

International Funds Net
Country updates

January 2023



Europe

European Union



ESMA updates Q&As on application of AIFMD on special purpose acquisition companies

On 16 December 2022, the European Securities and Markets Authority (“**ESMA**”) published an updated version of its Q&As (ESMA34-32-352) on the application of the Alternative Investment Fund Managers Directive (2011/61/EU) (“**AIFMD**”).

ESMA has updated a question in the scope section relating to special purpose acquisition companies (“**SPACs**”). It confirms that SPACs are not yet legally defined in Union law. In light of this, it is important to assess on a case-by-case basis:

- whether SPACs meet the definition of an “AIF” as legally defined in Article 4(1)(a) of the AIFMD; and
- whether SPACs qualify as a “holding company” in accordance with Article 4(1)(o) of the AIFMD.

This assessment should take into account the specific features and characteristics of the individual structure of the SPAC and it should be based on substance, not form, paying close attention to the guidance provided in the ESMA Guidelines on key concepts of the AIFMD (ESMA/2013/611).

Information kindly provided by Practical Law Financial Services.

ESMA confirms changes to notification letters for cross-border UCITS and AIFs

On 15 December 2022 the European Securities and Markets Authority (“**ESMA**”) published their final report on draft regulatory technical standards (“**RTS**”) and implementing technical standards (“**ITS**”) on notifications for cross-border marketing to host state National Competent Authorities (“**NCA**s”) and management of AIFs and UCITS in the EU.

Key changes

Although the notification letters will remain largely the same, there are some key changes, including:

- Legal entity identifier (“**LEI**”) codes of the management company/AIFM/internally managed AIF are mandatory;
- contact details and contact point for the

transmission of the invoice or the communication of any applicable regulatory fee or charges can be for a singular person or a department responsible for application within the management company/AIFM/internally managed AIF;

- ISIN of share class(es) for UCITS and AIFs are only required if available;
- information on the duration of the UCITS/AIFM/internally managed AIF and AIFs are only required if available; and
- information on the management company/AIFM/internally managed AIF national identification code is only required if available.

Overall, these changes should allow management companies and AIFMs to commence managing and marketing AIFs and UCITS at an earlier stage.

Clarifications

Following concerns raised from responses to the draft report that the technical standards go beyond existing practices and requirements, ESMA have made some key clarifications:

- only material modifications require a notification to the relevant NCA; and
- in respect of information on AIFs to be marketed in host Member States, there is no expectation for AIFs to identify only the share classes that will actually be marketed in the host Member State. However, all share classes of the AIF should be indicated to enable the NCA to identify the AIF structure

The European Commission will decide whether to adopt ESMA’s final report by 15 April 2023.

Information kindly provided by our Eversheds Sutherland office in the United Kingdom.

Bosnia & Herzegovina



Republika Srpska adopts new rulebooks on investment management companies

- 1) Rulebook on Amendments to the Rulebook on Issuing a Permit for the Acquiring of a Qualified Participation in an Investment Fund Management Company

This rulebook prescribes the necessary documentation to be attached to the application for a legal entity that intends to acquire or increase the percentage of qualified participation. It also introduces the obligation

of the investment fund management company to notify the Commission of any change in the ownership structure of the management company within eight days, as well as the obligation of a natural or legal person who intends to acquire a share in the investment fund management company in the amount of 10% or more to report it 15 days after the conclusion of the agreement.

2) Rulebook on Amendments to the Rulebook on the Business of an Investment Fund Management Company

With these amendments, a distinction was made between an investment fund management company, an alternative investment fund management company ("**AIFM**") and a small alternative investment fund management company. The obligation to establish a new organisational unit for the performance of additional activities was also introduced, as well as the obligation of companies in terms of the number of employees with a permit to perform the duties of an investment manager, depending on the organisational form.

Information kindly provided by Karanovic & Partners in Bosnia & Herzegovina.

Croatia



Changes to AIF and UCITS by-laws

On 1 January 2023, there were changes to the by-laws that accompany the Croatian Act on Alternative Investment Funds, as well as the Croatian Act on Open-Ended Investment Funds with a Public Offering.

