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Europe

Albania

Albanian Financial Supervision Authority introduces new regulation on private pension fund investments

The Albanian Financial Supervision Authority ("**FSA**") has adopted Regulation No. 154, dated 19 September 2024 (the "**Activities Regulation**"), introducing new and additional rules governing the investment activities and operational conduct of private pension funds in Albania.

The Activities Regulation establishes detailed guidelines on permissible and prohibited investments, risk management, as well as the limitations and maximum thresholds for investing the assets of private pension funds.

The Activities Regulation outlines specific investment restrictions to safeguard the assets of private pension funds, emphasising the importance of diversification and risk mitigation. It also includes strict measures to manage conflicts of interest and related-party transactions, prohibiting any transactions between private pension funds and related parties that do not adhere to the "arm's length" principle, which requires that such transactions be conducted as if between independent and unrelated parties.

In addition, the Activities Regulation addresses the use of financial derivatives, which are permitted exclusively for hedging purposes. The use of derivatives must align with the fund's investment objectives as stated in the prospectus and cannot be used to speculate or deviate from these objectives. The Activities Regulation also sets forth stringent criteria for counterparties in derivative transactions, ensuring that only reputable and financially stable entities are involved.

Furthermore, it mandates comprehensive reporting and compliance obligations for managing companies.

FSA adopts regulation on fees and costs for private pension funds

The FSA has issued Regulation No. 155, dated 19 September 2024, (the "**Fees Regulation**") setting out clear guidelines for determining the elements and levels of fees, as well as the calculation methods applicable to private pension funds in Albania.

The Fees Regulation specifies that pension fund management companies are allowed to implement annual administration fees based on a percentage of the net asset value of the managed funds. Additionally, other fees, including auditing costs, intermediary commissions, and transfer fees, are regulated under this framework. The total annual fees must not exceed 2.5% of the net asset value of the pension fund's assets.

Moreover, the Fees Regulation delineates calculation methods and the payment deadlines for each of the aforementioned fees. It also obliges the managing companies to disclose and notify in advance all costs and fees to the members of the pension fund, thereby ensuring that they are fully informed about the financial implications of their participation.

Information kindly provided by Karanovic Partners in Albania.

Croatia

New regulations on net asset values and share pricing

Two legislation changes are announced as of 1 November 2024, rendering two new regulations, namely:

- Regulation on determining the net asset value of AIF and the price of AIF shares; and
- Regulation on determining the net asset value of UCITS fund and the price of shares in a UCITS fund, which regulations will still regulate the following matters:
  - determination of the net asset value of the UCITS fund/AIF and the price of shares in the UCITS fund/AIF;
  - the frequency of determining the net asset value of the UCITS fund/AIF; and
  - method and deadlines for reporting on the net asset value of the UCITS fund/AIF and the share price in the UCITS fund/AIF; etc.

The new bylaws mostly coordinate and amend the numbering of the current articles, however, they envisage the new modalities for determining the net asset value of UCITS / AIF and the price of UCITS / AIF shares (which are calculated for each day - except for Saturday and Sunday - on the next business day, however, are always calculated for the last day of the month on the next business day), as well as new valuation method of foreign forward exchange transactions (valued daily at fair value, using *forward points* for a certain currency (*close-out*

method)). The new bylaws shall also provide for somewhat different fees and reporting methods.

Besides the above mentioned, the new bylaws greatly follow the wording of the currently applicable regulations.

Information kindly provided by Savoric & Partners in Croatia.

Malta

Feedback statement on Notified Professional Investor Funds

The Malta Financial Services Authority ("**MFSA**") introduced the Notified Professional Investor Funds ("**NPIF**") framework on the 18 December 2023.

Currently, NPIFs must be externally managed. A consultation was conducted in June 2024 to explore the possibility of allowing NPIFs to operate as self-managed funds. The Feedback Statement published on the 26 September 2024 notes that the overall response from stakeholders was positive, viewing the extension as a promising development for the local fund industry.

The MFSA detailed the key feedback from stakeholders, as well as the MFSA's positions on various issues. One major focus was on corporate governance requirements, with stakeholders calling for clearer guidelines. In particular, the stakeholders recommended that compliance officers should not be allowed to serve as portfolio managers, a suggestion that the MFSA has accepted. Regarding portfolio management, there were diverse views on the appointment and responsibilities of portfolio managers. The MFSA has clarified that in some cases, the Investment Committee as a whole could assume responsibility for portfolio management. Additionally, the Authority emphasised that at least one member of the Investment Committee should reside in Malta to ensure local substance.

Another significant topic of discussion was the regulatory safeguards for NPIFs. Some respondents advocated for stricter scrutiny of key officials within the self-managed NPIF framework. However, the MFSA confirmed that the assessment of officials' fitness and competence would remain the responsibility of the appointed Due Diligence Service Providers ("DDSPs"), which must be approved by the Authority.

On capital requirements, respondents supported the proposed minimum capital threshold but suggested that a higher ongoing Net Asset Value ("**NAV**") be mandated. After reviewing this suggestion, the MFSA decided to maintain alignment with existing frameworks and did not increase the NAV threshold. Conversion options were another area of interest. Respondents requested clarification on the ability of self-managed NPIFs to convert into third-party managed NPIFs and other fund types. The MFSA confirmed that such conversions would indeed be possible and that the rules will reflect this flexibility.

In light of the above, the MFSA is proceeding with amendments to the regulatory framework to facilitate the establishment of self-managed NPIFs. This includes updating rulebooks and lifting the prohibition on self-managed structures. The Authority will also introduce additional rules and guidelines to ensure the smooth implementation of the extended NPIF framework, particularly in relation to fitness and properness assessments for key officials.

Information kindly provided by Mamo TCV Advocates in Malta.

UK overseas territories

Cayman Islands

Updated requirements for beneficial ownership

On 31 July 2024, the Cayman Islands Beneficial Ownership Transparency Act, 2023 ("**BO Act**") and the accompanying Beneficial Ownership Transparency Regulations, 2024 ("**BO Regulations**") were brought into force. At the same time, Guidance on Complying with Beneficial Ownership Obligations in the Cayman Islands (BO Guidance Notes) was published on the General Registry's website.

