

International Funds Net Country updates

March 2023



Europe

European Union



European Securities and Markets Authority speech on macroprudential supervision of investment funds

On 21 March 2023, the European Securities and Markets Authority ("**ESMA**") published a speech by Verena Ross, ESMA Chair, in which she focuses on the macroprudential supervision of investment funds.

The speech covers market developments in the investment management sector and ESMA's views on current vulnerabilities. It includes details about what ESMA expects of market participants, including:

- risks are likely to come from sudden and unexpected shocks, coming on top of existing vulnerabilities, with interest rate risks being specifically highlighted. Therefore, it is important to identify, monitor and address vulnerabilities in the investment management sector, and identify the possible channels of contagion to the rest of the financial system. Investment managers are told to prepare for "further and prolonged adverse events";
- supervisory work continues to highlight issues with liquidity risk management. ESMA expects managers to monitor the alignment of their funds' investment strategy, their liquidity profile and their redemption policy. In addition, managers should put in place accurate assessment and strong controls around the management of liquidity risk. These obligations should also be regularly monitored through the ongoing supervision by national competent authorities; and
- being prepared for the active monitoring of leverage risk.

Council of EU adopts proposed Regulation amending European long-term investment funds Regulation

On 7 March 2023, as indicated in a note (7106/23) setting out the outcome of a vote at the 3,935th meeting of the Council of the EU (in its Education, Youth, Culture and Sport configuration), the Council of the EU adopted the proposed Regulation amending the Regulation on European long-term investment funds ("**ELTIFs**") ((EU) 2015/760).

The Council published the text of the proposed Regulation on 23 February 2023. This

followed the European Parliament voting to adopt the proposed Regulation at first reading on 15 February 2023.

Information kindly provided by Thomson Reuters Practical Law.

Bosnia & Herzegovina



Rulebook on Additional Conditions for the Investment of a Closed Investment Fund with the Public Offer adopted

In Federation of Bosnia and Herzegovina, the Rulebook on Additional Conditions for the Investment of a Closed Investment Fund with the Public Offer ("**Official Gazette of the FBH**", No. 7/2023) was adopted.

This rulebook regulates the restrictions on the permitted investment and restrictions on investment of the assets of the closed investment fund with a public offering.

Additional conditions for the permitted investment are regulated in terms of investment in securities, shares of open investment funds, real estate and debt securities issued by companies.

Information kindly provided by Karanovic partners in Bosnia & Herzegovina.

Norway



Reporting under SFDR article 11

The Norwegian Financial Supervisory Authority has stated that the reporting obligations under SFDR article 11 does not apply for the annual report for the financial year 2022 that shall be published by the first half of 2023. It is however advisable to include such information to the furthest possible extent. The reporting obligation will apply for the annual report for the financial year 2023 that shall be published by the first half of 2024.

For managers who already on a voluntary basis prior to 1 January 2023 for certain funds have chosen to provide investors with such information as follows from article 8 and 9 of the SFDR, cf. article 6, it will be natural for the sake of the investors that the manager also conforms to article 11 when the annual report for 2022 is settled. The investors will have a justified expectation to information about the results of the management etc. as stipulated by article 11.

Information kindly provided by Haavind in Norway.

Slovenia



Amendments proposed to the SMA's Decision on types and categories and key elements of investment funds

On 23 February 2023, the Slovenian Securities Market Agency ("SMA") has published the Draft amendment to the Decision on types and categories and key elements of investment funds ("Draft"). The published Draft was intended for public discussion which has finished on 9 March 2023. Even though the SMA did not publish the received comments and other submissions regarding the Draft, it is very likely that the further presented amendments to the currently applicable Decision on types and categories and key elements of investment funds ("Decision") will remain essentially unchanged.

The most important amendments proposed under the Draft concern Articles 14 and 15 of the Decision. Article 14 of the Decision provides for the definition pursuant to which, the *real estate investment fund* is considered to be an investment fund (either UCITS or AIFM fund), and which shall be deleted according to the provisions of the Draft. The latter is the consequence of the SMA's intent to delete all the references to alternative investment funds in the Decision. In addition, the Draft also provides for the amendment to the current terminology provided under Decision, namely the term '*investment fund*' shall be replaced by the term '*undertaking for collective investment in transferable securities*'.