Act on Alternative Investment Funds

The following new Rulebooks were introduced:

- 1) Rulebook on the structure and content of annual and semi-annual reports and other reports of the company for the management of alternative investment funds ("**AIFs**");**
- 2) Rulebook on the regulatory capital of the company for the management of alternative investment funds;**
- 3) Rulebook on the structure and content of annual and semi-annual reports and other reports of alternative investment funds;**
- 4) Rulebook on the calculation, amount and collection of fees paid to the Croatian Agency for the Supervision of Financial Services for the year 2023.**

Several existing Rulebooks were also amended:

- 5) Rulebook on determining the net value of AIF assets and the price of AIF shares**
- 6) Rulebook on compensation for damage to investors and/or AIF**
- 7) Rulebook on types of alternative investment funds**

(5) and (6) were amended to reflect the adoption of the euro in place of the kuna. In addition to these amends, the following changes were made to (7):

- rephrasing "Publicly offered AIFs" to "Open-End AIFs" and "Privately offered AIFs" to "Closed-End AIFs";
- new provisions in the Rulebook regarding Permitted investments of an open-end AIF with a public offering for investment in real estate (article 24a), General conditions for investing the assets of an open AIF with a public offering in real estate (Article 24b) and Investment and borrowing limits of an open-ended AIF with a public offer for investment in real estate (Article 24c); and
- when the shares of an open-ended AIF are offered through a public offer, the AIF is obliged to prepare key information for investors in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on PRIIPs KIDs.

Act on Open-Ended Investment Funds with a Public Offering

The following new Rulebooks were introduced:

- 1) Rulebook on the regulatory capital of the company for the management of UCITS funds**
- 2) Rulebook on the calculation, amount, and collection of fees paid to the Croatian Agency for the Supervision of Financial Services for the year 2023**

Several existing Rulebooks were also amended:

- 3) Rulebook on the structure and content of financial reports and other reports of the UCITS Fund Management Companies;**
- 4) Rulebook on determining the net value of UCITS assets and the price of UCITS shares;**

- 5) Rulebook on compensation for damage to investors of UCITS fund and/or UCITS fund.
- 6) Rulebook on the structure and content of annual and semi-annual reports and other reports of UCITS funds.

(3), (4) and (5) were amended to reflect the adoption of the euro in place of the kuna. The amendments to (6) regulate and prescribe in detail the content of the monthly report on the operations of the UCITS fund and deadlines and method of delivery of documents with key information.

Information kindly provided by Šavorić & Partners and Karanovic & Partners in Croatia.

Malta



Malta Financial Services Authority updates the Supervisory Reporting Submissions

On 16 December 2022, the Malta Financial Services Authority (“**MFSA**”) issued a communication to all investment firms licensed by the MFSA regarding the developments in the collection, transmission, and validation of the European Banking Authority’s XBRL supervisory reporting submissions.

As from 20 December 2022, the European Banking Authority’s XBRL submissions through the MFSA’s licence holder portal will be sent directly to the European Banking Authority with the new file naming convention in line with the guidelines available on the MFSA’s licence holder portal.

List of Financial Instruments amended

Investment firms have an obligation to submit on a biannual basis a list of financial instruments to the MFSA. The MFSA issued a circular on 21 December 2022 to inform regulated entities that the MFSA has revised the list of financial instruments to include the complex products survey which was previously part of the MiFID firms quarterly reporting. Regulated entities are required to refer to the latest version of the document available on the MFSA’s website.

Information kindly provided by Mamo TCV Advocates in Malta.

Changes to the AIFMD reporting submissions

On 16 January 2023, the MFSA issued a circular addressed to Alternative Investment Fund Managers, De-Minimis Alternative

Investment Fund Managers, Self-Managed Alternative Investment Funds, and Self-Managed Professional Investor Funds (“**AIFMs**”). The MFSA informed AIFMs of the various important changes related to the submission of the Annex IV and Annex 5 AIFMD returns.

Amongst the various important changes, the MFSA noted that a new licence number will automatically be allocated to all AIFMs and investment funds domiciled in Malta, and will be available shortly on the MFSA’s website. Such change will impact specific reporting positions of the licence number with effect from 23 January 2023. Any submissions referring to the old licence number following the above date will be treated as invalid and should be corrected and re-submitted. Non-EU AIFMs and investment funds not domiciled in Malta will not be allocated a new licence number.

Information kindly provided by Mamo TCV Advocates and Conti Legal in Malta.

