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International Funds Net

Country updates

April 2023

Europe

European Union

ELTIF Regulation 2.0 published

On 20 March 2022, Regulation (EU) 2023/606 of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds ("**ELTIF**") and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules (the "**ELTIF Regulation 2.0**") was published in the Official Journal of the EU.

While the ELTIF Regulation 2.0 will enter into force 20 days following the date of its publication, amendments introduced shall apply from 10 January 2024. Nevertheless, in order to give ELTIF managers sufficient time to adapt to the new requirements, the ELTIF Regulation 2.0 provides for a transitional period of five years.

Information kindly provided by Bonn Steichen & Partners in Luxembourg.

Counsel of the EU publishes note on positions on proposed AIFMD and UCITS Directive

On 28 March 2023, the Council of the EU published an information note containing a table comparing the negotiating positions taken by the European Commission, the Council of the EU and the European Parliament on the proposed Directive amending the Alternative Investment Fund Managers Directive (*2011/61/EU*) (AIFMD) and the UCITS Directive (*2009/65/EC*) relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by alternative investment funds (2021/0376 (COD)).

The note has been published as trialogue negotiations on the legislation. The European Parliament published a report it adopted in February 2023 on the proposed Directive. The Council agreed its general approach on the Directive in June 2022.

Information kindly provided by Practical Law.

Revision of the AIFMD Reporting IT Technical Guidance

The European Securities and Markets Authority ("**ESMA**") issued an updated version of the AIFMD IT Technical Guidance (the "**Revised Guidelines**"). The Revised Guidelines introduce new validation rules to ameliorate data quality by making existing reporting fields mandatory. AIFMs must use the Revised Guidelines when submitting the AIFMD Returns, starting from submissions with period ending 31 December 2023.

AIFMs must evaluate the changes made to the Revised Guidelines to ensure that their AIFMD reporting is in line with the novel validation controls. The Revised Guidelines will be applicable as from November 2023.

Information kindly provided by Mamo TCV Advocates in Malta.

Czech Republic

In-kind contributions and investments in qualified investor funds

A qualified investor fund may be able to solicit in-kind contributions or investments from its investors, according to an official opinion published on 27 March 2023 by the Czech National Bank ("**CNB**"). Under Czech law, a qualified investor fund that is a legal entity other than a limited partnership company may receive in-kind investments which may be subject to monetary evaluation.

According to CNB this holds true also for a qualified investor fund which is a unit fund. Thus, a unit fund may accept in-kind investments (such as e.g. movable/immovable property, share in a company, receivables, know-how, rights of construction or use, etc.) under the same conditions.

Information kindly provided by our Eversheds Sutherland office in the Czech Republic.

Ireland

Central Bank of Ireland updates guidance

During March 2023, the Central Bank of Ireland ("**CBI**") updated the following guidance to include information on Investment Limited Partnership agreements:

- Forms for AIFs;
- Retail Investor AIF ("**RIAIF**") Application Form Guidance - RIAIF Checklists and Money Market Fund Checklist; and
- Qualified Investor AIF ("**QIAIF**") Guidance - User Manuals, QIAIF Checklists, Money Market Fund Checklist and Other Documentation.

CBI publishes climate-related financial

disclosures

On 27 March 2023, the CBI published the first annual climate-related financial disclosures of its investment assets. It sets out information on the climate-related impact of the Central Bank's investment assets.

Information kindly provided by our Eversheds Sutherland office in Ireland.

Luxembourg

CSSF updates FAQ on Sustainable Finance Disclosure Regulation

On 13 March 2023, the CSSF updated the FAQ on Sustainable Finance Disclosure Regulation ("**SFDR**") by adding three additional questions and answers.

Are there any ESG and/or sustainability related considerations that financial market participants need to take into account with respect to the fund names?

The CSSF reminds financial market participants ("**FMPs**") that information required by SFDR should be easily accessible, simple, fair, clear and not misleading which also applies to fund names. Consequently fund's names should not be misleading and disclosure of sustainability characteristics should be commensurate with the effective application of those characteristics to the fund.

FMPs must align fund investment objectives and policies with the relevant principles-based guidance on fund names given by the ESMA Supervisory Briefing on sustainability risks and disclosures in the area of investment management (as well as any further development on the topic at European level). Such supervisory briefing notably sets forth the use of terms such as "ESG", "green", "sustainable", "impact" and other ESG–related terms which should only be used when supported in a material way by evidence of sustainability characteristics.

Shall the methodology used to define sustainable investments be made available to investors?

European supervisory authorities ("**ESAs**") have included in their list of additional SFDR queries a question to the European Commission to understand whether an investment in an investee company which has one economic activity among several other economic activities that contributes to an environmental or social objective (and none of the economic activities significantly harm any environmental or social objective and the company follows good governance practices) would be considered to be "sustainable investment" as a whole or in part.

While awaiting clarification at European level, the CSSF would in the meantime expect that the methodology used for the definition of a sustainable investment within the meaning of Article 2(17) SFDR, as well as, where applicable, the applied thresholds be made available by the FMPs to investors through, for instance, mandatory disclosure templates, prospectus/issuing document and/or website disclosures (all in accordance with Article 2 SFDR regulatory technical standards and Article 10 SFDR).

Can efficient portfolio management techniques used for hedging purposes fall within the remaining portion of the investment portfolio of funds disclosing under Article 9 SFDR?

An Article 9 SFDR fund may, next to "sustainable investments", also include investments or techniques used for hedging purposes or relating to cash as ancillary liquidity, provided those are in line with the sustainable investment objective of the fund.

As such the CSSF considers that when used for hedging purposes, efficient portfolio management ("**EPM**") techniques fall within the "remaining portion" of the investment portfolio of funds disclosing under Article 9 SFDR.

Attention should also be made to CSSF Circular 08/356 stating that EPM techniques may be used for different purposes, including for the purpose of risk reduction. As such, FMPs are responsible for assessing the precise purpose of the use of EPM techniques and whether those could fall in the "remaining portion" of the investment portfolio (if and when used in the context of funds disclosing under Article 9 SFDR).