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

UK



Financial Conduct Authority updates timeline of Overseas Funds Regime

On 28 February 2023, the Financial Conduct Authority ("FCA") published its Regulatory Initiatives Grid updating the timeline of the Overseas Funds Regime ("OFR"), the new equivalence regime for retail investment funds and money market funds established outside the UK, which will allow recognised funds to be marketed to the public in the United Kingdom.

This initiative was originally introduced in the Financial Services Act 2021, and the majority of provisions were commenced in February 2022. The FCA has confirmed that it is now working on operationalising the OFR and will

be consulting on various aspects of the Handbook rules during the second quarter of 2023 to ensure OFR funds are appropriately captured. It also confirmed that formal engagement is planned during the second half of 2023 and first half of 2024.

To help overseas asset managers stay up to date on developments, we have created a live timeline of developments related to the Temporary Marketing Permissions Regime ("TMPR") and OFR.

[Download the timeline >](#)

Information kindly provided by our Eversheds Sutherland office in the UK.

UK overseas territories

Guernsey



Commission updates natural capital fund rules

Following the launch of the 'Natural Capital Fund' framework in September 2022, the Commission has updated the rules that underpin the Natural Capital Fund regime to ensure that the framework reflects the international agreement made between the 188 governments around the world at Conference of the Parties to the Convention on Biological Diversity 15 in December 2022.

The newly agreed framework centres on the goal of '30 by 30' – a target to achieve the effective conservation and management of at least 30 per cent of the world's land, coastal areas and oceans as well as the restoration of 30 per cent of terrestrial and marine ecosystems by 2030.

Crown Dependencies issue joint statement on European Court of Justice decision

The Crown Dependencies (Guernsey, the Isle of Man and Jersey) have issued a joint statement indicating a short delay in implementing their commitment made in 2019 concerning registers of beneficial ownership of companies to allow them to consider the impact of the recent judgment of the Court of Justice of the European Union ("the ECJ").

The ECJ ruled that the provision of the EU's Fourth Anti-Money Laundering Directive (EU2015/849), as amended by the Fifth Directive (EU2018/843), which requires that information as to the beneficial ownership of legal entities is generally and publicly available, infringes fundamental rights to privacy and data protection under the EU

Charter of Fundamental Rights (Articles 7 and 8), and is therefore invalid.

Commission publishes report on money laundering and terrorist financing

On 15 December 2022, the Commission has published its Thematic Review on Money Laundering and Terrorist Financing Business Risk Assessments ("the **Review**") of over 100 licensed and registered firms across all sectors.

The results were largely positive, demonstrating that most met the Bailiwick's regulatory requirements. The Review identified seven areas for improvement, and two areas in particular have been highlighted by the Commission, based on the prevalence of the issues identified throughout the sample:

- Terrorist financing ("**TF**") risk assessments were less developed compared to money laundering ("**ML**") risk assessment. Firms should use the National Risk Assessment to help them improve upon identifying the TF risks which are relevant to their business, and are encouraged to revisit where their TF vulnerabilities exist from their:
 - customers;
 - jurisdictions;
 - products;
 - services;
 - transactions; and
 - delivery channels.
- Firms should consider where they can enhance their ML and TF business risk assessments through increased use of management information about their customers, jurisdictions, products, services, transactions and delivery channels and the nature of the underlying predicate offences in suspicious activity reports.

Information kindly provided by Mourant in Guernsey.

Americas

Canada



Ontario Securities Commission introduces exemptions to late registration filing fees

On 13 February 2023 the Ontario Securities Commission issued two general orders

providing temporary exemptions with respect to late fees for the late filing of certain registration-related information, where the filing is made on or after 13 February 2023 and before 3 April 2023. The orders are intended to reduce regulatory burden, consistent with previous outside activity late-fee moratoriums and fee rule amendments that will come into force on 3 April 2023.

Canadian Securities Administrators to receive comments on proposed transition to one-day settlement cycle

On 15 February 2023, the U.S. Securities and Exchange Commission approved amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1, with an implementation date of 28 May 2024.