Norway



EU’s Taxonomy and SFDR entered into force in Norway

The Taxonomy Regulation (EU) 2020/852 and Sustainable Finance Disclosure Regulation (EU) 2019/2088 (SFDR) is implemented in Norway in the Norwegian Act on Sustainable Finance, and entered into force on 1 January 2023.

Management companies must now adhere to the Taxonomy and SFDR when marketing funds in Norway.

European Long-term Investment Funds regulation entered into force in Norway

Regulation (EU) 2015/760 on European Long-term Investment Funds (“**ELTIF**”) is implemented in Norway by way of amendment to the Norwegian Act on the Management of Alternative Investment Funds, and entered into force on 1 January 2023. EEA domicile ELTIF funds may now be passported to and thus marketed in Norway.

Information kindly provided by Haavind in Norway.

Slovenia



New article introduced to Investment Funds and Management Companies Act

On 1 January 2023 new Article 203.a of the Investment Funds and Management Companies Act (“**ZISDU-3**”) came into force.

This new article simplifies obligations of management companies regarding the provision of key investor information. Namely, where a management company with respect to an investment fund managed in the Republic of Slovenia prepares, provides, reviews and translates the key information document referred to in Regulation (EU) 1286/2014, that key information document is deemed to be compliant with the national requirements for key investor information documents pursuant to subsection 6.7.3 of ZISDU-3. In addition, the Slovenian Securities Market Agency shall not require management companies to prepare a special key investor information document pursuant to subsection 6.7.3 of ZISDU-3 to the extent that the management company has prepared, provided, reviewed and translated the key investor information document referred to in Regulation 1286/2014/EU.

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

Sweden



Proposal on swing-pricing sent for referral to the Council on Legislation

On 8 December 2022, the Swedish Government sent a proposal for legislative changes aimed at improving fund managers' possibility to manage liquidity risks in funds by introducing the possibility of using variable fund share prices (i.e., swing-pricing) to the Council on Legislation (Sw. *Lagrådet*) for referral. Swing-pricing has previously been unregulated.

The primary changes according to the proposal are:

- that a UCITS company shall, after receiving authorisation from the Swedish Financial Supervisory Authority (the "SFSA"), be able to apply swing-pricing by using an adjusted fund unit value (Sw. *justerat fondandelsvärde*);
- that in order to receive authorisation, the UCITS company must have the organisation, systems and expertise required;
- that the use of swing-pricing must be compatible with the common interest of the unit holders and allow for adequate transparency and control; and
- that the fund rules must specify whether an adjusted fund unit value is used and the method for calculation (as applicable).

The proposal also applies to management companies when managing UCITS and AIF managers when managing special funds. The legislative changes are, under the current timeline, proposed to enter into force on 1 May 2023.

SFSA to implement online applications in Q1 2023

During Q1 2023, the SFSA aim to launch a new e-service for online applications. The online application process will first be available for management suitability assessments (Sw. *ledningsprövningar*) and owner management suitability assessments (Sw. *ägarledningsprövningar*).

If successful, the system will open up to include other types of applications later on. The SFSA have not yet confirmed a launch date, but the SFSA states that anyone who knows that they will be applying for a management suitability assessment or an owner management suitability assessment during the spring of 2023 can prepare for the launch by, inter alia, registering in the SFSA's authorisation system.

Information kindly provided by our Eversheds Sutherland office in Sweden.

Switzerland



FINMA EHP application and notification form relating to the filing of updated Prospectuses amended

The FINMA EHP (electronic filing platform) to confirm a signed Swiss prospectus and/or signed constitutive documents is no longer required. This means that for any regulatory filing submitted to FINMA in relation to an updated prospectus and/or constitutive documents as well as for applications regarding the registration of a new fund or additional sub-funds in Switzerland, no Swiss documents need to be signed by the relevant parties i.e. Management Company/Fund Company/Custodian/Depository.

The updated Swiss documents, submitted via FINMA EHP by a Swiss Representative Agent and/or appointed Legal Counsel, requests a "confirmation that the foreign management company or the collective investment scheme and the depositary of the fund are aware of the prospectus submitted for the offer in Switzerland and have approved it", by ticking the relevant button box.

This pragmatic approach does not apply to the signing of any legal contractual agreement/s which will still need to be wet-ink signed.