CSSF updates FAQ on cross-border notification procedures

On 16 March 2023, the CSSF updated its Frequently Asked Questions (the "**FAQs**") in relation to the rules regarding cross-border distribution of collective investment undertakings (as introduced into the Luxembourg laws of 17 December 2010 ("**UCI Law**") and of 12 July 2013 (the "**AIFM Law**")).

The CSSF provides the following main clarifications:

- the CSSF is of the opinion that Article 54-1 of UCI Law, which sets out the conditions pursuant to which a de-

notification can be done, does not apply (although a de-notification letter still needs to be submitted for:

- a non-voluntary de-notification of marketing arrangements of a UCITS share class or sub-fund in case of a life-cycle event, i.e. in case of a termination, liquidation, merger or at the end of a limited term of such share class or sub-fund; or
- a voluntary de-notification if no investors residing in the host Member State are invested in the relevant share class or sub-fund at the time of de-notification in such Member State.

- the CSSF provided an electronic link to the two types of de-notification letter available: de-notification letter UCITS share class and de-notification letter UCITS compartment.

Updated FAQs on AIFM

- Notification procedure

The CSSF clarified that for pre-marketing notifications, the Luxembourg AIFM/ Luxembourg European Venture Capital Fund ("**EuVECA**") Manager and Luxembourg European social entrepreneurship funds ("**EuSEF**") Manager is required to submit a pre-marketing request via the CSSF eDesk portal. The CSSF specified that the information on how to access the eDesk portal is available on the CSSF website.

- De-notification for AIFs

The CSSF specified that in the case of a de-notification, emails are no longer accepted by the CSSF. The AIFM needs to submit a de-notification letter to the CSSF via the eDesk Cross-border Marketing Notifications Tool which requires a Luxtrust authentication product.

The CSSF also gave additional information on the elements to be taken into account after submitting a de-notification request via eDesk and a link to the template de-notification letter.

As for UCITS, the CSSF clarified that that Article 29-1 and respectively Article 30-1 of AIFM Law do not apply (although a de-notification letter still needs to be submitted) for:

- a non-voluntary de-notification of marketing arrangements of a sub-fund in case of a life-cycle event, i.e. in case of a termination, liquidation, merger, replacement of the AIFM or at the end of a limited term of such sub-fund, or
- a voluntary de-notification if no investors residing in Luxembourg or in the relevant host Member State are invested in the relevant sub-fund at the time of de-notification in such Member State. In such case, a comment should be added in the de-notification letter under the section additional information which states that no investors are left and thus cannot be contacted.

The CSSF further clarified that the end of a capital raising period in case of closed-ended funds is not a life-cycle event.

CSSF announce SFDR data collection exercise for Luxembourg investment funds

On 24 March 2023, the CSSF followed up on a press release published on 27 July 2022 announcing their intention to launch a data collection exercise related to SFDR and Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (the "**Taxonomy Regulation**").

The objective of the recent press release is to provide industry participants with information on the launch of the data collection exercise relating to pre-contractual product disclosure documents and templates.

Scope

The following FMPs are required to participate in this exercise:

- UCITS management companies based in Luxembourg or in another Member State of the EU, in relation to all Luxembourg-domiciled UCITS they manage;
- authorised alternative investment fund managers ("**AIFMs**") based in Luxembourg in relation to the Luxembourg-domiciled AIFs (regulated or unregulated, including ELTIFs) that they manage;
- authorised AIFMs based in another Member State of the EU in relation to all Luxembourg-domiciled regulated AIFs, as well as Luxembourg-domiciled unregulated AIFs (only when they qualify as ELTIFs) that they manage;
- registered AIFMs, subject to Article 3(3) of the Law of 12 July 2013 on alternative investment fund managers ("**Law of 12 July 2013**"), based in Luxembourg or in another Member State of the EU, in relation to all Luxembourg-domiciled regulated AIFs that they manage; and

- institutions for occupational retirement provision ("**IORPs**"), subject to the Law of 13 July 2005.

FMPs who are subject to Articles 2(2) or 3(1) of the Law of 12 July 2013 may also participate on a voluntary basis in relation to Luxembourg-domiciled regulated AIFs that they manage.

Those in scope must provide a set of information relating to pre-contractual product disclosures for each of the financial products mentioned above.

The data, which includes sustainability-related information in the pre-contractual disclosure of financial products, in accordance with the SFDR and the Taxonomy Regulation, must be provided to the CSSF for each fund/sub-fund managed by the FMPs listed above (regardless of the regime application to the fund under SFDR i.e. Article 6, 8 or 9 SFDR).

Deadline for Submission

The deadline for submission of the initial report is 15 June 2023. FMPs must ensure that after initial submission, the information they have provided is kept up-to-date.

Methods of Submission

The SFDR data can be submitted via the following channels:

- submission of a structured file through S3 (simple storage service) protocol; or
- via eDesk for manual input by the FMPs for each fund/sub-fund they manage.

The second channel will not be available until 2 May 2023.

Draft law proposes changes to Luxembourg fund laws

On 27 March 2023, draft law No. 8183 (the "**Draft Law**") was submitted to the Luxembourg Parliament (*Chambre de Députés)*. The Draft Law proposes to amend the following Luxembourg laws:

- the law of 15 June 2004 as amended, relating to the investment company in risk capital ("**SICAR**") (the "**SICAR law**");
- the law of 13 February 2007 as amended, relating to specialised investment funds ("**SIF**") (the "**SIF law**");
- the law of 17 December 2010 as amended, relating to undertakings for collective investment ("**UCI**") (the "**UCI law**");
- the AIFM law of 12 July 2013 as amended; and
- the law of 23 July 2016 as amended, on reserved alternative investment funds ("**RAIF**") (the "**RAIF law**").