The updated requirements ("**New BO Regime**") set out in the BO Act, BO Regulations and BO Guidance Notes replace the existing requirements to maintain a beneficial ownership register ("**BO Register**"), which were set out in the separate entity statutes.

The New BO Regime extends the scope of entities required to maintain a BO Register by including limited partnerships and removing a number of exemptions, while also consolidating the requirements in a single statute.

As a result of the New BO Regime, investment funds registered under the Mutual Funds Act (as revised) ("**MFA**") or the Private Funds Act (as revised) ("**PFA**") no longer benefit from an exemption and will need to elect a Contact Person as an alternative route to compliance

or maintain a BO Register.

By selecting the alternative route to compliance, the fund must nominate a Contact Person to hold up to date information on their beneficial owners that can be provided to the relevant Cayman Islands authorities within 24 hours of any request. The Contact Person must be a Cayman Islands fund administrator or other entity licensed by Cayman Islands Monetary Authority ("**CIMA**").

Any investment entity or other vehicle within a fund structure that is not registered under the MFA or PFA will no longer benefit from an exemption and will be required to maintain a BO Register.

Although the New BO Regime is now in force, enforcement of the new requirements will not commence until January 2025.

Information kindly provided by Carey Olsen in the Cayman Islands.

Jersey

Changes to the Jersey Private Fund Guide

On 2 July 2024, following a collaboration with the Jersey funds industry, the Jersey Financial Services Commission ("**JFSC**") published an updated version of the Jersey Private Fund Guide ("**JPF Guide**") with the goal of improving the Jersey Private Fund ("**JPF**") regime (see here).

With the JPF regime having proven an immense success since its introduction in April 2017, including over 700 funds having benefitting from a cost-effective service, swift authorisation, flexibility and light-touch regulation, the updates made to the JPF Guide mainly clarify and simplify the understanding of the JPF regime to ensure that the JPF Guide remains up to date. The main updates include:

- **carry and/or co-investment vehicles**: recognition that certain co-investments can form part of a fund's carry/incentive arrangements;
- **governing body**: clarification that there should be at least one Jersey resident director appointed to the board or governing body of the JPF;
- **transfers**: for any involuntary interest, such as on a bankruptcy or death, stating there is no requirement for the transferee to qualify through the same criteria as the transferor, however the transferee still needs to meet the investor eligibility requirements as defined in the JPF Guide; and
- **"50 or fewer test"**: clarification that;
  - a co-investment vehicle (whose sole purpose is the sharing of the profits of the JPF) will not be counted as an investor for the purposes of the test;
  - where a professional investor acquires an interest in a JPF on behalf of a retail investor/s, only the professional investor will be counted towards the test provided; and
  - a feeder fund will not be counted towards the test, but each of its investors will be.

Other changes to the Guide include:

- alterations to broaden the definitions of eligible employee and relative for the purposes of the employment and family connection exemptions;
- amendments to the professional investor eligibility; and
- updated references to the Money Laundering (Jersey) Order 2008 and the JFCS's Outsourcing Policy.

New guidance on asset tokenisation and initial coin/token offerings

The JFSC has published two sets of guidance notes (see here) aimed at Jersey issuers to promote Jersey's competitiveness as an international finance centre in the digital assets space.

The guidance notes aim to standardise the applicable regulatory requirements in light of Jersey's growing number of token and coin issuances and clarify the process for issuing a digital representation of a real-world asset on a blockchain by a Jersey issuer.

The first guidance note, entitled '*The application process for issuers of initial coin and token offerings (IC/TOs)*', is an update and refresh of the JFSC's existing guidance relating to issuers of virtual assets such as cryptographic tokens and coins.

The existing categorisation of tokens and coins as security tokens/coins and non-security tokens/coins (the latter category being further sub-divided into utility tokens/coins and cryptocurrency tokens/coins) continues to apply, as do many of the other substantive requirements applicable to Jersey issuers. However, the terminology used in the updated guidance note reflects that many token and coin issuances will not involve fundraising in the

manner of a typical initial coin offering so should not be described as an 'ICO'.

Under the new guidance, any regulated asset managers or authorised participants selling virtual assets on behalf of the issuer will now be obliged to bring certain risk warnings to the attention of their customers, and the guidance note also refers to the recent requirement for certain entities to make a Jersey AML/CFT registration as a "virtual asset service provider".

The second guidance note, entitled '*Tokenisation of real world assets ("RWAs")*', deals with the requirements applicable to Jersey issuers which will issue a digital representation of a RWA, such as units in a fund, other securities, commodities, real estate or fine art, on a blockchain.

Stablecoins (i.e. tokens whose value is tied to a fiat currency such as one US dollar or one Euro) will now be treated as a tokenisation of a fiat currency, as opposed to being viewed as a cryptocurrency, for Jersey regulatory purposes.

The JFSC will expect bespoke risk warnings reflecting the nature of the tokenisation and the underlying RWA to be provided to investors together with full disclosures regarding any differences to the rights attaching to the tokens vis a vis direct holdings in the underlying assets (for example, voting rights and distributions).

There are also detailed requirements regarding matters such as the safekeeping and verification of the underlying RWAs and the auditing of smart contracts.

Jersey impact of Pillar Two tax reforms

As part of its commitment to adhering to international standards, Jersey has updated its position on the implementation of the Organisation for Economic Co-operation and Development's ("**OECD**") Pillar Two international tax reforms.

The key aim of the Pillar Two reforms is to ensure that large multinational groups pay a minimum effective tax rate of at least 15% on profits in every jurisdiction in which they operate.

In May 2024, the Government of Jersey released a statement in respect of its intended implementation of Pillar Two reforms, which included the proposed introduction of an Income Inclusion Rule ("**IIR**") and a new Multinational Corporate Income Tax ("**MCIT**").

These proposed rules will only apply to multinational groups of enterprises ("**MNE**") with more than €750 million annual global revenue, although there are some excluded entities, including certain investment funds and real estate investment trusts.

Under the MCIT, the Jersey tax-resident companies and branches of in-scope MNEs will be subject to an effective tax rate of 15% of their taxable profits. The Government of Jersey has claimed that these changes will support Jersey's diverse geographical investment base and, by standing independently to Jersey's existing tax regime, it will be administratively simple for in-scope MNEs to comply.