Information kindly provided by RBC Investor & Treasury

UK



The anticipated commencement of the UK Overseas Funds Regime

The end date for the Temporary Marketing Permissions Regime ("**TMPPR**") for EEA UCITS funds has been extended from 3 to 5 years under the Financial Services Act 2021 and will now continue until 31 December 2025.

The Financial Conduct Authority ("**FCA**") expects that it will take two years to process the estimated 8,000 funds to be considered for the Overseas Funds Regime ("**OFRR**"). In light of the TMPPR deadline the FCA will need to begin processing OFRR applications from December 2023 at the latest. It may take the FCA up to two months to process each application.

The FCA discussed its work with HM Treasury to design the OFRR in its August 2022 perimeter report. It expects to consult on the necessary changes to the Handbook during 2022/2023. On 10 October 2022 HM Treasury confirmed that it had commenced its equivalence assessments under the OFRR.

UK's FCA introduces changes to FSMA Overseas Funds Regime

On 16 December 2022, the FCA published a notice confirming the Collective Investment Schemes (Individually Recognised Overseas Schemes and Miscellaneous Amendments) Instrument 2022 ("**CIS 2022**") will come into effect from 1 January 2023.

CIS 2022 introduces changes to the 's272 regime' contained in Financial Services and Markets Act 2000 ("**FSMA**") for recognising overseas collective investment funds. The Collective Investment Schemes sourcebook ("**COLL**"), the Decision Procedure and Penalties manual ("**DEPP**") and the Glossary of definitions of the FCA Handbook are amended.

The main changes are summarised below:

Defining 'material alteration'

Greater clarity on the 'material alteration' threshold is introduced in COLL 9.3.10 – 9.3.12. Rule 9.3.10 identifies twelve changes which will always be considered material:

- changes the purpose or nature of the scheme;
- alters the risk profile of the scheme;

- may materially prejudice a participant in the scheme;
- affects the ability of participants in the scheme to exercise their rights in relation to their investments;
- introduces any new type of payment or materially increases other types of payment that a participant in the scheme would have to pay out of scheme property;
- changes the legal form of the scheme;
- changes the name of the scheme or the name of the umbrella of which a sub-fund is a part;
- will result in the restructuring of the scheme or a merger with another scheme;
- changes the regulatory status of the scheme;
- changes the regulatory status of the operator or, if the scheme has a depositary, of the depositary;
- changes the composition of the board or governing body of the scheme, if it has one; or
- otherwise has a material effect on the scheme and its participants.

Rule 9.3.11 provides guidance to assist fund operators to determine if a change is material. This includes a non-exhaustive list of examples of material changes:

- any material changes to the investment objective or policy;
- any change to the investment strategy that involves taking exposure to a new class of assets with a different risk profile;
- any change affecting arrangements for the redemption of units on behalf of participants, including any arrangements to sell units on an investment exchange;
- any change to the facilities maintained in the United Kingdom, including marketing arrangements, in accordance with COLL 9.4; and
- any expansion or limitation of the powers and duties of the operator or, if the scheme has a depositary, of the depositary.

These new rules should be considered alongside the changes which already require notification, under s277 FSMA.

COLL 9.3.12 reminds operators of s272 FSMA recognised schemes of existing notification obligations.

Exercising power of public censure

CIS 2022 introduces guidance on the s282B FSMA power of public censure to DEPP. This section came into force in February 2022. s282B empowers the FCA to publish a statement acknowledging a fund operator's contravention of certain rules.

DEPP 2 Annex 1 confirms decisions by FCA staff on whether to censure will follow the executive procedures in DEPP 2.5.12G and 2.5.13G. The FCA must act proportionately if it decides to revoke recognition of a fund and/or issue a public censure, per DEPP 6A.5. In circumstances in which the FCA is empowered to apply both sanctions, it must consider whether the combined effect on the fund operator is disproportionate to the breach. This aligns with the established approach in similar situations.

The FCA handbook glossary has been amended so that reference to the s282B power of censure is now included in definitions of 'breach' and 'public censure'.

Information kindly provided by our Eversheds Sutherland office in the United Kingdom.

UK overseas territories

British Virgin Islands



BVI approved managers annual report deadline

BVI Approved Managers are required to file an annual return with the BVI Financial Services Commission by 31 January 2023 in respect of the preceding year pursuant to the Regulations.