The Draft Law includes relevant provisions of draft law No. 6936 (introduced in 2016), which has been withdrawn from the roll.

The most notable amendments proposed by the Draft Law are as follows:

- Certain of the proposed amendments are common to the SIF, RAIF and SICAR laws, as follows:
  - to modify the definition of "well-informed investor" (*investisseur averti*) contained in the SICAR law, the SIF law and the RAIF law respectively, in order to reinforce the coherence between the laws and to align the Luxembourg regime with the European standard, by referring to the professional investor concept under Directive 2014/65, updating the legislative references, allowing an AIFM to evaluate the status of a well-informed investor and lowering the current investment threshold from EUR 125,000 to EUR 100,000;
  - to extend the period by which the minimum capital must be reached, for funds governed by the SICAR law, the SIF law, and the RAIF law, from 12 months to 24 months;
  - providing that the issue and redemption of shares/units would be prohibited where the fund has no depositary or upon liquidation or insolvency of the depositary;
  - removal of the reference to the two-month notice period applicable to the replacement of the depositary and the addition of a requirement to replace the depositary within the notice period provided under the depositary agreement, failing which the CSSF will remove the fund from the official list; and
  - to clarify the rules applicable to the appointment and duties of the supervisory commissioner if the fund is liquidated.
- The SIF Law and RAIF Law are to be specifically amended as follows:
  - to clarify that a SIF's minimum capital can also include the value of any

amount constituting partnership interests and also that the requirement that a SIF's capital be entirely subscribed and paid up to 5% only applies to the *société anonyme, société en commandite par actions* and the *société à responsabilité limitée*;

- in order to encourage investment into ELTIFs it is proposed to amend the SIF Law and RAIF Law to provide that investments into ELTIFs by SIFs or RAIFs are exempt from subscription tax; and

- removal of the requirement to do a *constat de constitution* for a RAIF that has been incorporated before a notary.

- The SICAR Law is to be updated in light of the experience gained by the CSSF and to align it with similar provisions of the SIF Law:

  - to implement the practice developed by the CSSF regarding conditions of delegation by a SICAR;

  - to require that the persons responsible for portfolio management be subject to the CSSF's prior approval;

  - to update the CSSF of any material amendment to the information pursuant to which the CSSF based its authorisation of the SICAR; and

  - to prohibit the issue of Shares/units in a SICAR from the date of the event triggering its liquidation.

- The changes to the UCI Law largely concern Part II Funds and management companies:

  - it is proposed to introduce the possibility for SICAVs subject to Part II of the UCI Law to adopt, in addition to the form of a public limited company, the form of a partnership limited by shares, a limited partnership, a special limited partnership, a limited liability company or a cooperative society organised as a public limited company;

  - in relation to Part II Funds it is proposed to increase the period by which the minimum capital is to be reached, from 6 to 12 months;

  - it is proposed to remove the requirement for units/shares of closed ended funds to be issued at NAV;

  - clarification that the provisions of Article 100 of the UCI law relating to foreign undertakings for collective investment, does not apply to the marketing to retail in Luxembourg of units/shares of AIFs carried out in accordance with the provisions of the AIFM Law; and

  - amendments to the regime for judicial and non-judicial legislation of management companies.

- Finally, the most notable amendments to the AIFM law include:

  - a proposal to introduce the possibility for AIFMs to use tied agents, thus aligning the legal framework applicable to them with that of management companies authorised under Part IV, Chapter 15 of the UCI law;

  - similar amendments to the UCI Law in order to update the regime for judicial and non-judicial legislation of AIFMs; and

  - a proposal to modify the provisions of the AIFM Law governing marketing of AIFs to retail investors in order to add SIFs and SICARs to those funds subject to supervision designed to protect investors and thus remove any ambiguity about offering such funds to well-informed investors in Luxembourg.

Judgment issued on autonomy of investment fund compartments

On 24 May 2022, the Court of Appeal (the "**Court**") rendered judgment No. 99/22 (the "**Judgment**") relating to the autonomy of a compartment of an umbrella investment company with variable capital (*Société d'Investissement à Capital Variable*) (the "**SICAV**") subject to the SIF Law and constituted as a limited partnership with shares ("**SCA**").

In this case, the sole limited partner (the

"**Sole Limited Partner**") held 100% of the assets of a compartment of the SICAV. The general partner of this SICAV (the "**General Partner**") was asked by the Sole Limited Partner to convene a general meeting of the sub-fund to discuss the liquidation of the latter. The General Partner refused to call such meeting. Therefore, the Sole Limited Partner submitted an application to the Court for the appointment of an *ad hoc* representative for the convening of the general meeting of the compartment, in application of Article 450-8 of the law of 10 August 1915 on commercial companies, as amended (the "**1915 Law**").

The district court agreed with the Sole Limited Partner and appointed the representative. The SCA appealed this decision to the Court, which confirmed the judgment of the district court.

Grounds for Appeal

The SCA argued, *inter alia*, that the Sole Limited Partner did not have the right to request the convening of a general meeting at the level of the sub-fund.

Article 450-8 of the 1915 Law states that the board of directors, the management board, as the case may be, as well as the supervisory board and the auditors are entitled to convene the general meeting. They are obliged to convene it in such a way that it is held within a period of one month, if shareholders representing one tenth of the share capital so request in writing, indicating the agenda. If such general meeting is not held within the prescribed period, the meeting may be convened by a proxy appointed by the president of the district court at the request of one or more shareholders representing the same percentage of the share capital.

The appellant stated that Article 450-8 of the 1915 Law was not applicable in this case.

The SCA recalled that this article is included in the 1915 Law under the title relating to public limited companies and that even if, in accordance with Article 600-2 of the 1915 Law, "*the provisions relating to public limited companies are applicable to partnerships limited by shares, except for the modifications indicated in this title*", it would be inapplicable by virtue of Article 600-9 of the 1915 Law which requires, except in the event of a provision to the contrary in the articles of association, the agreement of the General Partner in order to convene the general meeting.