The Canadian Securities Administrators ("**CSA**") previously published for comment proposed rule amendments to National Instrument 24-101 - *Institutional Trade Matching and Settlement* (NI 24-101) to support the transition from a two-day Canadian trade settlement cycle to a one-day settlement cycle. Comments were due on 17 March 2023. The CSA concurrently published CSA Staff Notice 81-335 - *Investment Fund Settlement Cycles*, advising that the CSA is not proposing amendments to National Instrument 81-102 - *Investment Funds* to mandate a shorter settlement cycle.

Information kindly provided by McMillan in Canada.

Chile



Chile implements new legislation on fintech

On 4 January 2023, Law Nr. 21.521 was enacted ("**Fintech Law**") which, among other matters, regulates:

- crowdfunding platforms;
- alternative transaction systems;
- credit and investment advisory/consulting services;
- custody of financial instruments; and
- order routing and intermediation of financial instruments.

This newly enacted legislation is in the process of being implemented. To this end, the Chilean securities regulator ("**CMF**") has undertaken to issue several regulations (nearly 70) to implement the Fintech Law.

In February 2023 the CMF published the first two general rules ("*Norma de Caracter General*" ("**NCG**")), Nr. 493 and 494, directed to implement the law, both related to the new registration and licensing process for investment consultants.

NCG 493 introduces the following aspects:

- investment consultants that were already registered with the CMF under the prior statutory framework which was replaced by the Fintech Law (implemented by NCG 472) automatically become part of this new register; and
- to maintain this registration in force, investment consultants must submit to the CMF the information required in section I by NCG 493 prior to February 3, 2024. Regarding this, although almost the same information already submitted for registration in the Investment Consultants Register under NCG 472 is required, the relevant entities will have to review their organisational documents to ensure that they comply with the new requirement that their corporate purpose be exclusively investment consulting. This requirement is in fact one of the few controversial aspects of the Fintech Law which fails to consider the reality that investment consulting firms are typically not sole purpose entities but do provide ancillary services that are not necessarily subject to separate regulatory licenses. This issue is also related to another controversial aspect of the Fintech Law which is the lack of clarity of this new statute as to whether the specific separate license that is now required for trade order routing will include placing orders with foreign broker-dealers.

Information kindly provided by Alessandri Abogados in Chile.

Asia Pacific

India



The Securities and Exchange Board of India issues circular permitting participation of AIFs in Credit Default Swaps

By way of its Circular dated 12 January 2023, the Securities and Exchange Board of India ("**SEBI**") has permitted Alternative Investment Funds in India to participate in Credit Default Swaps ("**CDS**") subject to the following conditions :

Conditions applicable to Category I, II and III AIFs for buying CDS:

- Category I AIFs and Category II AIFs may buy CDS on underlying investment in debt securities, only for the purpose of hedging; and
- Category III AIFs may buy CDS for the purpose of hedging or otherwise, within permissible leverage as specified in SEBI.

Conditions applicable to Category II and III AIFs for selling CDS:

- Category III AIFs may sell CDS, subject to the condition that effective leverage undertaken is within the permissible limits as specified in SEBI;
- Further, Category II AIFs and Category III AIFs may sell CDS, by earmarking unencumbered Government bonds/Treasury bills equal to the amount of the said CDS exposure. Such earmarked securities may also be used for maintaining applicable margin requirements for the said CDS exposure. Exposure to CDS undertaken in the aforesaid manner shall not tantamount to leverage; and
- Total exposure to an investee company, including exposure through CDS, shall be within the limit of applicable concentration norm as specified in AIF Regulations.

Other conditions applicable for transacting in CDS:

- AIFs shall report details of CDS transaction to the custodian, by the next working day, in the manner as specified by the custodian;
- Further, for Category II AIFs and Category III AIFs which sell CDS by earmarking securities in the manner as mentioned at para 2(b) above, in case the amount of earmarked securities falls below CDS exposure:
 - The AIF shall send a report to the custodian on the same day of the breach;
 - The AIF shall bring the amount of earmarked securities equal to CDS exposure and report details regarding rectification of breach to custodian, by the end of next trading day; and
 - In case the AIF fails to rectify the breach in the manner as specified above, the custodian shall report details of the breach to SEBI, on the next working day.

