EVERSHEDS SUTHERLAND

International Funds Net

Country updates

June 2024

Europe

Bosnia & Herzegovina

Amendment to Rulebook on investment fund asset valuation

In May 2024, the Rulebook on Amendments to the Rulebook on Determining the Value of Investment Fund Assets and Calculating the Net Value of Investment Funds Assets introduced the following amendments:

- paragraph 3, Article 4 which prescribed that requests for sale of shares in investment fund and request for payment for purchasing the share that have been received during the weekend and holidays in that way that managing company will calculate the value of share by the investment fund's share at next following working day is now deleted;
- a new paragraph 2 is added in the Article 5, which prescribes that the value of net asset of opened investment fund with public offer on Friday, weekends and holidays will be calculated on Monday i.e. the first next following working day; and
- new paragraph 2 is also added in the Article 27 which prescribes that the depository bank is obliged to deliver a notification to the company after the procedure of calculation, method of valuation of assets and liabilities of the investment fund and confirmation of the amount of the net value of the investment fund's assets and the net value of the assets per share or per share of the investment fund for Fridays, weekends and holidays, on the first working day on the day following the specified days.

New Rulebook on deposit banks of investment funds

In the same month, the new Rulebook on Deposit Banks of Investment Funds was adopted, which regulates:

- conditions and rules for submitting a request for obtaining the permit and performing the activities of depository bank, the obligatory content and form of the contract on performing activities of depository bank for the investment fund concluded by the bank and the managing company, as well as the method of informing the Securities Commission of Federation of Bosnia and Herzegovina;
- the method and the deadlines in which the depository bank informs the Securities Commission of established irregularities in fund's operations and special reports on the valuation of investment fund's asset and deviations from the investment structure;
- the method of securing the investment fund's asset at depository bank;
- the obligatory content of the request for issuance of prior consent for change of the depository bank as well as documentation that is being attached to the request for issuance of the permit for performing the operations of depository bank;
- the way of conducting in the situation where the depository bank's permit for performing the activities of depository bank has been revoked or when the managing company's permit for managing the investment funds has been revoked; and
- the scope and the content of audit report on the performed audit of the performance of the depository bank's obligations.

Information kindly provided by Karanovic Partners in Bosnia & Herzegovina.

Czech Republic

Czech National Bank comments on financial market regulation

The Czech National Bank has published new opinion on financial market regulation. The Opinion mandates that securities dealers must provide customers with illustrations of the impact of total costs and fees on investment returns, both before and after the investment, which was not standard practice.

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

Malta

Financial instrument submission obligations updated

Investment Firms that are obliged to submit biannually a list of Financial Instruments to the Malta Financial Services Authority (the "**MFSA**") are exempt from submitting the list for H1 2024 and H2 2024 pursuant to a circular issued by the MFSA on 3 June 2024.

The MFSA has updated the List of Financial Instruments to be reported on which also includes reporting data related to sustainable

finance. The updated list will be circulated for feedback prior to its launch. It is intended to be launched at the end of the year and will apply to reporting year 2024.

Information kindly provided by Conti Legal in Malta.

MFSA issues Circular on marketing campaigns

On the 21 June 2024, the MFSA issued a circular addressing concerns over marketing campaigns and selling practices related to financial products of regulated entities. The circular emphasises the need for regulated persons to comply with fair, clear, and non-misleading communication standards as stipulated in R.1.2.6 and R.1.2.7 of the Conduct of Business Rulebook.

The MFSA highlighted that marketing communications should provide a balanced view, clearly identifying the product being promoted and ensuring that essential information is easily understood by consumers. Thus, promotions on social media and other online platforms should not overemphasise tax benefits but should instead focus on the features and benefits of the financial product itself.

Regarding *cold calling*, the MFSA clarified that it generally does not approve of unsolicited calls for selling financial products. In this respect, regulated persons are expected to exercise high diligence in such calls, ensuring they promote the financial product rather than relying on tax incentives as the primary attraction to potential clients. The initial call should centre on how the product meets the customers financial needs rather than on ancillary tax incentives. Moreover, the MFSA noted that regulated persons must avoid unfair comparisons with competitors' products and ensure that there is no confusion as to the nature of the product being marketed during these calls.

The MFSA also stressed that regulated persons must ensure that their customers have a clear understanding of the financial products they are considering. This involves providing timely and comprehensible information, avoiding misleading advice, and ensuring that sales processes are conducted transparently and ethically. The MFSA outlined that compliance officers must formally approve all marketing communications and monitor the activities of tied agents to maintain standards of honesty and professionalism.