The SCA further claimed that this article is applicable only to the SCA as a whole and not, in the absence of legal personality, to each of the compartments in isolation. The Sole Limited Partner did not have 10% of the entire capital of the SCA and therefore did not meet the conditions of Article 450-8.

Analysis by the Court

The Court limited itself to examining if the request of the Sole Limited Partner met the conditions of Article 450-8. The only matter contested in this regard was whether the Sole Limited Partner met the 10% requirement.

The Court noted that Article 71(1) of the SIF law which provides that unless derogated therefrom in the articles of the relevant SIF, each compartment was to be treated as a distinct pool of assets and that the rights of investors and creditors in a compartment are limited to the assets of that compartment. In relations between investors each compartment is to be treated as a separate entity unless the articles of incorporation provide otherwise.

While it was noted that the articles of incorporation of the SCA did not have specific provisions dealing with the rights of shareholders of a compartment to request the convening of a meeting at the level of the compartment, the articles did not derogate from Article 71(1). The articles provided that general meetings of shareholders of sub-funds could be held. Further, any decisions taken at shareholder meetings at fund level that impacted on specific compartments required the vote of shareholders of that compartment. Such provisions confirmed the existence of a certain autonomy of each compartment.

The Court therefore concluded that the shareholders of a compartment holding one tenth of the share capital could validly request the convening of a general meeting relating to that compartment. The one tenth should be calculated on the basis of the capital of that compartment and not the capital of the fund as a whole.

Information kindly provided by Bonn Steichen & Partners in Luxembourg.

CSSF issues circular on Money Market Fund Regulation stress test scenarios

On 24 March 2023, the CSSF issued a circular regarding the ESMA Guidelines on stress test scenarios under Article 28 of the Money Market Fund Regulation.

Circular CSSF 22/818 implementing the 2021 version of the Guidelines is repealed and replaced by this circular with effect as of 27 March 2023. This circular, with the updated Guidelines, entered into force on 27 March 2023. The CSSF expects all entities falling

under the scope of this circular to apply the 2022 Guidelines for the preparation of the required MMF reporting as from the reporting date 31 March 2023 onwards.

Information kindly provided by our Eversheds Sutherland office in Luxembourg.

Malta

Malta Financial Services Authority assesses UCITS and AIF fund managers' compliance with valuation of illiquid assets

In March 2023, the Malta Financial Services Authority ("**MFSA**") set out its findings and observations following its assessment of the level of compliance of UCITS and AIF fund managers with the valuation related requirements enshrined in the relevant rules of less liquid assets, such as unlisted equities, unrated bonds, real estate, illiquid listed equities etc.

Although MFSA's overall assessment of the situation was found to be satisfactory, it noted certain gaps and improvements in crucial areas. The MFSA's findings can be found in its circular dated 24 March 2023 'MFSA's Findings and Observations Identified During the ESMA Common Supervisory Action on Valuation of UCITS and Open-Ended AIFS'.

In its circular, MFSA reminds fund managers of the importance of setting up policies, procedures and practices in line with the nature of the fund, and to avoid a one size fits all approach. Fund managers are also reminded to assess their governance structures, processes and procedures and take the necessary steps to address any deficiencies in line with the applicable regulatory requirements and the strategies and objectives of the funds under management.

Transposition of Covered Bonds Directive

As part of the transposition of the Covered Bonds Directive, with effect from 18 March 2023, investments by UCITS in covered bonds issued by a credit institution can be up to 25% of assets invested by the UCITS in the said issuer.

Covered bonds are debt securities issued by credit institutions against a ring-fenced pool of assets which offer dual recourse protection for bondholders, who have direct recourse over the cover pool as preferred creditors, and at the same time remain entitled to claim against the issuer as ordinary creditors.

Information kindly provided by Conti Legal in Malta.

Revision to the Investment Services Rulebooks on Money Market Funds Regulation

On 12 April 2023, the MFSA issued a circular on the various changes carried out to the Investment Services Rulebooks on Money Market Funds Regulation (Regulation (EU) 2017/1131). The changes are mainly related to:

- revising the Rules which implement the ESMA Guidelines on stress test scenarios issued under the Money Market Funds Regulation; and
- introducing new Rules to refer to Commission Implementing Regulation 2018/708 in relation to the template to be utilised by managers of Money Market Funds when reporting to their respective competent authorities as per article 37 of the Money Market Funds Regulation.

The revised Rulebooks entered into force on 13 April 2023.

Information kindly provided by Mamo TCV Advocates in Malta.

Slovenia

Slovenian Securities Market Agency adopts Guidelines on the Prevention of Money Laundering and Terrorist Financing

On 30 March 2023, the Slovenian Securities Market Agency ("***SMA***") adopted the new Guidelines on the Prevention of Money Laundering and Terrorist Financing (the "***Guidelines***"), which aim to ensure a consistent understanding and implementation of the provisions of the Slovenian Prevention of Money Laundering and Terrorist Financing Act (the "**Act**").

Pursuant to Article 169 of the Act, the SMA is obliged to issue recommendations and/or guidance regarding the implementation of specific provisions of the Act, carried out by the liable entities. Thus, by means of the Guidelines, the SMA provided guidance primarily on the provisions relating to the areas provided below. Most importantly, the liable entities are required to align their policies, control procedures and other relevant procedures, and to prepare risk assessments, in accordance with the Guidelines no later than six months after the publication in the Official Gazette of the Republic of Slovenia, i.e. by 7 October 2023.

<u>Assessment and risk management of money laundering and terrorist financing</u>

To effectively manage the money laundering and/or terrorist financing risks, the liable entities shall identify and assess the risks to which they are exposed, namely

- risks concerning the nature and complexity of the liable entity's own business; and
- risks deriving from a conclusion of the specific business relationship.

Accordingly, the risk factors shall be regularly evaluated (especially in the event of significant changes to the business operations), and, pursuant to Article 20 of the Act, the liable entities shall put in place effective policies, control procedures, and other relevant procedures, appropriate to their business activities and size, to mitigate and manage the identified risks. Therefore, the Guidelines provide for more detailed guidance on conducting an effective and proper risk assessment.