The annual return should be in a prescribed form confirming:

- Compliance with the requirements of the Regulations;
- That each director, senior officer and shareholder with a significant interest is fit and proper; and
- Details of:
 - entities the BVI Approved Manager provides services to;
 - the assets under management for such entities;
 - the number of investors for such

entities; and

- whether the BVI Approved Manager has received any significant complaints.

Information kindly provided by Maples Group in the British Virgin Islands.

Cayman Islands



Limited Liabilities Companies Act amended

The Limited Liability Companies (Amendment) Act, 2022 was gazetted and came into force on 19 October 2022. The Act made the following amendments to the Limited Liability Companies Act (2021 Revision) (the "**LLC Act**"):

- Section 5 was amended to clarify that the registration statement of a limited liability company ("**LLC**") should include the names and addresses of the *initial* members of the LLC.
- Section 6 was amended to require the register of members, to include information on the interest held by each member of the LLC, including:
 - each group or class, if any, of LLC interest held by the member;
 - whether the LLC interest held by the member confers the right to vote on any matter which is to be voted on;
 - whether the member has the right to vote as a consequence of membership of any group of members or otherwise; and
 - whether such right is conditional.
- Section 61 was amended to introduce a requirement that, where the register of members of an LLC is kept at a place other than the registered office, the LLC must maintain the information contained in the register at its registered office.

These amendments are aimed at aligning the LLC Act with the Companies Act (2022 Revision).

Cayman Islands Financial Action Task Force update

The Financial Action Task Force ("**FATF**") determined at the plenary meeting held in Paris on 21 October 2022 to keep the Cayman Islands on its list of jurisdictions with AML/CFT deficiencies (also known as the FATF 'grey-list'), despite noting that the Cayman Islands is now compliant with 62 out of the 63 recommended actions required in order to

improve the Cayman Islands' AML/CFT regime.

The Cayman Islands Ministry of Financial Services & Commerce released a Media Release on 21 October noting that the final recommended action relates to money laundering investigations and prosecutions, which the FATF has encouraged the jurisdiction to complete by February 2023.

List of approved stock exchanges updated

An updated list of approved stock exchanges was adopted by the Cayman Islands Monetary Authority on 24 October 2022 and can be found [here](#).

Information kindly provided by Maurant in the Cayman Islands.

Guernsey



Guernsey's government issues consultation on 'six directorship' exemption

In December 2022, Guernsey States' Policy and Resources Committee published a consultation paper seeking views on a proposed change to the requirements which affect some individuals acting as company directors, by way of business, in or from within the Bailiwick.

Acting as a director for any company in the Bailiwick, by way of business, requires directors to hold a personal fiduciary licence granted by the GFSC under the Fiduciaries Law, though there are a number of exemptions to this requirement. One exemption is the 'six directorship' exemption, which means individuals who hold directorships of six or fewer companies, being directorships which are not subject to another exemption under the Fiduciaries Law, are not required to hold a personal fiduciary licence. However, they are still subject to anti-money laundering and counter-terrorism financing obligations. In 2015, a MoneyVal report recommended measures should be introduced to ensure effective compliance with these obligations.

The proposed changes, which would see a registration framework extended to directors who come under the 'six directorship' exemption, are intended to be a practical and proportionate solution to deliver on the recommendation.

Information kindly provided by Ogier and Maurant in Guernsey.

Jersey



JFSC issues feedback and further consultation to amend legislation regarding "arranging" in investment business

Feedback and a further consultation paper was issued by the JFSC in September 2022 in connection with the ongoing proposals to bring the activity of 'arranging' into the scope of 'investment business' under the Financial Services (Jersey) Law 1998.

No further responses were received. The proposals will now proceed through the legislative process. The timeline for implementation is not yet known

Information kindly provided by Ogier in Jersey.

Americas

Canada



Canadian Securities Administrators publishes changes to the "offering memorandum" prospectus exemption

On 8 December 2022, the Canadian Securities Administrators ("CSA") published changes to the "offering memorandum" prospectus exemption set out in National Instrument 45-106 – Prospectus Exemptions (NI 45-106).

The amendments, originally published for comment on 17 September 2020, set out new disclosure requirements for issuers engaged in "real estate activities" and issuers that are "collective investment vehicles" (both of which are new definitions in NI 45-106). The amendments also include general amendments intended to clarify or streamline parts of NI 45-106 or improve disclosure for investors. The amendments are expected to come into force on 8 March 2023.