Information kindly provided by Mamo TCV Advocates in Malta.

Norway

PRIIPs Regulation adopted by Parliament

Regulation (EU)1286/2014 ("**the PRIIPs Regulation**") has now been formally adopted by the Parliament, but is not yet in force. It is currently unknown when it will be in force. In addition to that transitional provisions may be issued.

New application process for AIFs

Following the implementation of application and registration fees in 2024, the Norway Financial Services Authority has changed its practice so that they will not be processing any applications for marketing of foreign AIFs in Norway until the application fee has been paid for by the AIFM. Managers should note the practice change and ensure that the application fee is duly paid.

Information kindly provided by Haavind in Norway.

Switzerland

Federal Council comments on industry self-regulation on greenwashing

During its meeting on 19 June 2024, the Federal Council took note of the financial sector's new self-regulatory provisions to combat greenwashing.

These are a step forward in the implementation of the Federal Council's position on preventing greenwashing in the financial sector.

Taking into consideration this progress, the European Union's ongoing work on amending the Sustainable Finance Disclosure Regulation ("**SFDR**") and the major importance of the European market for the Swiss financial center, the Federal Council is refraining from introducing state regulation to combat greenwashing in the financial sector at this time. However, it has instructed the Federal Department of Finance to re-evaluate the need for action with regard to the full implementation of the Federal Council's position once the European Union publishes any amendments to its SFDR, but by the end of 2027 at the latest.

Information kindly provided by Nastra Attorneys at Law Ltd in Switzerland.

UK overseas territories

Guernsey

Guernsey Financial Services Commission issues policy statement on fund tokenisation

The Guernsey Financial Services Commission (the "**Commission**") has issued a policy statement setting out its regulatory approach to fund tokenisation in relation to collective investment schemes ("**CIS**").

The policy statement notes that fund tokenisation, i.e. where the register of holders of units in a CIS is maintained by using distributed ledger technology and tokens are issued as a digital representation of the ownership of the units, is currently permitted under the Bailiwick regulatory regime, subject to the CIS's compliance with the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and related rules/regulations and its designated administrator continuing to be responsible for its administration in accordance with the applicable law, including the proceeds of crime regime.

The Commission's overall position is to encourage the use of technology which enhances services to investors and increases efficiency and effectiveness of operations within the Bailiwick, subject to the technology complying with the Bailiwick's legislative regime protecting investors and countering financial crime. If there are specific rules which may hinder a party's ability to trial new technology, the Commission is prepared to work with that party, for example to consider whether to grant a waiver on a pilot basis or to redraft a rule where technological developments mean its original design is now obsolescent.

The Commission's statement acknowledges that technology within the fund tokenisation space will continue to advance, e.g. the use of public, permissionless blockchains and that such developments may pose additional risks which may not be consistent with the Bailiwick's current regulatory framework. It states that it is monitoring such developments and welcomes ongoing engagement with the funds sector to ensure that the Bailiwick's regulatory regime remains fit for purpose, reflecting changing technologies and practices, as well as meeting international regulatory standards.

Information kindly provided by Mourant in Guernsey.

Americas

Canada

Ontario Securities Commission issues staff notice on exchange-traded funds

On 22 May 2024, the Ontario Securities Commission ("**OSC**") published Staff Notice 81-735 - *Cash Collateral Use for Delayed Basket Securities in ETF Subscriptions*.

The notice sets out the views of the OSC regarding the use of cash collateral for in-kind subscriptions for exchange-traded funds ("**ETFs**") where one or more securities from a basket of securities comprising payment cannot be delivered on the settlement date. The guidance is intended to address the current variance in practice by market participants in this regard and confirms the OSC's view that using cash collateral to facilitate the issuance of ETF units in the case of delayed delivery of such securities is permissible under National Instrument 81-102 (NI 81-102).

Canadian Securities Administrators publish notice on trade settlement cycles

On 23 May 2024, the Canadian Securities Administrators ("**CSA**") published final amendments designed to help mutual funds that voluntarily shorten their trade settlement cycles from two trading days to one (T+1), following the upcoming transition by North American securities markets to T+1 settlement.

The amendments accommodate a range of settlement cycles for mutual funds, including those switching to T+1. The amendments include provisions that clarify payment dates for transactions and the timeframe for forced redemption of securities for non-payment.