Due diligence of customers

Pursuant to Article 22 of the Act, the liable entities shall carry out a customer due diligence when entering into a business relationship with a customer, on or before each transaction of a value EUR 15,000 or more, when in doubt as to the veracity and adequacy of information obtained (by a customer or its ultimate beneficial owner), and whenever a transaction, customer, funds or assets give rise to a suspicion of money laundering and/or terrorist financing, irrespective of the value of the transaction. Moreover, the Guidelines also include appendices containing two sets of lists of indicators that may facilitate the identification of customers and transactions that give rise to suspicion of money laundering or terrorist financing.

Establishment of the authorised person

The liable entity shall appoint its authorised representative responsible for the area of money laundering and terrorism financing. In addition to the requirements set forth in Article 84 of the Act, the authorised representative shall also be independent of the business areas and units he/she oversees and shall not be subordinate to the person responsible for the management of any of those business areas. Moreover, the authorised person shall have direct access at all times to all information necessary for the performance of his/her duties and, finally, the authorised person shall be given direct access to a management to be able to report directly.

Information kindly provided by Rojs, Peljhan, Prelesnik & partners in Slovenia.

UK

Draft Insider Dealing Order published

On 17 April 2023, the draft Insider Dealing (Securities and Regulated Markets) Order 2023 was published. The draft instrument supplements the Criminal Justice Act 1993 ("**CJA**") to align the securities and markets on which the criminal offence of insider dealing can be committed under Part 5 of the CJA with those to which the UK Market Abuse Regulation ("**MAR**") applies.

Part 5 of the CJA applies to securities listed in Schedule 2 that satisfy conditions in secondary legislation, namely the Insider Dealing (Securities and Regulated Markets) Order 1994, as amended. The list of securities within scope of Part 5 is currently narrower than the list of securities covered by the civil insider dealing offences in MAR. Namely:

- Article 6 of the draft instrument replaces the list of securities in Schedule 2 of the CJA with a new list (containing those instruments found in Part 1 of Schedule 2 to the Financial Services and Markets 2000 (Regulated Activities) Order 2001);
- Article 7 of the draft instrument revokes the Insider Dealing (Securities and Regulated Markets) Order 1994 and certain amending instruments (SIs 1996/1561, 2000/1923 and 2002/1874);
- Article 3 of the draft instrument sets out the condition that a security which falls within Schedule 2 of the CJA must be either traded on a specified trading venue or its price or value be linked to such securities. The venues are:
  - UK, EU or Gibraltar regulated markets;
  - multilateral trading facilities or organised trading facilities;
  - NASDAQ;
  - the SIX Swiss Exchange; and
  - NYSE.

This replaces the current list of named exchanges which is out of date. Regulated markets, organised trading facilities and multilateral trading facilities are defined by reference to the definitions in MAR. Articles 4 and 5 define regulated markets for the purposes of Part 5 by reference to these venues. The effect of these provisions is to align the markets with those to which MAR

applies. In addition, NASDAQ and the SIX Swiss Exchange remain within scope of the CJA and NYSE is added.

Information kindly provided by Practical Law.

UK overseas territories

Cayman Islands

Cayman Islands Monetary Authority issues notice on segregated portfolio fees

On 22 March 2023, the Cayman Islands Monetary Authority ("**CIMA**") issued an Industry Notice to advise financial service providers that with immediate effect, it will not be collecting annual registration fees on behalf of segregated portfolios for private fund segregated portfolio companies.

Further, CIMA will be refunding any segregated portfolio fees already paid from 2020 to date.

The Private Funds Act (2021 Revision) and the accompanying regulations are expected to be amended, following a broader stakeholder consultation, in due course, with a statutory based registration fee implemented thereafter.

Media release on Financial Action Task Force

On 24 February 2023, the Cayman Islands Ministry of Financial Services & Commerce issued a media release in relation to the Financial Action Task Force ("**FATF**") plenary in February. Whilst the Cayman Islands remains on the list of countries that are under increased monitoring, the FATF has noted the Cayman Islands continuous progress toward completing the final recommended action regarding investigations and prosecutions of money laundering cases. The Cayman Islands will have the opportunity to provide a further update on progress during the FATF Joint Group's review meeting this April, prior to the next FATF Plenary this June

Information kindly provided by Mourant in the Cayman Islands.

Guernsey

Guernsey Financial Services Commission no longer requires updated fund documentation

The Guernsey Financial Services Commission no longer requires submission of updated documents, including the following:

- Scheme Particulars;
- Information Memoranda;
- KIIDS;
- fact sheets;
- annual / interim financial statements; and
- any shareholder notices that are not impacted by the requirements below.

However, the Commission still requires immediate notifications to be made in respect of the following events / occurrences:

- any change in matters relating to the Promoter or the Scheme which would have the effect of either of them no longer meeting the relevant criteria for the Promoter to be exempted from holding a licence under the POI Law in relation to its promotion of the Scheme in the Bailiwick of Guernsey;
- any changes to the name, address or email address of the party promoting the Scheme in the Bailiwick of Guernsey;
- any change of name or regulatory status of the Scheme; and
- when / if the Promoter no longer promotes the Scheme (and has no intention of further promoting the Scheme) in the Bailiwick of Guernsey, then the Commission should also be notified. Until / unless such notification is received, annual non-refundable fees will become due from the Promoter on 1st January every year.

If the Promoter wishes to promote any further schemes in the Bailiwick of Guernsey (besides those originally disclosed on the initial application form or in subsequent notifications) a further Form EX and associated documentation should be completed and submitted to the Commission.

Information kindly provided by the Guernsey Financial Services Commission in Guernsey.

Jersey

Jersey Financial Services Commission issues notice designating senior management functions

The Jersey Financial Services Commission's ("**JFSC**") statutory notice designating which personnel within a registered person will constitute senior management came into effect on 13 March 2023.