CSA and the Investment Industry Regulatory Organization of Canada publish notice on short selling

On 8 December 2022, the CSA and the Investment Industry Regulatory Organization of Canada ("IIROC") published Joint CSA and IIROC Staff Notice 23-329 - Short Selling in Canada, which provides a review of the current regulatory landscape and initiatives on short selling in Canada and seeks input from investors, industry, and the public on certain areas for regulatory consideration. Comments are due by 8 March 2023.

The CSA also published CSA Staff Notice 25-

306 – Activist Short Selling Update on the same date. This notice provides a summary of comments and responses to CSA Consultation Paper 25-403 - Activist Short Selling, originally published on 3 December 2020. IIROC also concurrently published its report on its failed trade study.

CSA announces greater oversight of crypto trading platforms

On 12 December 2022, the CSA announced that, following recent events in the crypto market, they will be strengthening their approach to oversight of crypto trading platforms (“CTPs”) by expanding existing requirements for platforms operating in Canada. Among other updates, the announcement advised that the securities regulators will be considering all regulatory options to bring CTPs into compliance with securities law, including enforcement action, and that they are of the view that stablecoins, or stablecoin arrangements, may constitute securities and/or derivatives.

CSA issues proposed amendments to support the transition to a one-day trade settlement cycle

On 15 December 2022, the CSA 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. The move to a T+1 settlement cycle is expected to occur in 2024, at the same time as the markets in the United States move to a T+1 settlement cycle. The proposed rule amendments would also repeal certain exception reporting requirements in Part 4 of NI 24-101.

Comments are due by 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. This is intended to allow investment funds to have flexibility to determine whether a shorter settlement cycle is appropriate for the fund.

Information kindly provided by McMillan in Canada.

Asia Pacific

Myanmar



Central Bank of Myanmar exempt foreign companies from mandatory forex conversion

On 30 December 2022, the Central Bank of Myanmar issued letter No. FE-1/2861(Ka) concerning the Foreign Exchange Supervisory Committee Meeting Resolution No. (78/2022). The most pressing issue faced by foreign companies in Myanmar was resolved by the decisions made in paragraphs 1(d) of the meeting resolution no. 78/2022.

Meeting resolution Paragraph 1 (d) states that foreign currencies of companies with more than 35% of foreign shareholding do not need to be mandatorily converted into Myanmar Kyat. Such foreign companies can use foreign currency for internal use and sell them to banks. However, foreign companies must seek prior approval from the Foreign Exchange Supervisory Committee if they wish to use foreign currency for outward remittances for non-trading purposes.

Meeting resolution Paragraph 1 (r) states that companies with more than 35% foreign ownership are not allowed to trade and export non-value-added agricultural products. The trading companies permitted to export agricultural products must continue utilising 65% of their export earnings per CBM's notification number 36 of 2022.

Information kindly provided by DFDL in Myanmar.

Taiwan



Financial Supervisory Commission amends discretionary investment business regulations

On 30 November 2022, the Financial Supervisory Commission (“FSC”) issued an official letter to amend Article 2 of the Regulations Governing the Conduct of Discretionary Investment Business by Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises. This revised the mandatory threshold for a trust enterprise to apply for a discretionary investment mandate license from no less than NT\$10 million to NT\$15 million of trust assets investing in the securities referred to under Article 6 of the Securities and Exchange Act and individually or collectively managed by trust enterprises.

Amendment to the Application Documents for Offer and Sell the Offshore Funds

On 9 December 2022, the FSC announced updated application documents for offering and selling offshore funds. The main update is to add the required explanation items related to ESG-theme funds and the share classes to be introduced to Taiwan, and incorporate the other documents required by

the competent authority in practice, such as the explanation on:

- fair value pricing;
- anti-dilution mechanisms; and
- suspension of account transactions due to AML issues in the Checklist for Application by Master Agent to Offer and Sell the Offshore Funds.

Guidelines and template agreement for open cooperation of public securities information announced

On 12 December 2022, the Securities Investment Trust & Consulting Association (“**SITCA**”) announced the guidelines and template of cooperation agreement for open cooperation of search and usage of public securities information between SITCA members and third-party service providers. The key points of such documents include the obligation of the third-party service provider, intellectual property of open API, and information security between both parties.