Draft legislation in respect of both the application of the IIR and the MCIT is being considered by the States Assembly in Jersey with a view to each being effective for fiscal years beginning on or after 1 January 2025.

Institutional Limited Partners Association guidance on private equity funds NAV facilities

In July 2024, the Institutional Limited Partners Association ("**ILPA**") published new guidance ("**NAV Guidance**") on the use of NAV facilities in a private equity funds context (and not, for example in other contexts, such as secondaries, private credit or real estate). Against a backdrop of the increased usage of NAV facilities in private equity structures, and the need to promote a standardisation in fund documents, the NAV Guidance aims to address concerns that limited partners have over the use of NAV facilities by general partners and managers, such as:

- lack of oversight into when NAV facilities are used;
- lack of clear language in limited partnership agreements ("**LPAs**") regarding use of NAV facilities;
- inconsistent interpretation of borrowing limit provisions in LPAs; and
- potential misuse of NAV facilities to artificially enhance fund performance.

To address such concerns, the NAV Guidance makes several recommendations, notably the use of precedent wording in LPAs to explicitly approve the use of NAV facilities by general partners and managers, and the specific requirement for limited partner consent when NAV facilities are being obtained.

In this respect, the ILPA notes that many older LPAs do not specifically reference NAV facilities, which has led to inconsistency in interpretation among fund managers. In particular, some fund managers do not take into account SPV-level NAV indebtedness

when determining compliance with LPA borrowing limits. ILPA's view is that a NAV facility entered into by an SPV below the fund should be counted for such purposes.

The NAV Guidance also recommends that limited partners should ask general partners if they view a lack of explicit drafting as permission to use NAV facilities, and that new LPAs be drafted to clearly define the amount of leverage that a general partner can incur through NAV facilities, whether at the fund level or through an SPV (although it should be noted that the ILPA does not recommend a specific threshold to limit the amount of NAV facility exposure, suggesting this should be determined by the proposed partners during LPA negotiations).

Information kindly provided by Carey Olsen in Jersey.

Americas

Canada

Canada expands interim measures and disclosure powers for foreign investment national security reviews

Effective 3 September 2024, the Minister of Industry ("**Minister**") has significant new powers when conducting national security reviews under the *Investment Canada Act* ("**ICA**").

These new rules:

- allow the Minister to order reviews without a Cabinet authorisation, to extend timelines and to impose interim conditions during a review;
- increase information-sharing and disclosure powers during national security reviews, including greater scope to communicate with foreign governments and the power to identify the investors and the target business investment when publicly disclosing that the federal Cabinet has issued an order taking measures to protect national security; and
- increase the penalties for non-compliance.

A new pre-notification regime for sensitive sectors and technologies requires implementation regulations and will not come into force until sometime in 2025 or thereafter.

The ability to negotiate resolutions with the Minister rather than requiring Cabinet approval may be helpful for foreign investors and Canadian businesses in suitable cases. However, the additional powers to extend timelines, make interim orders and disclose the identity of parties where national security concerns arise may interfere with transaction planning for investors and Canadian businesses.

New Ministerial Powers in the National Security Review Process

The Minister now has significantly more flexibility over the national security review process:

- A Cabinet order is no longer required to conduct a formal review — The Minister may order a review immediately after consulting with the Minister of Public Safety and Emergency Preparedness;
- The Minister also may unilaterally extend the national security review period beyond the initial 45-to-90-day window, without the previously required Cabinet approval; and
- The Minister has a broad new power to impose interim conditions on an investor during a review, after consultation with the Public Safety Minister but without any need for Cabinet approval.

The Government of Canada has clarified in an Administrative Note on Interim Conditions that interim conditions "will be imposed when necessary for the purpose of preventing injury" and such decisions will be determined on a case-by-case basis. These interim conditions may include monitoring requirements, limitations on access to intellectual property of the Canadian business during the review, and changes to the governance of the target. Interim measures are most likely for transactions involving Canadian businesses in defence, critical minerals, critical infrastructure, critical goods and services, and sensitive technologies such as artificial intelligence.

The Minister's new power to accept undertakings from parties (including from both foreign investors and vendors) to address possible national security concerns provides a faster and more flexible mechanism for resolving concerns on a negotiated basis at the Ministerial level rather than waiting for a Cabinet order.

The Government has released an Administrative Note on National Security Undertakings, which provides greater detail on the process by which the Government provides foreign investors with opportunities to make representations and propose undertakings to address national security concerns. Measures

may include altering transaction documents, corporate structures, governance, and operations, and the use of monitoring and reporting protocols. These measures may be negotiated and refined in consultation with the Minister's staff.

Information Sharing and Disclosure

The new rules permit more information sharing with both foreign governments and the public than was previously authorised. The Minister is now authorised, without waivers from the investor, to share any information obtained through the administration or enforcement of the ICA with foreign governments or agencies for the purpose of conducting national security reviews of foreign investments. This is comparable to the authorisation granted to the Competition Bureau when conducting merger reviews or other investigations; waivers from the parties providing information are not required if the communication is for the purpose of administering or enforcing the *Competition Act*.

The ICA now also expressly permits the Minister to identify both the investor and/or the business that is the subject of the investment when disclosing that the federal Cabinet has issued an order taking measures to protect national security. This is a significant change, since historically only the industry sector and the country of origin of the investor were disclosed. While the Government announced its intention to be more transparent regarding the outcome of national security reviews in a statement from November 2022, it was not clear whether the investor's and Canadian business's identities could be disclosed publicly until the Bill C-34 amendments.

In contrast, investors are not receiving additional rights to disclosure or transparency during national security reviews. Instead, the new rules authorise a judge conducting a judicial review of the Minister's or Cabinet's decisions to hold hearings without the applicant or their lawyers present, at the Minister's request, if the disclosure of evidence could harm national security or jeopardise public safety. The judge may base a decision on such evidence or other information, even if the applicant has not been provided such information. However, the Government is required to provide a summary of information sufficient for the investor "to be reasonably informed" of the government's case.