This designation is relevant in determining those roles which are within scope of the civil financial penalties regime in the event such persons are culpable in a registered person's contravention of the Money Laundering (Jersey) Order 2008 or a Code of Practice.

The JFSC advises that, as a matter of best practice, registered persons should identify which of their employees they consider fall into one of the four categories of senior management function and notify those employees accordingly.

Registered persons are not required to notify the JFSC of such persons, nor should personal questionnaires be completed. Details should only be provided to the JFSC if specifically requested.

Jersey limited liability company regime now fully in force

Jersey's new limited liability company ("**LLC**") framework came into force on 14 February 2023.

LLCs are expected to be particularly attractive to US fund managers given their familiarity with this structure. LLCs may make an election at the time of registration to be a body corporate, providing additional flexibility for the vehicle to be used in a variety of different contexts, including as Jersey Private Funds and regulated or exempt general partners, investment managers or advisers to funds.

Jersey's regime has been designed so as to be familiar to those with experience dealing with Cayman Islands and Delaware LLCs, and where possible to compare favourably with those regimes.

Information kindly provided by Ogier in Jersey.

Americas

Brazil

Securities and Exchange Commission postpones the beginning of the new regulatory framework for investment funds

On 28 March 2023, Brazil's Securities and Exchange Commission ("**CVM**") approved CVM Resolution No. 181 ("**RCVM 181**"), which makes specific changes to CVM Resolution No. 175 ("**RCVM 175**") and postponed its effectiveness until 2 October 2023.

RCVM 175 establishes a new regulatory framework for investment funds and aims to reflect fundamental advances for greater efficiency in the operation of the funds market, responding to requests for regulatory modernisation, among other measures.

Initially scheduled to take effect on 3 April 2023, the new regulatory framework was postponed after the CVM received requests from representatives of the investment fund industry and the Brazilian Financial and Capital Markets Association ("**ANBIMA**"). There was an agreement from a large part of the industry about the need for a longer period to adequately implement the operational and structural provisions of RCVM 175.

Besides changing the validity and the implementation schedule of RCVM 175, RCVM 181 postpones other deadlines and makes the following specific adjustments in order to improve the new fund rule:

- Adaptation of the stock of Receivables Investment Funds

The deadline for the adaptation of the Receivables Investment Funds ("FIDCs") stock was postponed to 1 April 2024, the original deadline being 31 December 2023. It should be noted that the adaptation deadline for the entire industry remains on 31 December 2024.

- Classes and subclasses, rebates, and segregation of fund fees

The rules related to the creation of classes and sub-classes, rebates, and the segregation of the fund's fees (administration, management, and maximum distribution) had their effectiveness extended to 1 April 2024. This change was requested by ANBIMA, which pointed out the need for these three topics to come into force together to minimise the compliance costs during the adaptation process of the funds and reduce the impact to the investors.

- Description of fees in the annex or appendix

RCVM 181 transferred to the class descriptive appendix the administration and management fees, which were previously foreseen in the general segment of the regulations, as well as the provision that in case the class of quotas has sub-classes with distinctions of administration and management fees, these should be disciplined in the respective descriptive appendices of the sub-classes.

- Provision of the certificates of receivables in the limits per financial asset modality

The certificates of receivables, so far not foreseen in RCVM 175, were included in the list of assets that should observe the limit per type of financial asset of up to 20% of the net worth of a determined class. These certificates of receivables observe, as a general rule, the 20% limit, being this limit reduced to 5% for investments in certificates of receivables whose backing is composed of non-standard credit rights, as specified in Article 2, item XIII, of Regulatory Annex II of RCVM 175.

- Exposure to capital risk in long and short-strategy funds

In order to correct a deficiency readily identified by the market in the rules for exposure to the capital risk brought in by RCVM 175, the CVM included an express provision applicable to the share classes that carry out transactions involving long and short positions of assets and derivatives of the variable income market, whose expected result is preponderantly derived from the difference between the positions (long and short), exempting said classes from complying with the maximum limit for use of a gross margin of 70% of the net assets of the class.

- Concentration limits per issuer in the "Multimarket" class applicable only to variable income assets

RCVM 181 adjusted the sole paragraph of Article 58 of Normative Annex I of RCVM 175 to state that the concentration limits per issuer in the case of the "Multimarket" class apply only to certain variable income investments, such as shares and depositary receipts admitted to trading in an organised market, subscription warrants and receipts admitted to trading on an organised market, shares of fund classes typified as "Shares", ETFs of shares, BDR-Shares and BDR-ETFs of shares.

- Custodian and origination/assignment of credit rights by the administrator, manager, or consultant specialised in FIDC

RCVM 181 included two additional paragraphs to Article 30 of the Normative Annex II of RCVM 175, providing, in summary, that if the investment policy admits the acquisition of credit rights originated or assigned by the administrator, manager, specialised consultants, and their related parties, the custodian may not be a party related to the manager or specialised consultant. This requirement is not applicable to the class exclusively destined for professional investors.

CVM issues Circular Letter to clarify provisions of the new CVM Resolution No. 175/2022

Following the publication of RCVM 175, of 23 December 2022, in order to more clearly illustrate specific topics of the new Resolution, the Superintendence of Institutional Investors Supervision ("**SIN**") and the Supervision of Securitisation ("**SSE**") of the CVM published, on 4 April 2023, CVM/SIN/SSE Circular Letter 01/2023.

CVM/SIN/SSE Circular Letter 01/2023 aims to clarify and disclose the interpretations of SIN and SSE on the general provisions introduced by RCVM 175.

Divided into 24 topics in a Q&A format, CVM/SIN/SSE Circular Letter 01/2023 presents 84 answers to the main questions about RCVM 175 raised by market participants.