Amendments to the ruling regarding concurrently serving securities investment trust enterprises and securities investment consulting enterprises

On 22 December 2022, the FSC announced amendments to the ruling related to concurrent engagement of personnel of securities investment trust enterprises (“**SITE**”) and securities investment consulting enterprises (“**SICE**”), which are mainly to require that SITE/SICEs shall regularly assess whether the concurrent engagement of responsible person in other positions affects the effective execution of his/her core duties or leads to a conflict of interest in accordance with the need of their investment management and risk management policies.

The results of the assessments shall be used as an important reference for continuing or reducing such concurrent engagement arrangement.

Regulations governing responsible persons and associated persons of SITE/SICEs amended

On 22 December 2022, the FSC announced the amendments to Regulations Governing Responsible Persons and Associated Persons of Securities Investment Trust Enterprise and Regulations Governing Responsible Persons and Associated Persons of Securities Investment Consulting Enterprises.

Amendment to the Application Form for

Offering the Securities Investment Trust Funds

On 26 December 2022, the FSC announced the updated application forms for offering securities investment trust funds (“**SIT Funds**”) by SITE. The main update is to add the required explanation items related to ESG-theme funds in the Checklist for Application to Offer the SIT Funds by SITE and the Mandatory Provisions of Offering Plan.

FSC amends Regulations Governing Offshore Funds

On 28 December 2022, FSC announced the amendments to Regulations Governing Offshore Funds. We summarise below:

- **Master Agent:** To add the restriction that a master agent can represent funds managed by not more than five offshore fund management companies. Where a master agent represent funds managed by four offshore fund management companies or more, additional operating bond will be required. Also, the operating bond shall be based on the group enterprise to which the offshore fund management companies belong. In addition, adding an additional negative qualification that it has not been subject to a disposition as set out in the Financial Consumer Protection Act within the past 2 years.
- **Sales Agent:** To specify the qualifications for companies that issue shares without par value in accordance with Article 156 of the Company Act to serve as sales agents of offshore funds. In addition, adding an additional negative qualification that it has not been subject to a disposition as set out in the Financial Consumer Protection Act within the past 2 years.
- **Management Company:** To amend the no sanction qualification of an offshore fund management company to limit the sanctions on breaches relevant to assets management business which has not been improved yet.
- **Application Documents:** To delete the required documents for sales agents upon the filing for new fund registration and request those to be filed with the Securities Investment Trust & Consulting Association (SITCA) for review and approval after the new fund registration has been approved.

SITCA announces greater self-regulation for SITE/SICEs

On 10 January 2023, the SITCA issued an official letter to announce the "Self-Regulation on the Security of Info-communication System of the SITE and SICE", "Self-Regulation on the Cyber Security and Protection of the SITE and SICE", and "Self-Regulation on the Risk Management of the Supply Chain of the SITE and SICE" for the industry's reference. They are to strengthen the cyber security, the security of the info-communication system and the risk management of selecting and managing the information service providers along with that of the termination and the revocation of the services with the said providers in accordance with the FSC's "Financial Cyber Security Action Plan".

Regulations governing information to be published by securities investment trust enterprises updated

On 23 December 2022, the FSC announced the amendment to Regulations Governing Information to be Published in Prospectuses by Securities Investment Trust Enterprises Offering Securities Investment Trust Funds. The main update includes that ESG-theme funds shall disclose the items such as the investment objective and evaluation standard, investment strategy and approach, and allocation of investment percentage in the prospectus.

Information kindly provided by Lexcel Partners in Taiwan

Middle East and Africa

United Arab Emirates



Securities and Commodities Authority introduces New Fund Regime

During January, the Securities and Commodities Authority ("SCA") has introduced a new fund regime by way of two board decisions, Board Decision No. (01/RM) of 2023 and Board Decision no. 4 RM of 2023, The effects of these are detailed below:

- 1) Board Decision No. (01/RM) of 2023 concerning the regulation of investment funds ("**New Fund Regulations**")

Further to its media briefing in December 2022, wherein the SCA indicated its positive intent to achieve a 100% increase of the amount of the money managed by local funds and introduce new types of investment funds under regulation, the SCA has now repealed Board of Directors' Decision No. (9/R.M) of 2016 Concerning the Regulations of Investment Funds ("**Old Fund Regulations**") and promulgated the New Fund Regulations. These were issued on 16 January 2023.