The CSA also amended National Instrument 24-101 - *Institutional Trade Matching and Settlement* to align with the industry's move to reduce the time by which institutional trades must be matched from two days after the date of a trade (T+2) to one day (T+1).

Information kindly provided by McMillan LLP in Canada.

Chile

New rules published on fees for Chilean pension funds

On 10 June 2024, the Chilean securities, banking and insurance regulator published for comment the proposed new annual rule

whereby it jointly sets with the Chilean pension regulator the maximum fees and expenses ("**Max TER**") that may be borne by Chilean pension funds. The excess over such Max TER must be borne by the pension fund managers ("**AFPs**").

In the case of equity mutual funds the rates are either lowered or remain the same, whereas they are raised in the case of money market funds and certain other fixed income funds.

ETF rates are raised in the case of developed markets and global equity ETFs as well as in the case of emerging markets debt ETFs. Rates for other ETF types remain unchanged. No distinction continues to be made between actively managed and passive ETFs.

The Max TER for private equity ("**PE**") is raised from 2.25% to 2.35%, but the one for private credit ("**PC**") is slightly reduced and put on a par with PE. The explanation for the latter was that there was a comparatively low amount of data for PC funds in the Preqin date base used by the regulators to fix the new Max TERs. Likewise Max TERs for funds of funds were brought down to 3.75%.

On a related note, Chilean feeder fund fee reporting requirements will now be subject to the same reporting standard that sponsors receiving direct investments (i.e. the ILPA standard) are subject to.

In other respects, there were no changes, meaning that the same updated databases (Morningstar for registered funds and Preqin for private equity and private credit) were used to calculate the Max TERs, and the same percentiles were used for the statistical methodology to determine which funds to consider within the relevant databases.

Information kindly provided by Alessandri in Chile.

Asia Pacific

Cambodia

Update on measures to ease the use of Khmer language in accounting records and supporting documentation

Notification 031/24 AAR ("**Notification 031/24**") was issued by the Accounting and Auditing Regulator ("**ACAR**") on 15 May 2024 to clarify the implementation of Circular no. 009 MEF dated 1 September 2021 on the Use of Language and Currency in Accounting Records and Financial Statements.Notification 031/24 clarifies that:

- enterprises and non-profit organisations can use the English language in accounting reports and supporting documents without needing to translate to Khmer language from the date of when their operations began; and
- enterprises and non-profit organisations may be required to translate accounting reports and/or supporting documents from English to Khmer if ACAR requests during an audit.

ACAR encourages all relevant entities to adhere to these guidelines responsibly.

Information kindly provided by DFDL in Cambodia.

India

Reserve Bank of India publishes Circular on issuance of partly paid units

The Reserve bank of India ("**RBI**") has on 21 May 2024, issued a circular ("**Circular**") on the issuance of partly paid units to persons resident outside India ("**NR**") by investment vehicles under the Foreign Exchange Management (Non-debt instruments) Rules, 2019 ("**NDI Rules**").

The Circular provides that AIFs can post 14 March 2024 issuance of partly paid units to NRs, and further clarifies that NRs who were holding partly paid units in AIF prior to 14 March 2024 are required to regularise / compound the contravention of holding partly paid units earlier through the compounding process of the RBI under the Foreign Exchange Management Act, 1999.

Securities and Exchange Board of India Paper on valuation of AIF investment portfolios

The Securities and Exchange Board of India ("**SEBI**") has on 23 May 2024, released a consultation paper ("**Consultation Paper**") on the review of certain aspects of the framework for valuation of investment portfolio of AIFs. The Consultation Paper has been released after SEBI receiving multiple representations from the AIF industry highlighting issues regarding certain aspects of the valuation framework for AIFs. Key proposals from the Consultation Paper are set out below:

- the valuation of securities, other than unlisted securities, for which valuation norms have been prescribed under SEBI (Mutual Funds) Regulations, 1996 shall be carried out as per the norms prescribed under the MF Regulations. The valuation of unlisted securities, on the other hand, shall be carried out as per the

valuation guidelines endorsed by eligible AIF Industry Association based on the recommendations of the Alternative Investment Policy Advisory Committee of SEBI, i.e., presently the International Private Equity and Venture Capital Valuation Guidelines in this regard;