- Any unhedged position, which shall result in gross unhedged positions across all CDS transactions exceeding twenty-five percent of investable funds of the scheme of an AIF, shall be taken only after intimating to all unit holders of the scheme;
- Category I and II AIFs shall not borrow funds directly or indirectly and engage in leverage except for meeting temporary funding requirements for not more than thirty days, not more than four occasions in a year and not more than ten percent of the investable funds. In this regard, Category I and Category II AIFs which transact in CDS, shall maintain thirty days cooling off period between the two periods of borrowing or engaging in leverage;
- All CDS transactions shall be on a platform regulated by SEBI or Reserve Bank of India ("RBI"), to enhance transparency and disclosure; and
- AIFs transacting in CDS, shall also ensure compliance with applicable provisions of RBI notification on 'Master Direction – Reserve Bank of India (Credit Derivatives) Directions, 2022', dated February 10, 2022 and other directives issued by RBI in this regard from time to time.

Information kindly provided by AZB & Partners and King Stubb & Kasiva in India.

SEBI requires AIFs to trade through request for quote platform

By way of its Circular dated 1 February 2023, SEBI stipulated that with effect from 1 April 2023, AIFs shall undertake at least 10% of their total secondary market trades in Corporate Bonds by value in a month by placing/seeking quotes on the Request for Quote ("RFQ") platform.

It further clarified that all transactions in Corporate Bonds wherein AIF(s) is on both sides of the trade shall be executed through RFQ platform in 'one-to-one' mode. However, any transaction entered by an AIF in Corporate Bonds in 'one-to-many' mode which gets executed with another AIF, shall be counted in 'one-to-many' mode and not in 'one-to-one' mode.

Master circular issued for foreign venture capital investors

On March 3 2023, SEBI released its Master Circular for foreign venture capital investors ("FVCIs"), in order to enable the stakeholders to have an access to all the applicable requirements / circulars at one place. It lays

down the following instructions:

Firm commitment requirement for registration as FVCI:

Applicants desirous of registering with SEBI as FVCI shall obtain firm commitment from their investors for contribution of an amount of at least USD 1 million at the time of submission of applications seeking registration as FVCI.

Quarterly reporting by FVCIs:

All FVCIs are directed to submit the report on venture capital activity to SEBI complete in all respects, in accordance with Regulation 13(1) of SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("**FVCI Regulations**").

The report is to be uploaded online on SEBI portal within 7 days from the end of each calendar quarter. Physical copies of the report are not required to be submitted.

The domestic custodian shall be responsible for timely submission of the report, in accordance with Regulation 14 (2) of FVCI Regulations.

The format for the quarterly report is enclosed in the Master Circular as *Annexure I*.

Online filing system for FVCIs:

All applicants seeking registration as a FVCI are now required to submit their applications online only, through the SEBI intermediary portal.

Furthermore, all SEBI registered FVCIs are now required to file their compliance reports and submit applications for any request under the provisions of FVCI Regulations, through the online system only. Existing SEBI registered FVCIs are advised to activate their online accounts, for which activation e-mail has been sent separately.

Information kindly provided by King Stubb & Kasiva in India.

Singapore



Circular providing guidelines on ESG funds comes into force

On 1 January 2023, the disclosure and reporting guidelines for retail ESG funds, initially published on 28 July 2022, came into effect.

The Circular applies to an authorised or recognised scheme which:

- uses or includes ESG factors as its key

investment focus and strategy. This means that ESG factors significantly influence the scheme's selection of investment assets; and

- represents itself as an ESG-focused scheme.

The Circular provides information on fund naming requirements, as well as disclosure requirements for prospectuses, annual reports and additional information.

Information kindly provided by Allen & Gledhill LLP in Singapore.