The New Fund Regulations aim to revamp the existing legislative framework relating to the incorporation and governance of public and private funds established in the UAE, and is more comprehensive than the Old Fund Regulations to ensure the protection and cohesive growth of the local UAE funds market. Substantial developments include, inter alia, expedited processing periods for the approval of public/private funds, reduction of regulatory requirements and additional types of funds recognised by SCA, which are set out below.

The New Fund Regulations have expanded the exemptions of arrangements that would not be considered as a fund to cover joint bank accounts, insurance and pension contracts, joint investments between the parent, holding, subsidiary and sister companies, timeshare properties and other sharing property use, employees share options schemes managed by the issuer or group company and government funds.

New categories of fund structures have been introduced such as:

- Family Funds – a local fund where the ownership of its units is restricted to one or more persons from one family; and
- Self-managed Funds – where a local fund is established by two or more individuals or corporates.

In addition, the New Fund Regulations establish new categories of specialized funds such as real estate development funds, precious metal funds, direct financing funds, ESG funds, capital protection funds, protected-cell funds, charity investment funds and commodities investment funds.

Capital requirements of fund management companies have been reduced from AED 50 million to 1 million and fund administration companies from AED 5 million to AED 1 million. The New Fund Regulations remove foreign ownership restrictions, allowing 100% foreign ownership of such companies.

Furthermore, the application process timelines have been reduced to 5 working days for private funds and 10 working days for public funds for the approval of establishment of the respective fund. The SCA's final decision on applications for new types of funds will be issued within 20 working days from the date of submission.

While existing funds would need to conduct suitable due diligence to ensure compliance with the New Fund Regulations, there are some exemptions. Additionally, such funds are permitted to continue with activities as per

the categorisation and investment policy set out in their offering document. In the event no categorisation or investment policy is set out then compliance on such matters in accordance with the New Fund Regulation shall apply.

Further notable provisions under the New Fund Regulations include:

- investment funds may issue and offer sukuk and bonds for the general public;
- public real estate funds may be offered to the public through the book building mechanism;
- permitting mergers and acquisitions of local investment funds;
- buyback rules of investment funds traded on the stock exchange; and
- capital increases of investment funds may be increased in instalments and tranches.

The New Fund Regulations will be effective the day after publication in the Official Gazette.

Separately, the SCA has also issued Administrative Decision no. 8 RT of 2023 that contains annexes to the New Fund Regulations. The annexes contain guidelines on:

- the content of the offering document and Key Investor Information Document ("**KIID**");
- the investment policies of the local funds;
- classifications of local funds; and
- the evaluation of units of the local public fund.

2) Board Decision no. 4 RM of 2023 concerning the status regularisation mechanisms of foreign funds promotion in UAE ("Foreign Funds Promotion Regulations**"):**

The New Funds Regulations details matters relating to the incorporation, regulation and oversight of locally established funds. To align with its objective to provide impetus to the local funds market, the SCA has also issued the Foreign Funds Promotion Regulation that provides new criteria on the promotion, offering, and registration of foreign funds to investors in the UAE.

The SCA has issued approvals to 1965 foreign funds to promote and offer their funds through licensed promoters in the UAE. The

intention of the Foreign Funds Promotion Regulation is to restrict the access of foreign funds to UAE retail investors.

The promotion of foreign funds in the UAE can only be made by way of private placement to professional and counterparty investors as defined in Resolution No. 13 of 2021 Concerning the Booklet of the Rules of Financial Activities and the Status Rectification Mechanism (the "**Rulebook**"). As such, investors appear to be restricted from accessing public foreign funds under the Foreign Funds Promotion Regulations. These are material developments.

UAE licensed promoters have been provided a grace period of 6 months, from 1 January 2023, to continue with existing promotion arrangements or until the remaining period of those arrangements expire, whichever is earlier. It is expected that the SCA will issue a circular and will reach out to promoters on existing foreign funds that have been registered with the SCA to provide further guidance.

The Foreign Funds Promotion Regulations is effective as of 17 January 2023.

[Information kindly provided by Al Tamimi in the United Arab Emirates.](#)

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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