Increased Penalties

The Minister must make a demand to a party to comply with any obligations that are being breached under the ICA before applying to a court to have penalties imposed. The amendments significantly increase the extent of the penalties for not adhering to a justified Ministerial demand for compliance from C$10,000 to C$25,000 per day. Such penalties continue to apply predominantly to foreign investors, not to the vendor or the Canadian business;

Upcoming Changes: Mandatory Pre-Closing Filings and Other Amendments Still not in Force

Some amendments enacted by Bill C-34, most notably the mandatory pre-implementation filing requirements for investments in sensitive industries, and the new ministerial powers to review investments by state-owned or state-influenced entities, are not yet in force. These amendments also will introduce new penalties of up to $500,000 or more for foreign investors who fail to make required pre-closing filings for investments involving prescribed sensitive industries. These amendments are expected to come into force in 2025 (or potentially later), following public consultations on the proposed regulations.

The national security review provisions do include the ability for the Minister to demand information from vendors and other persons relevant to a national security review. If a vendor (or another person who is the subject of such a demand) fails to comply, they could also be found liable for these penalties.

Information kindly provided by McMillan LLP in Canada.

Chile

Proposed rule change to expand investments from insurance companies in foreign securities

On 2 October 2024, the Commission for the financial market ("**CMF**") opened a consultation process on a proposed change to General Rule 152 that, if enacted as proposed, would see the total limit to investments in foreign equity securities (including foreign funds) from Chilean insurance companies, increased from 10% to 15% of their technical reserves and risk capital.

The consultation is open, and comments can be sent until 4 November 2024. The publication of a final rule is expected after that, though timing for this may vary.

Information kindly provided by Guerrero Olivos in Chile.

Asia Pacific

Cambodia

New transfer pricing Prakas

Prakas 574 "*On the Rules and Procedures for Income and Expense Allocation among Related Parties*" ("**Prakas 574**") was issued by the Ministry of Economy and Finance ("**MEF**") on the 19 September 2024 and comes into effect on 1 January 2025. Practically what that means is that for most taxpayers the first financial year that will be impacted by Prakas 574 will be the financial year ending 31 December 2025.

Notably Prakas 574 abrogates existing regulations in the event of a conflict, including Prakas 986, that was formerly the founding transfer pricing document in Cambodia.

Documentation Requirements

One of the salient updates to arise from Prakas 574 involves the concessions provided to some taxpayers with respect to the requirement to maintain annual transfer pricing documentation ("**TPD**").

Article 17 of Prakas 574 sets out the annual documentary requirements for taxpayers in Cambodia who enter into controlled transactions i.e. transactions entered into with related parties, as follows:

Ability to recycle previous year TPD

Taxpayers who have prepared TPD for the preceding tax year, may utilise the same TPD for the current tax year, provided that there have been no significant changes in the controlled transaction(s) and comparability factors that would affect the methodology used, with the exception of financial indicators for comparables which still needs to be current.

Exemption on TPD for loans – existing regulations

Loan transactions with related parties shall be exempt from the annual TPD requirement if taxpayers can provide supporting documentation as outlined by Notification No. 10979 of the General Department of Taxation ("**GDT**") on the "*Required Documents to Support the Interest Charge on Related Party Loans*" the required supporting documentation includes:

- A loan agreement that specifies the terms of loan and repayment obligations;
- A business plan or current/forecasted financial statements at the time of borrowing that provides evidence of the purpose of the borrowing, as well as explanations; and
- Approval of the Board of Directors (for those enterprises that are not single-member private limited companies).

In addition it should be noted that under Notification No. 10979 cash advances received from a related party that are repaid within one year of receipt shall not be considered to be a related party loan for the purpose of the Arms Length Principle.

Exemption on TPD for Loans – new update

Cambodian resident taxpayers, excluding financial institutions, shall be exempt from the TPD compliance obligation for related party loans if the taxpayer meets any of the following criteria:

- For newly incorporated entities – three years from the date of tax registration; or
- A single member private limited company that enters into a loan transaction with a shareholder, with a loan balance for any period of less than KHR3 billion (approx. US$750k; or
- A sole proprietorship with loan transactions with the owner, spouse, or dependent children.

General Exemption on TPD

Cambodian resident taxpayers are exempted from the obligation to prepare TPD for any tax year if the taxpayer has met both criteria in that tax year as follows:

- Has annual turnover of less than KHR8 billion (approx. USD2 million) and total assets of less than KHR4 billion (approx. USD1 million); and
- There are transactions among related parties with a total value of less than KHR1 billion (approx. USD250k) for goods, assets, services and/or royalties, excluding loan transactions.

Remaining Key Points

- *Arm's length range and TP adjustment (Article 7):* Prakas 574 provides for TP adjustments based on the median of the arm's length range. Cambodia's focus on the median aligns with the approach in Thailand but contrasts with Singapore, where adjustments may be made to any point within the range, offering more flexibility to taxpayers.
- *Intangible assets and development,*

enhancement, maintenance, protection, and exploitation functions (Article 14 and 15): Cambodia's approach to intangible assets, particularly emphasising the development, enhancement, maintenance, protection, and exploitation framework, is fully aligned with the OECD base erosion and profit shifting ("**BEPS**") Action 8 to 10 guidelines. Cambodia's focus on the legal ownership as well as the economic ownership of the intangible asset is a welcome step towards reducing potential tax disputes.

- *Services (Article 16)* focuses on services supplied between related parties has made the methodology to be used by Cambodian resident taxpayers in determining the "cost base" allowable for charge/deduction clearer. Article 16 focuses on the importance of being able to authenticate the service was actually supplied, that the service has economic and commercial value to the recipient, that the service supplied is not already being performed by the service recipient itself, and that the service provided has a direct benefit to the service recipient, rather than a secondary benefit.

- *Primary and Secondary adjustment definitions (Article 3):* The introduction of primary and secondary adjustment in Cambodia's New Prakas 574 is a significant development that aligns with the OECD Transfer Pricing Guidelines.

- *Primary Adjustment:* Refers to an adjustment that a tax administration in a first jurisdiction makes to a company's taxable profits as a result of applying the arm's length principle to transactions involving an associated enterprise in a second jurisdiction. This is a standard procedure in many jurisdictions when the declared transfer price between related parties deviates from what would have been set between independent parties.