- change in valuation methodology / approach to comply with Chapter 22 of SEBI Master Circular for AIFs released on 7 May 2024, namely on '*Standardised approach to valuation of investment portfolio of AIFs*' shall not be construed as a material change. Change in methodology / approach to valuation of investment portfolio of AIFs shall not be construed as a material change. However, in such cases, the valuation of the investment carried out based on valuation methodologies / approaches, both old and new, shall be disclosed to the investors to ensure transparency;
- the eligibility criteria for an independent valuer for a partnership entity or company shall be:
  - such entity or company shall be a registered entity registered with the Insolvency and Bankruptcy Board of India; and
  - the deputed / authorised person(s) of such registered valuer entity, who undertake(s) the valuation of investment portfolio of AIFs, shall have a membership of Institute of Chartered Accounts of India or Institute of Company Secretaries of India or Institute of Cost Accountants of India or CFA Institute; and
- AIFs shall provide audited data on cash flows and valuation of their scheme-wise investments, after the audit of books of accounts of the AIF in terms of Regulation 20(14) of SEBI (Alternative Investment Funds) Regulations, 2012, to performance benchmarking agencies within 7 months from 31 March, i.e., by 31 October of each year.

Information kindly provided by AZB Partners in India.

Taiwan

Amendment to Electronic Signatures Act

On 15 May 2024, the President announced the amendment to the "Electronic Signatures Act", which took effect on the announcement date. The amendments can be summarised below:

- to specify that digital signature is a type of electronic signature;
- to specify that the legal effect of electronic record and electronic signature cannot be denied solely because of their electronic form;
- unless the counterparty consents to the use of electronic form, the counterparty shall be given an opportunity to refuse before using electronic form, and be notified that it is presumed consent if not refused
- the digital signature issued by the government permitted certification service provider is presumed being personally signed; and
- the administrative authority can only exclude the application of this Act through the laws, and the announcement of excluding the application of the Act made by the administrative agency prior to the amendment shall cease to take effect 1 year after the implementation of this amendment. However, with the approval of the competent authority, the exclusion date may be extended 1 time for a period of 2 years.

The matters to be considered for the competent authority to permit foreign certification service provider includes technical docking cooperation in addition to the principles of reciprocity under equivalent security requirements.

Amendment to Regulations Governing Approval for Private Legal Entities to Purchase Residential Houses

On 17 May 2024, the Ministry of the Interior announced amendments to the Regulations Governing Approval for Private Legal Entities to Purchase Residential Houses. The amends are as follows:

- for private legal entities purchasing houses to use as employee dormitories, the amendment provides that the purchase should, in principle, be of completed houses. Additionally, the purchase of high-priced residences is prohibited and the private legal entity must employ five regular employees or more to apply for purchase of residential house for employee dormitories use; and
- for private legal entities purchasing houses for rental business purposes, ownership transfer registration must be completed simultaneously when the purchase is approved.

Draft amendment to Regulations

Governing Borrowing or Lending Money in Connection with Securities Business by Securities Firms

On 21 May 2024, the Financial Supervisory Commission ("**FSC**") announced the draft amendments to "Regulation Government Borrowing Lending Money in Connection with Securities Business by Securities Firms." The amends are summarised below:

- to allow new shares of a company subscribed by its employees or original shareholders due to its initial public offering or secondary public offering to be taken by securities firms as collaterals for loan;
- to add types of non-permitted collateral for loan;
- to supplement required items for the template of loan agreement; and
- to include the Taiwan Depository & Clearing Corporation ("**TDCC**") as one of the governing entities for the regulations governing business operations of the subject business.

Amendment to Guidelines for Advertisements and Business Activities Performed by Members and Their Sales Agent

On 17 May 2024, the Securities Investment Trust and Consulting Association ("**SITCA**") announced the amendment to "Guidelines for Advertisements and Business Activities Performed by Members and Their Sales Agent" (Guidelines). The amends are summarised below:

- to add that the Securities Investment Trust Enterprises ("**SITE**"), master agents, and sales agents, along with influencers who regularly share information online (internet celebrities) must adhere to the Guidelines and establish pre-event, during-event, and post-event verification management mechanisms when advertising and conducting business activities related to fund products. These requirements should be clearly defined in their internal control systems. Furthermore, the internet celebrities must meet the qualifications listed in Items 1 to 3 of Paragraph 1, Article 6-1 of the Regulations Governing Responsible Persons and Associated Persons of Securities Investment Trust Enterprises;
- to add that within 10 days of collaboration with internet celebrities, SITEs, master agents, and sales agents must report the relevant information of such advertising and business activities to the SITCA; and
- to add that the SITCA should conduct regular inspections on the information reported by SITEs, master agents, and sales agents regarding their collaborations with internet celebrities and relevant forms provided.

