

The relevant entities which own or operate "critical infrastructure assets" which are now subject to the mandatory FIRB approval regime for the acquisition of direct interests (10% or more) by foreign investors are as follows:

- **Banks:** An authorised deposit taking institution (ADI) which has assets over \$50 billion. The Government estimates that this is likely to include up to 10 Australian ADIs.

- **Superannuation funds:** A registrable superannuation entity that holds assets over \$20 billion.
- **Insurers:** An entity that carries on insurance business, life insurance business or health insurance business which has assets over \$2 billion (in the case of an insurance business), or over \$5 billion (in the case of a life insurance business) or over \$500 million (in the case of a health insurance business). The Government estimates that this is likely to include around 15 insurance businesses, 10 private health insurance businesses and 10 life insurance businesses.
- **Financial market and payment system businesses:**
  - Financial markets
  - Clearing and settlement facilities
  - Payment systems
  - Derivative trade repositories
  - Benchmark administrators

### Cambodia



#### Instruction No. 002 (dated 27 January 2022): Submission of Annual Financial Statements and Instruction 001 (Dated 27 January 2022): Use of English Language

On 27 January 2022, Instruction 002 was issued taking the obligation to file annual financial statements with the Accounting and Auditing Regulator (ACAR) a step further; expanding the filing obligation to all enterprises including those that do not meet the criteria contained in Prakas 563. Those enterprises affected by Instruction 002 are obliged to submit their annual financial statements with ACAR within 3 months and 15 days from the close of their accounting period. For enterprises that close their accounting period on 31 December the due date for the first submission of their annual financial statements to ACAR will be on 15 April 2022. Enterprises are able to use the ACAR e-filing system to submit their annual financial statements. There will be a public service fee to be paid for the retention of financial statements in accordance with Prakas No. 001 BBFSA. Entities that fail to, or are late in, submitting their annual financial statements to ACAR will be subject to penalties of Khmer Riel 2 million (USD500) and Khmer Riel 1.5 million (USD375) for Large and Medium

taxpayers respectively.

Circular 009 dated 1 September 2021, which came into effect from 1 January 2022, provided guidance for enterprises and non-profit organizations with respect to the use of English in accounting systems, related software and supporting documents. With respect to the implementation of Circular 009 the ACAR issued Instruction 001 which provides the following:

- Registered enterprises looking to use English language in their computerized accounting systems and/or other relevant computerized systems are required to notify ACAR before 31 March 2022. Newly established enterprises shall submit a notice on the use of English to ACAR within 60 days from the date on which they are registered with the General Department of Taxation;
- Enterprises can use the e-filing system of ACAR to submit the notice on the use of English in their computerized accounting system and/or other relevant computerized systems according to the sample already provided in the e-filing system.

Enterprises should retain the original copy of the notice for disclosure to the ACAR in future inspections. Enterprises that use English in their computerized accounting system and/or other relevant computerized systems without submitting a notice to the ACAR by the deadlines shall be subject to fines of Khmer Riel 2 million (USD500) and Khmer Riel 1.5 million (USD375) for Large and Medium taxpayers respectively.

## 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.

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



**Lindi Rudman**  
*Legal Director*

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

---



**Michaela Walker**  
*Partner*

**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

---

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

© Eversheds Sutherland 2022. All rights reserved.  
Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit [www.eversheds-sutherland.com](https://www.eversheds-sutherland.com).