- The inclusion of primary adjustments ensures that GDT can directly address transfer pricing discrepancies, which is the essential for combating BEPS. This adjustment on the taxable income is a common practice adopted by the tax authorities in the region.

- *Secondary Adjustment:* Refers to a constructive transaction that some jurisdictions will assert under their domestic legislation after having proposed a primary adjustment in order to make the actual allocation of profits consistent with the primary adjustment. A secondary adjustment is a correction that arises as a result of a primary adjustment. The basic idea is that the related party in the first jurisdiction with the increase in income from the primary adjustment is deemed to have given this amount to the related party in the second jurisdiction. However, the manner of effecting this depends on the relationship between the parties.

- Secondary transactions may take the form of constructive dividends, constructive equity contributions, or constructive loans, triggering additional tax liabilities like withholding tax. The tax consequences of secondary adjustments tend to be complex in nature and require consideration of an issue from several angles.

- Moreover, secondary transfer-pricing adjustment rules vary among tax jurisdictions. For instance, Indonesia is quite aggressive with secondary adjustments, particularly when tax adjustments lead to deemed dividends, triggering withholding taxes and other penalties. Singapore, on the other hand, is generally more lenient when it comes to secondary adjustments.

- There is a potential for double taxation in case of secondary adjustments, particularly in cases where there is no corresponding credit or relief provided by the second jurisdiction for the additional tax liabilities that may arise. Taxpayers may resort to dispute resolution mechanisms including Mutual Agreement Procedures in such cases.

- Cambodia's introduction of secondary adjustments is a shift towards stronger enforcement and greater alignment with the OECD Transfer Pricing Guidelines. Companies operating in Cambodia should be particularly vigilant, as this move by the GDT signals that companies not only must ensure that their Reference Price Transactions ("**RPTs**") are priced at arm's length but also that they are prepared for any recharacterisation of the RPTs by the tax authorities. Secondary adjustments can results in significant additional tax cists and thus, taxpayers must ensure that their RPTs are well documented and defensible in case of a review.

- *Attribution of profits to Permanent Establishments (Article 18):* The definition of Related Party in Prakas 574 now provides a reference to Permanent Establishment ("**PE**") The guidance on profit attribution to PEs aligns with the OECD Transfer pricing Guidelines,

ensuring income is allocated to the PE as if it were a separate entity.

- Article 18 provides that non-resident taxpayers must allocate income, deductions, and benefits in a way that clearly reflects the income attributable to the Cambodian PE. The income attribution must be determined by considering the income from the supply of goods or services that are similar to the PE's activities. The allocation must be made in a manner as if the PE were an independent entity operating in similar circumstances.

Information kindly provided by DFDL in Cambodia.

India

Securities and Exchange Board of India issues Circular on AIF valuation

The Securities and Exchange Board of India ("**SEBI**") has on 19 September 2024 issued a Circular modifying the framework for valuation of investment portfolio of AIFs ("**Circular**"). Key considerations from the Circular are set out below :

- valuation of securities, other than unlisted securities and listed securities which are non-traded and thinly traded, for which valuation norms have been prescribed under SEBI (Mutual Funds) Regulations, 1996 ("**MF Regulations**") shall be carried out as per the norms prescribed under the MF Regulations;
- with respect to thinly traded and non-traded securities, SEBI has envisaged to harmonise the valuation norms across entities within SEBI's regulatory purview in a time bound manner so as to facilitate applicability of the same for valuation of investment portfolios of AIFs on or after 31 March 2025;
- change in valuation methodology/ approach to comply with the relevant provisions of the SEBI Master Circular for AIFs dated May 7, 2024 ("**Master Circular**") shall not be construed as a material change. Change in methodology/ approach within the valuation guidelines/ valuation norms prescribed for AIFs, shall not be construed as a material change. However, upon such change, 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 independent valuer for a partnership entity or company shall be:
  - such entity or company shall be a registered valuer 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 as prescribed under the Circular.
- the specified timeline for reporting valuation based on audited data of investee companies as on 31 March every year, to performance benchmarking agencies, has been extended from six months to seven months, i.e., by 31 October of each year; and
- the trustee/ sponsor of the AIF shall ensure that the compliance test report prepared by the manager includes compliance with the provisions of this Circular.

Specific due diligence requirements for investors and investments of AIFs

SEBI has on 8 October 2024, issued a circular ("**Circular**") providing directions on specific due diligence of investors and investments of AIFs to prevent facilitation of circumvention of such laws, as may be specified by SEBI from time to time. Subsequently, the Standard Setting Forum of AIFs ("**SFA**"), *vide* their notification dated 9 October 2024, issued the implementation standards for due diligence to be conducted ("**Implementation Standards**"). Below are the key points from Circular and the Implementation Standards:

- to prevent investors of AIFs who are otherwise ineligible for qualified institutional buyer ("**QIB**") status on their own from availing benefits of QIB and/ or QIB status through AIFs under the SEBI (Issue of Capital and Disclosure Requirements), 2018 ("**ICDR Regulations**") and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**"), following is specified:
  - every scheme of an AIF ('**Scheme**') having investor(s) belonging to the same group contributing 50% or more to the corpus of the Scheme ('**Corpus**') to undergo necessary due diligence as set out below, before benefits of QIBs and/ or QBs are granted to such Scheme;

- Implementation Standards state that the following due diligence checks have to be carried out by the AIF/ their manager or their Key Managerial Personnel ('**KMP**') before QIB and/ pr QB benefits are accorded to such investor(s):

  i) whether they are QIB's themselves; or

  ii) whether they are entities established, owned or controlled by the central, state or a foreign government, including central banks and sovereign wealth funds.

  In cases where such an investor is AIF/ fund set up outside India or the International Financial Services Centre ('**IFSC**'), the same will be scrutinised by the manager on a look through basis. If either of the conditions mentioned above are fulfilled, then the scheme may avail QB benefits, and such Scheme can also avail QIB benefits (provided that the manager of the AIF independently verifies and provides appropriate confirmation to the stock exchange, lead manager or merchant banker or any other concerned authorities before availing the benefits of the QIB).