Among the covered topics, the following ones are worthy of mention: clarification of questions concerning fund classes and subclasses creation, as well as the calculation of the net equity of each class. In addition, the answers also address:

- remuneration of the service providers of funds, rebates, charges, and accounting statements;
- constitution and registration of the fund; communication with quota holders;
- liquidity management;
- financial statements of administration transfer;
- general adaptations of other rules (COFI and Resolution CVM No. 21);
- voting in meetings by parties related to socio-environmental funds; and
- investment by funds with limited liability, among others.

Furthermore, the CVM, SIN, and SSE intend to continue publishing Circular Letters as each Normative Annex of RCVM 175 is published. So far, only the Annexes of FIF (Financial Investment Funds) and FIDC (Receivables Investment Funds) have been introduced into RCVM 175.

Information kindly provided by Tozzini Freire in Brazil.

Canada

Ontario Securities Commission publishes Annual Service Commitment Review

On 21 March 2023, the Ontario Securities Commission ("**OSC**") published its 2023 Annual Service Commitment Review, which

provides investors, registrants, and market participants with transparency on the standards and timelines they can expect when interacting with the OSC.

Government of Canada proposes legislation on corporate transparency and accountability

On 22 March 2023, the Government of Canada announced new proposed legislation designed to further increase corporate transparency and accountability. Last year, a first series of amendments to the Canada Business Corporations Act ("**CBCA**") were adopted in the Budget Implementation Act, 2022, No. 1. The proposed legislation announced this March now presents a second series of amendments to the CBCA and amendments to other statutes, namely the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, the Income Tax Act, and the Access to Information Act. These changes will require Corporations Canada to make public some information regarding the beneficial owners of federal corporations. The changes will also:

- introduce protections for whistle-blowers;
- bolster the powers of Corporations Canada to make enquiries;
- introduce an exemption regime for certain individuals who may face harm from public disclosure, including minors;
- ensure compliance with the new regime through robust criminal and monetary penalties; and
- facilitate information-sharing and data validation.

Canadian Securities Administrators publishes rules on SEDAR+ filing system

On 23 March 2023, the Canadian Securities Administrators ("**CSA**") published rules to support its new SEDAR+ filing system. The new system is designed to create a modern, user-friendly platform that reduces the time and cost of securities regulatory compliance across Canada. SEDAR+ will be launching on 13 June 2023.

Information kindly provided by McMillan LLP in Canada.

Chile

Intermediaries offering foreign private funds

Chilean registered intermediaries may be authorised to offer foreign private funds, under the recently enacted Fintech Law.

Prior to the enactment of the Fintech Law, pursuant to the Chilean Securities Law and Circulars No. 1046, dated 17 December 1991, and No. 2108, dated 14 June 2013, securities intermediaries such as stockbrokers and securities dealers could, in addition to their brokerage activities regarding registered securities, carry out ancillary activities such as advisory services and commissions on the purchase and sale of foreign securities in foreign securities markets through foreign authorised securities intermediaries, insofar as they acted as agents and the issuers of the securities were subject to the supervision of an entity of similar authority to the Chilean Securities Regulator. However, Article 24 of the Fintech Law expressly states that any ancillary services to be provided by securities intermediaries must be authorised by way of a General Rule issued by the CMF, thus in conflict with the previously issued Circulars, which have a different legal status.

Consequently, the enactment of the Fintech Law might have broadened the scope for future guidance by the Chilean Securities Regulator regarding the ancillary activities that securities intermediaries will be authorised to carry out.

Information kindly provided by Alessandri in Chile.

Asia Pacific

Myanmar

Further extension of the amended formula for calculating liquidity ratio

The Central Bank of Myanmar ("**CBM**") published Directive No. 8/2023 on 24 March 2023 regarding further extension of the amended formula for calculating the liquidity ratio of banks in Myanmar ("**Directive**").

In this Directive, CBM notes that pursuant to Directive No. 2/2022 dated 21 March 2022, it had temporarily extended the revised calculation of liquidity ratio from 1 April 2022 to 31 March 2023. It further notes that considering the liquidity issues faced by the banks due to the pandemic, CBM decided to further extend the revised calculation for a period of six (6) months starting from 1 April 2023 and ending on 30 September 2023.

The Directive concludes by noting that other than the extension described above, the content of the Notification 19/2017 remains unchanged.

New requirements introduced for newly incorporated companies for annual returns

On 1 April 2023, the Directorate of Investments and Company Administration ("**DICA**") announced (the "**Announcement**") additional requirements regarding when the annual return ("**AR**") is submitted by the companies to DICA within two months after registering their company under the Myanmar Companies Law ("**MCL**"). The purpose of issuing this Announcement is to scrutinise whether the companies, directors, and members of the companies comply with the existing laws and to combat and support the Anti-Money Laundering and Terrorism Financing processes.

The new requirements to be submitted in AR

The Announcement applies to companies established after the date of issuing of this Announcement. Under the Announcement, the following additional particulars must be provided when such companies submit AR to DICA:

1) the bank account details opened in the company's name and evidence that the paid-up capital of the shares presented in the MyCo system has been remitted into the bank account;

2) for each individual described as a director of the company:

- where the director is a Myanmar national, a recommendation of the relevant township police Force that the director resides at the address of the director stated in the copy of the National Registration Card ("**NRC**") of the director and Form "A" (application for incorporation of the company); and
- for a foreign director, evidence that the registration has been carried out in accordance with "The Registration of the Foreigner Rules 1948" (For example – Immigration Form C).

3) recommendation from the relevant Township Police Force that the company's registered office address stated in the MyCo system is actually located at the place as per the address, and the company has arranged to open an office;

4) the evidence stated in paragraph (2) above regarding the members, if the members stated in the company's registration are natural persons; and

5) the evidence relating to the member company, if the member stated in the company's registration is a legal person/ legal entity.

Actions to be taken by DICA for non-compliance

Per the Announcement, the entrepreneurs registering the new companies must fully comply with the Announcement starting from the issuance of this Announcement and report the particulars stated in the Announcement to company.dica@mifer.gov.mm.