Amendment to the Guidelines on the Business of Securities Investment Trust Enterprises

On 24 May 2024, the SITCA announced the amendment to the "Guidelines on the Business of Securities Investment Trust Enterprises" (Business Guidelines of SITEs). The amendments are summarised below:

- addition of Point 14: When the SITE receives training from the fund's foreign investment advisor or foreign management institution, a training plan shall be signed and may be incorporated into the contract. The training plan shall include required items, and the SITE shall establish the criteria for selecting participants for the training; and
- addition of Point 15: The SITE shall clearly define in its internal control system the mechanisms for identifying and preventing conflicts of interest or potential conflicts of interest arising from the business of securities investment trust funds.

Amendment to questions and explanations for application in relation to Directions for Matters of SITE/SICE Outsourcing to Others

On 24 May 2024, the FSC announced the amendments to Q&A of Questions and Explanations for Application in relation to "Directions for Matters of SITE/SICE Outsourcing to Others" (the "**New Q&A**"). The amendment model can be generally divided into three types with examples (not exhaustive) respectively as follows:

1) New added explanation: for example, operations such as using market information services and trading and communication platforms (e.g. Bloomberg) and handling of anti-money laundering and prevention operations by using the Taiwan Central Depository and Clearing Corporation's anti-money laundering and counter-terrorism searching system are further supplemented to Item 1 of the NEW FAQ to be excluded from the scope of outsourcing to others to handle for SITE/SICE;

2) Integration: for example, the FSC consolidated the responses to the application of outsourcing directions to the outsourced matters of the SITE/SICE involving its affiliated group company to Item 2 of the New Q&A; and

3) Further clarification: for example, Item 8 of the New Q&A further clarified the application procedures for the changes after receiving the approval from the FSC, which can be divided into the following situations:

a) change or addition of a new service provider;

b) the service provider is not changed, but the data processing or storage location is changed or added; or

c) the service provider remains unchanged, but changes or additions to the outsourced content will materially increase the relevant risks, and the original risk control and internal control mechanisms will need to be adjusted.

Information kindly provided by Lexcel Partners in Taiwan.

Thailand

Amended rules on high-risk customers of financial institutions

On 17 May 2024, Thailand's Anti-Money Laundering Office ("**AMLO**") issued an amended Notification Concerning the Rules for Designating or Reviewing the List of High-Risk Customers Who Require Close Monitoring under the Ministerial Regulation on Customer Due Diligence B.E. 2563 (2020).

This notification, which took effect the following day, updates the previous version of the notification from 2022 to cover cybercrimes listed under the Emergency Decree on Measures for the Prevention and Suppression of Technological Crimes B.E. 2566 (2023). The amended notification sets out the steps that all financial institutions in Thailand must take to manage money laundering risks and to comply with the AMLO's mandatory Guidelines on Customer Due Diligence.

Under the new notification, account holders suspected of engaging in or facilitating technological crimes, as recorded by the Anti Online Scam Operation Center ("**AOC**"), are to be classified as "high-risk persons." The notification includes provisions for listing high-risk customers under two specific codes:

- HR-03-1: This code applies to individuals who are the subject of either a petition or a complaint related to a predicate offense accepted by the relevant inquiry officer and recorded as a criminal case. It also covers individuals whose bank accounts are suspected of being used to conduct transactions related to crimes under the Emergency Decree on Measures for the Prevention and Suppression of Technological Crimes B.E. 2566 (2023), with victims seeking prosecution. The names of individuals in this category are received from responsible agencies according to the Criminal Procedure Code or the AOC and are documented in a publicly accessible online notification system.
- HR-03-2: This code is for individuals involved in the commission of a predicate offense or those whose bank accounts are suspected of being used in such offenses, but whose cases have not been accepted or numbered by the relevant inquiry officer. Names under this category are provided by agencies such as the Royal Thai Police, the Financial Investigation Division, the Cooperation and Standard Development Division, banks, or other sources in Thailand.

These updated rules aim to ensure that relevant individuals and their transactions are closely supervised, thus enhancing the efficiency of monitoring high-risk customers and preventing technological crimes.

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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