- to address ever-greening of stressed loans/assets of Reserve Bank of India ("**RBI**") regulated lenders/ entities through AIFs and to prevent circumvention of norms with respect to Income Recognition, Asset Classification, Provisioning and Restructuring of stressed loans/assets specified by RBI for its regulated lenders, following is specified:

  - every scheme of an AIF whose manager or sponsor is an entity regulated by RBI, or has investor(s) regulated by RBI who:

    i) individually or along with investors of the same group contribute 25% / more to the scheme corpus;

    ii) is an associate of the manager / the sponson of the AIF; or

    iii) directly or through representative(s)/ nominee(s) has majority or veto power in voting or decisions of the investment committee set up by the manager to approve investment decisions of the scheme will have to undergo necessary due diligence as per the Implementation Standards, and the manager to ensure that such schemes do not make any investment which would lead to any interest/exposure to the RBI regulated lender/entity indirectly in the investee company that they are otherwise not permitted to acquire or hold directly.

  - implementation Standards specifies certain checks to be conducted by the manager in relation to investors of the Scheme who are lenders/entities regulated by RBI ("**Regulated Investor**") or investors that are funds having contribution from RBI regulated lenders. Depending on result of such checks, actions specified under the Implementation Standards to be undertaken.

- in the event for any proposed investments, the AIF / Scheme fails the diligence checks set out above, then either:

  i) the investment shall not be made; or

  ii) the investor(s) to be excluded from the investment subject to disclosures in the PPM.

  Due diligence checks specified in the Implementation Standards to also be carried out for existing investments of Schemes. If the AIF/ Scheme fails the diligence checks set out above for any existing investment, then details of such investments are required to be reported to the custodian of the AIF on or before 7 April 2025, in a specified format. If all the existing investments of such schemes satisfy the respective due diligence checks for making investment, then manager of the AIF is required to submit an undertaking to this effect to the custodian, on or before 7 April 2025.

- To prevent investments from land bordering countries ("**LBC**") through AIFs by circumvention of government approval requirements under the foreign exchange laws in India:

  - every Scheme where 50% or more of the corpus of the Scheme is contributed by investors:

i) who are citizens of/are from/are situated in a country which shares land border with India; or

ii) whose beneficial owners, as determined in terms of sub-rule (3) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, are citizens of/are from/are situated in a country which shares land border with India,

necessary due diligence as per the implementation standards formulated by SFA, shall be carried out prior to making any investment by such Scheme.

- necessary due diligence must be completed, Schemes are to report investment details resulting in it holding more than 10% of equity or equity-linked securities issued by the investee company on a fully diluted basis to custodians:

i) for fresh investments - within 30 days of any fresh investment (in a specified format); and

ii) for existing investments - a declaration to be submitted in specified format on or before 7 April 2025.

The compliance test report prepared by the manager to include compliance with the provisions of the Circular. The provisions of the Circular shall come into force with immediate effect.

Information kindly provided by AZB & Partners in India.

SEBI's new mutual fund scheme for passive funds

Through a recent notification in October 2024, SEBI has given its approval for a simplified framework for regulation of entities that are looking forward to launching passive mutual fund schemes called the "MF Lite" scheme which aims to reduce the requirements for compliance along with encouraging new market entities.

Additionally the MF Lite Scheme also aims to feature relaxed requirements pertaining to eligibility of sponsors include tracking of net worth, profitability as well as changes to the responsibilities of trustees and the processes for approvals. Under the presently applicable framework of mutual funds, the regulations are uniformly applicable to all schemes and do not differentiate between the application of various provisions of entry barriers or net worth, track record and other requirements necessary for entities planning to launch only passive funds.

Key Changes in the New Mutual Fund Scheme

- **Simplified Process for Approval**: The New Mutual Fund Scheme "MF Lite" has improved the process for obtaining approval for launching passive mutual fund schemes by streamlining the process and removing entry barriers.
- **Reduced Requirements for Disclosure**: There has been a considerable reduction in the compliance and disclosure requirements, leading to a lesser burden upon the mutual fund houses to operate.
- **Relaxed Criteria for Eligibility**: The sponsors setting up Mutual Fund Schemes will have to undergo less stringent requirements in terms of disclosing and maintaining their net worth, track records and profitability.

There are various objectives which the scheme aims to achieve which include easing the entry process in the mutual funds market so that new players can easily gain access to the stakeholders and carry forward their activities, reducing barriers so that increased penetration can be achieved along with a larger number of players in the market which would contribute to increased liquidity and competition and a wider range of passive fund options which would provide greater diversification opportunities.

Moreover, the simplified framework would also foster innovation and development of newer passive fund products which would aim to boost market participation, increase investment and improve mutual funds liquidity.

Lastly, existing Asset Management Companies with both passive and active schemes have been allowed to hive off their passive schemes into a separate entity which would result in the management of active and passive schemes under a single common sponsor.

Information kindly provided by King Stubb and Kasiva Advocates & Attorneys in India.

Taiwan

Draft amendments to Securities Transaction Tax Act

On September 12, the Executive Yuan passed the draft amendments to Articles 2-2 and 12 of the Securities Transaction Tax Act and submitted them to the Legislative Yuan for

review.

The major amendment is to extend the securities transaction tax reduction measure (i.e., 1.5‰) for Day Trading to until December 31, 2017.

Clarification on "certain conditions" in Paragraph 1, Article 27-2 of the Regulations Governing Offshore Funds

On 24 September 2024, the Financial Supervisory Commission ("**FSC**") announced the ruling to clarify the "certain conditions" specified in Paragraph 1, Article 27-2 of the Regulations Governing Offshore Funds, which is eligibility for report for effective registration of offshore funds, refers to:

- the offshore fund institution applies with the FSC for a recognition of Deep Rooting Incentive Plan and entitled to the favorable treatment of reporting for offering and sales of an offshore fund;
- the fund's domicile has signed a memorandum of cooperation on securities supervision with Taiwan or is a member of a multilateral memorandum of understanding of the International Organisation of Securities Commissions; and
- the master agent has not received a notice from the Securities Investment Trust and Consulting Association ("**SITCA**") in the past six months for the total number of deficiency points reaches fifteen or more in accordance with Regulations on Defects in Master Agents' Application for Offering and Sale of Offshore Funds in Taiwan or Compliance of Relevant Laws and Regulations. However, this requirement still be considered as having been achieved for those who has been notified the total number of deficiency points reaches fifteen or more and have been improved.