The Registrar will approve the AR submission only after the companies submit these particulars. For the submission of AR without complying with the Announcement, the Registrar will proceed with it under Section 430 (d) of the MCL, where the Registrar may give notice to the company that it intends to suspend the company's registration. The suspension will take effect within 28 days unless the company makes good the default, including by paying any outstanding fees and prescribed penalties.

Information kindly provided by DFDL in Myanmar.

Taiwan

Guidelines Governing Conduct of Suitability Evaluation of Funds for Clients by Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises amended

On 7 April 2023, the Securities Investment Trust & Consulting Association ("**SITCA**") announced the "Amendment to Guidelines Governing Conduct of Suitability Evaluation of Funds for Clients by Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises" to add the regulations for sales of the Specific Portfolio and related compliance matters. The main points are set out below:

- the Specific Portfolio refers to a product package that consists of a number of onshore funds and/or offshore funds which have been approved by or reported for effectiveness with the competent authority;
- The Portfolio RR is calculated by multiplying the investment ratio of an individual fund in the Specific Portfolio by the risk return of the corresponding individual fund, and the resulting values are added together to form the risk weight of the Specific Portfolio, which is rounded up zero decimal places, to correspond to the risk return of the Specific Portfolio. However, this calculation method cannot be used as the only indicator for assessing risk returns;
- the funds allocated in the Specific

Portfolio should be diversified in terms of risk return;

- individual funds that meet the client's risk tolerance should account for at least 70% of the Specific Portfolio;
- the investment ratio of each fund in the Specific Portfolio cannot be changed without the consent of the client, and the client is not allowed to purchase or redeem a single or part of the funds allocated in the Specific Portfolio; and
- it is not permitted to sell the Specific Portfolio to certain type of clients such as those who are 65 years old or more, have educational level of junior high school or lower, or have National Health Insurance Critical Illness/Injury Certificate.

SITCA promulgates Rules Governing the Preparation and Filing of Sustainability Reports by Securities Investment Trust Enterprises and its Appendix

On 6 April 2023, the SITCA promulgated the Rules Governing the Preparation and Filing of Sustainability Reports by Securities Investment Trust Enterprises and its Appendix (Rules). The main points are summarised below:

- a securities Investment Trust Enterprise ("**SITE**") is required to establish the process for preparation and filing of sustainability reports and incorporate it to the internal control system;
- the content of the sustainability reports prepared by the SITE shall contain general matters such as:
- the organisation of the company and the preparation of the reports, commercial activities and employees, the governance of sustainable development items, policies and concrete measures, and engagement regarding sustainable development items;
- the report shall also cover material themes such as information in relation to the incorporation of environmental, social, and governance into the investment process, governance status, relevant info-security issues, relevant friendly financial information, etc. The SITE may also identify other material themes other than the above;
- the SITE shall make disclosures in accordance with Appendices of the Rules. Where the asset under management of a SITE has not reached NT$100 billion as of the end of the previous fiscal year, it may simplify its report in accordance with the Rules; and
- the rules also provide the filing schedule of the sustainability reports, the schedule of incorporating international standards for info-security management and obtaining international or professional licenses for info-security personnel, the inspection schedule of Scope 1 and Scope 2 of the Greenhouse Gas Emissions, and the confirmation schedule of Scope 1 and Scope 2 of the Greenhouse Gas Emission.

Regulations Governing Permission and Administration of Securities and Futures Business Dealings and Investment between the Taiwan Area and the Mainland Area amended

On 17 March 2023, the Financial Supervisory Commission ("**FSC**") announced the amendment to the Regulations Governing Permission and Administration of Securities and Futures Business Dealings and Investment between the Taiwan Area and the Mainland Area. The main amendments are summarised below:

- to allow that Taiwan-area securities firms, securities investment trust enterprises, securities investment consulting enterprises, futures commission merchants, or their third-region subsidiaries meeting specific qualifications, required documents, and relevant procedures may invest in subsidiaries of securities and futures business and their branches in Mainland Area. The "invest" herein shall include new establishment, new establishment with joint venture, procurement of shares of existing companies and change from the original equity investment to subsidiaries due to equity structure change; and
- to specify the relevant report matters and methods of the above.

Taipei Exchange Rules Governing Management of Foreign Currency Denominated International Bonds and Taipei Exchange Rules Governing Review of Securities for Trading on the TPEx amended

On 9 March 2023, the Taipei Exchange announced the amendment to the Taipei Exchange Rules Governing Management of Foreign Currency Denominated International Bonds and Taipei Exchange Rules Governing Review of Securities for Trading on the TPEx.

It was announced requirements would be added for the issuer to proceed in accordance with Article 252 of the Company Act, and to

complete the offering and issuance and commence the over-the counter transactions within 7 business days after the report becomes effective, are not applicable to financial holding companies issuing foreign currency denominated international bonds and ordinary corporate bonds as approved by the competent authority.

Amendment to Incentive Plan of Securities Investment Trust Business

On 24 February 2023, the FSC announced the amendment to the Plan to Advance Excellence for SITEs. The amendment is mainly to add that where a SITE actively participates in the "central clearing platform of the onshore funds" established by the Taiwan Depository & Clearing Corporation and uses the platform by the end of 2023, such arrangement can be considered as one of the evaluation indicators of the above-mentioned plan.

Amendment to Regulations Governing the Mandated Trading of Foreign Securities by Securities Firms

On 2 March 2023, the Taiwan Securities Association announced the addition of Article 31-1 to the Regulations Governing the Mandated Trading of Foreign Securities by Securities Firms. This states that handling fees received by securities firms for mandated trading of foreign securities may be paid to the relevant introducers as remunerations pursuant to the agreements, provided that the introducers are limited to the domestic and foreign financial institutions registered and approved to engage in securities business by the local competent authority, and subsidiaries of financial holding companies that have entered into agreements for cross-selling business. The amendment has taken effect on the announcement date.

Information kindly provided by Lexcel Partners in Taiwan.

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.

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