Taiwan



Amendment to corporate governance best-practice principles for securities investment enterprises

On 15 February 2023, the Securities Investment Trust and Consulting Association of the R.O.C ("**SITCA**") announced the amendment to the Corporate Governance Best-Practice Principles for securities investment trust enterprises and securities investment consulting enterprises ("**SITEs/SICEs**"). We summarise below:

- For the purpose of promoting sustainable development for SITEs to transform their business operation, to add the following: the board of directors shall approve a sustainable development policy, establishment of a dedicated or concurrent unit for sustainable development, implementation of info-security protection according to laws and regulations, and utilisation of external experts and including sustainable development into directors and supervisors' educational courses, etc.;
- In order to enhance corporate governance level of SITEs, to add the following: SITEs are advisable to enhance the accountability of responsible persons, remote-working and delegation of functions, matters to be communicated between controlling shareholders and SITEs, and regular report to the board of directors on evaluation of sustainable development committee or working group etc.; and
- SITE shall produce a sustainability report in accordance with SITCA's requirements.

Information kindly provided by Lexcel Partners in Taiwan.

Thailand



Securities and Exchange Commission sets security measure requirements for digital asset custody

On 16 January 2023, Thailand's Securities and Exchange Commission ("**SEC**") prescribed a set of security measures that digital asset business operators must implement if they provide custody of digital assets for their customers. The new security measures are prescribed in two notifications from the SEC and its office on digital asset wallet management systems and cryptographic key management systems, with the aim of safeguarding digital assets in custody against loss, fraud, and cybertheft. The notifications took immediate effect.

The new security measures and the management systems are summarised below:

Policy and guidelines for managing systems related to digital asset custody

Digital asset business operators must have a written risk management policy for all systems relating to digital asset custody, approved by their board of directors and made accessible to all employees. The policy must be reviewed or revised at least once annually, or promptly if any potential risks are identified. Specific procedures must be implemented, such as establishment of a compliance team and internal controls.

Management of systems for digital asset wallets and cryptographic keys

Digital asset business operators must have policies and procedures for managing all systems relating to digital asset custody. This includes properly designing, developing, and managing digital asset wallets in a safe and secure manner. The same requirement on policies and procedures applies to cryptographic key management as well.

Management of incidents that may affect systems related to digital asset custody

Digital asset business operators must have measures in place to manage incidents that may impact systems related to digital asset custody. The measures include designating a person responsible for incident management, testing and reviewing the incident management policy annually, reporting any incidents affecting digital asset custody to the designated responsible person and the SEC immediately, and conducting a digital forensic investigation with an independent specialist, if necessary.

If an incident affects the security of systems related to digital asset custody and has a significant impact on customers' assets, the digital asset business operator must conduct

a digital forensic investigation and report the investigation results to the SEC. The operator must also develop a plan to resolve the issues, along with measures to prevent reoccurrence. Documentary evidence of the incident management must be maintained for at least two years.

Implementation

Digital asset business operators that provided digital asset custody services to customers prior to 16 January 2023 are required to implement the new security measures specified in the notifications at the earliest opportunity, and no later than 16 July 2023 (i.e. six months from the effective date of the notification).

Department of Business Development clarifies updated requirements on publication of shareholders' meeting notices

Thailand's Department of Business Development ("**DBD**") has clarified that even after the amended Civil and Commercial Code ("**CCC**") comes into effect on 7 February 2023, companies with articles of association pursuant to the previous CCC will still have to follow the previous requirements for publication of shareholders' meeting notices.

The amended CCC removes the requirement for companies to publish a notice in a local newspaper when calling a general meeting of shareholders. Instead, companies can call a general meeting of shareholders either by sending a notice by post with acknowledgement of receipt to every shareholder whose name appears in the register of shareholders or by delivering the notice in person. However, the amended CCC still requires companies that have issued share certificates to bearers to publish a notice at least once in a local newspaper or via electronic means, as prescribed by the relevant ministerial regulations.

Notwithstanding these updated requirements, the DBD has issued a clarification explaining that the amended CCC coming into effect on February 7 will not usher in a blanket change to the way most companies are required to notify shareholders about a general shareholders' meeting. If a company's articles of association were made pursuant to a prior version of the CCC, that company will still need to publish a notice calling for a general meeting of shareholders in a local newspaper - even after the new amendment becomes effective.

If companies would like to change their practice so that they no longer have to publish this notice, they will need to amend their

articles of association after the effective date of the amended CCC.

Information kindly provided by Tilleke & Gibbins in Thailand.

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:



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