Announcement on the format and required documents for approval or effective registration of offshore funds

On September 24, 2024, the FSC announced the format and required documents of the application/report form for approval or effective registration in accordance with Paragraph 1, Article 27 of the Regulations Governing Offshore Funds. The new versions will take effect on October 1, 2024, with the previous versions ceasing to apply on the same date. The key changes are summarised below:

- "Declarations of Eligibility and Sales Agreements from the Sales Agents" has been removed from the list of documents in the application form; and
- the checklist of the application has been revised to reflect updates to relevant laws and regulations. Additional documents are now explicitly required, including, among others, data on the fund's month-end portfolio percentages for the most recent year to ensure compliance with substantive review principles, as well as a description of procedures and measures to prevent short-term trading.

Draft amendments introducing Active Exchange Traded Funds

On 30 September 2024, the FSC announced the draft amendment to "Regulations Governing Securities Investment Trust Funds", "Regulations Governing Information to be Published in Prospectuses by Securities Investment Trust Enterprises Offering Securities Investment Trust Funds" and "Standards Governing Eligibility of Securities for Margin Purchase and Short Sale". The amendments are summarised below:

- introduction of actively managed Exchange Traded Funds ("**ETFs**") and related regulations;
- the actively managed ETF is introduced. For this, the definition, investment scope, and the requirements related to the securities investment trust agreement for actively managed ETFs are specified;
- it is added that the term "active" must be included in the fund name of actively managed ETFs. Additionally, when investing in stocks or bonds, the relevant regulations for stock funds and bond funds, respectively, shall apply. The product characteristics must be fully disclosed in the prospectus, along with relevant explanations when performance benchmarks are set;
- furthermore, it is added that once actively managed ETFs are listed or traded over-the-counter, they may be subject to margin purchasing and short selling regulations;
- when the index components of passively managed ETFs include both stocks and bonds, the index compilation rules must specify the allocation ratio of each type of component securities and the information must be disclosed in the prospectus. Additionally, the index name must include the term "balanced," and it must follow the regulation that prohibits issuing leveraged or inverse passively

managed ETFs based on such indices; and

- in response to Article 156 of the Company Act, it is stipulated that the relevant regulations on margin purchasing and short selling for listed companies and OTC companies shall apply to companies with either no par value or a par value per share that is not NT$10.

FSC ruling on virtual asset ETFs for professional investors

On 1 October 2024, the FSC issued a ruling to include "foreign virtual asset ETFs" as one of the permissible financial products under consigned trading of securities firms, provided that the qualified investors are limited to professional investors only.

Based on the above, the Taiwan Securities Association also added Article 6-3 of the "Regulations Governing Securities Firms Accepting Orders to Trade Foreign Securities" and related internal control systems. In addition to clearly defining the scope of professional investors, the regulations also request to establish an appropriate product suitability system for virtual asset ETFs, a risk disclosure statement for initial purchases of such products, and impose an obligation to provide product information, as well as regular internal education and training, among other requirements.

Amendments to Article 13-1 and 15-3 of Rules Governing Securities Firms Accepting Orders to Trade Foreign Securities

On 25 September 2024, the Taiwan Securities Association ("**TSA**") announced the amendments to Article 13-1 and 15-3 of the Rules Governing Securities Firms Accepting Orders to Trade Foreign Securities. The amends are summarised below:

- to specify the disclosure and control operation of the securities firms when entrusted by professional investors for the electronic trading of offshore structured products; and
- to allow that depositary receipts and beneficiary certificates can be the subject of regular savings plans and constant share under consigned trading.

Draft amendment to Article 24 of "Standards Governing the Establishment of Securities Investment Consulting Enterprises"

On 1 October 2024, the FSC announced the draft amendment to Article 24 of "Standards Governing the Establishment of Securities Investment Consulting Enterprises".

The key point of the amendment is to relax the financial requirements for trust enterprises concurrently operated by banks, allowing them to use capital adequacy as the financial condition for operating discretionary investment services or securities investment consulting services, not subject to the restriction that the net asset value per share must not be lower than the par value, as reflected in the most recent audited financial statements.

Draft amendment to Article 24 of "Regulations Governing the Public Offering of Securities Investment Trust Funds by Securities Investment Trust Enterprises"

On 14 October, 2024, the FSC announced the draft amendment to Article 24 of the "Regulations Governing the Public Offering of Securities Investment Trust Funds by Securities Investment Trust Enterprises," adding that when a securities broker acts as a fund distributor and subscribes to a securities investment trust fund under the name of the investor, the subscription amount can be debited from the investor's retained funds in the separate account ledger of the securities firm's settlement account established under the Regulations Governing Securities Firms and transferred to the segregated fund account, without being subject to the restriction that subscription amounts must be remitted directly to the segregated fund account by the subscriber.

Information kindly provided by Lexcel Partners in Taiwan.

Thailand

Securities and Exchange Commission of Thailand clarifies reporting requirements for shares held by directors and executives

On 27 September 2024, the Securities and Exchange Commission of Thailand ("**SEC**") issued a circular clarifying reporting obligations in relation to listed company securities held by the company's directors, executives, auditors, or persons related to them ("**Key Persons**").

The circular aimed to address growing concerns over transparency in shareholding, particularly when shares are used as loan collateral by company executives without sufficient public disclosure, which can lead to sudden share loss and executive departures, destabilising the company. This circular is likely a stopgap measure, and a full overhaul of the reporting regulations may be needed.

The current reporting obligations came into effect on 16 March 2024, and were designed to simplify reporting procedures while still maintaining transparency in the capital markets. The rules allow the Key Persons to consolidate multiple transactions and report them only when certain thresholds are crossed — such as when the total transaction value reaches THB3 million or when six months have passed since the last report. The rules were intended to reduce the number of minor reports and limit penalties for missed deadlines.

However, recent scandals have raised concerns about the reporting rules, particularly issues related to the enforcement of share collateral on executives' or directors' loans where the listed company may face a change of direction and management due to such forced sales. To ease these concerns, the SEC issued the new circular to reiterate the rules and lay out three key situations triggering a reporting duty:

- **Force-Selling Due to Default**: If shares are forcibly sold due to a loan default, this must be reported, and the transaction should be recorded with the Thailand Securities Depository ("**TSD**");
- **Transfer of Shares to Custodians**: Under current rules, the transfer of shares to/from a custodian holding them on behalf of a beneficial owner does not have to be reported. However, the circular clarifies that where the custodian holds shares for the benefit of another person or entity, the transfer of the shares will constitute a change of ownership that must be reported. The SEC's focus is on the intent behind the transfer, particularly when it involves shifting ownership or control; and
- **Endorsement of Share Certificates to Creditors**: Endorsing physical share certificates to creditors is treated as a transfer of ownership, even if the transfer is conditional, such as upon the default of a loan, since it is a valid transfer method prescribed by law, thus triggering the reporting duty.

A failure to report these changes under the current rules carries a steep penalty of up to THB500,000, and daily fines of up to THB10,000 for continued violations. The SEC circular further emphasised that such failure could significantly damage the credibility of the listed company involved.

Another issue to consider is that when collateral placement is made under foreign laws, the method of a pledge may differ from Thai law, and could trigger reporting obligations at an earlier stage, subject to the details of the foreign laws.

SEC primed to allow digital asset investments by funds

Following the U.S. Securities and Exchange Commission's approval of spot Bitcoin ETFs, the SEC is reassessing regulations on the investments of mutual funds and private funds (collectively "**Funds**"). The SEC has launched a public consultation on new draft notifications introducing the new asset classes that can be held by Funds, and aims to bring these rules into effect on 1 January 2025.

The highlights of these changes are set out below.

Eligible New Asset Classes

The new asset classes that can be held by Funds can be categorised into two types — investment tokens and crypto assets — and the determination will focus on substance over form.

Investment tokens: If the substance involves raising funds, regardless of what the assets are called, and they are legally issued and offered or approved by home regulators that are members of the International Organisation of Securities Commissions ("**IOSCO**"), Funds can invest in these types of assets as transferable securities within the permitted ratio.

Crypto assets: The eligible crypto assets which Funds are entitled to hold focus on crypto ETFs or offshore funds investing in crypto assets, and they are subject to investment limits. Funds can hold crypto assets directly, but only temporarily, and only for the purpose of purchasing, selling, or exchanging the crypto assets, not speculative purposes. The notifications state that Funds may hold Bitcoin/Ethereum for no longer than five business days and USDT/USDC for no more than one month.

Investment Limits

Typically, the rules segregate investment limits into listed and non-listed digital assets, and the limits depend on the sophistication of the investors in the Funds.

In general, UI Funds (mutual funds offered to institutional investors or ultra-high net worth investors) can invest in these new asset classes without any limitations, although net exposure to other crypto assets –which are not crypto ETFs – is limited to the 20% net asset value ("NAV") threshold. Private funds with retail investors will be subject to the same investment limits as retail mutual funds. Accredited funds (AI Funds or mutual funds

for non-retail investors) have higher investment limits than retail mutual funds.

In the draft notifications that are under consultation, the investment limits for investment tokens are set at a relatively high level for retail funds, as set out below.

For listed digital assets:

- single entity limit of the issuer: 10% of NAV;
- group limit for all issuers in the same industry: 25% of NAV; and
- concentration limit (considering the total issued tokens of each issuer): One-third of the offering value of the total issued tokens of the issuer.

For non-listed digital assets:

- a limit of non-listed digital assets at 5% of NAV (calculated from all issuers), and a total limit for all other unspecified investment products ("**SIP**"), e.g., unrated bonds, of 15%;
- group limit: 25% of NAV; and
- concentration limit: One-third of the offering value.

These notifications will open up the market for digital assets and investors. Funds will, however, be required to comply with the relevant disclosure requirements and investor protection measures.

SEC guidelines simplify market entry for foreign securities businesses

On 18 September 2024, the SEC issued comprehensive guidelines to make it easier for foreign business operators to provide investment services in Thailand. These guidelines are designed to support Thailand's goal of becoming a global financial hub and align with government efforts to enhance the ease of doing business.

The guidelines primarily focus on streamlining the process for foreign firms applying for securities and derivatives licenses, and ensuring quicker and more transparent entry into the Thai market for businesses offering securities (such as shares, mutual funds, and collective investment schemes) and derivatives (such as futures and options).

Fast-Track Licensing

Under the new guidelines, the SEC will provide support to foreign companies wishing to operate securities businesses in Thailand. This support includes a fast-track licensing process for foreign operators that meet certain qualifications, such as having a company incorporated in Thailand, having operated a system of group companies for at least five consecutive years, and being supervised by a regulator under the IOSCO Multilateral Memorandum of Understanding ("**MMoU**").

The SEC will also collaborate with the Ministry of Commerce to grant exemptions from the requirement of a foreign business license for companies providing certain services relating to or supporting securities or derivatives businesses, such as net asset value calculation/confirmation for mutual funds, and promotion of capital market products. Applying for foreign business licenses has long been a complicated process for foreign operators, and this exemption can help reduce such complications.

Targeted License Exemptions to Reduce Regulatory Burdens

Foreign operators providing specific investment services may be exempt from full securities and derivatives licensing requirements, saving time and costs associated with the full licensing process, and allowing them to start their businesses quickly and efficiently. Key exemptions include:

- foreign operators providing derivatives services solely to institutional investors are only required to register as derivatives dealers. This is a light-touch approach compared to the stricter requirements of a license; and
- foreign operators:
  - offering investment advice under qualified actions/protocols; or
  - assisting Thai investors in offshore investments through locally licensed intermediaries are exempt from licensing.

Flexibility for Limited Operations in Thailand

Under the guidelines, the SEC continues to allow flexibility to businesses wishing to maintain a smaller footprint in Thailand. Foreign operators are able to:

- set up a representative office in Thailand to gather market intelligence, provided the activities of the office do not involve the operation of a securities business or the offering of securities in Thailand. The establishment of a representative office is still subject to SEC approval;
- outsource non-core operations, such as research or back-office support, to local firms.

Despite the SEC's increased support and flexibility, foreign operators are recommended to consult local experts before entering the Thai market due to the complexity of the laws and penalties.

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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