

Global Registration Services – Market Update Q2 2020

United Kingdom

As noted in our client update on 7 July 2020¹, the FCA has announced that they will be reopening the notification window for the temporary permissions regime ("TPR") on 30 September 2020.

This will allow firms that had not previously notified the FCA of their intention to use the TPR to do so and also allows fund managers to update their previously submitted notifications before the end of the transition period.

Europe

COVID-19 and Half-Yearly Financial Reports

On 20 May 2020, ESMA published a public statement addressing the implications of COVID-19 on the half-yearly financial reports of listed issuers. It outlines a number of recommendations including:

- (a) the importance of providing relevant and reliable information and publishing it within the relevant national timeframes;
- (b) the importance of updating information in financial reports to adequately inform stakeholders of the impacts of COVID-19; and

- (c) the need for entity-specific information on the past and expected future impact of COVID-19 on the strategic orientation and targets, operations, performance of issuers as well as any mitigating actions in place to address the effects of COVID-19.

The statement² calls on the management, administrative and supervisory bodies including audit committees of issuers and, where applicable, their auditors to take due consideration of the recommendations.

Supervisory Expectations on Investment Funds Periodic Reports

On 9 April 2020, ESMA published a public statement³, for fund managers concerning their obligations to publish yearly and half-yearly reports.

Noting that the confinement measures taken by EU Member States to prevent the spread of COVID-19 present significant challenges for fund managers and auditors, ESMA states that these should be taken into account by national competent authorities ("NCAs") in a coordinated way.

ESMA expects NCAs to adopt a risk-based approach and not prioritise supervisory actions

¹ <https://maples.com/Knowledge-Centre/Industry-Updates/2020/07/FCA-Temporary-Permissions-Regime-Update>

² <https://www.esma.europa.eu/press-news/esma-news/esma-calls-transparency-covid-19-effects-in-half-yearly-financial-reports>

³ <https://www.esma.europa.eu/press-news/esma-news/esma-sets-out-supervisory-expectations-publication-investment-funds-periodic>

against market participants in respect of the upcoming reporting deadlines.

Belgium

Updated Bank Account Number

Effective 1 June 2020, the bank account number relating to the payment of UCI tax to the Belgian Ministry of Finance has changed.

Please get in touch for further details.

New Procedures for Electronic Filing

Foreign Alternative Investment Funds registered for retail distribution in Belgium or Foreign European Long-Term Investment Funds registered for distribution in Belgium can now file the following documents electronically with the FSMA:

- Financial reports
- Effective management reports
- Final documents requested by official letter

The documents can be filed via the FSMA's eCorporate platform and funds or their management companies must appoint a company administrator to complete the filings. Details of the company administrator must be provided to the FSMA prior to the access codes for the eCorporate platform being provided.

Access to eCorporate requires a personal certificate for each user and the following options are available:

- A personal certificate issued by either Globalsign Personal 3 or Isabel
- An electronic identity card

Further information is available in French and Dutch⁴.

Spain

CNMV Updates MiFID II Q&A

In January 2020, the CNMV updated its Q&A⁵ on the implementation of MiFID II.

It addresses the following topics:

- Inducements
- Information on the safeguarding and use of financial instruments
- Information in respect of costs and expenses
- The scope and application of MiFID II

Denmark

Danish Dividend Tax Regime

On 18 May 2020, the Danish Minister of Taxation entered into an agreement with Finance Denmark, the Danish Banking Association, on the taxation of dividends paid to foreign investors.

Currently, 27% of the tax on dividends is withheld at source when the dividend is distributed to foreign shareholders. Foreign shareholders can reclaim part of the dividend tax which exceeds that rate under the relevant double taxation agreement.

Under the new regime, relief at source will be applied whereby dividend tax is withheld at the correct rate under the relevant double taxation agreement.

⁴ <https://www.fsma.be/en/news/communication-procedure-submitting-documents-electronically>

⁵ https://www.cnmv.es/docportal/Legislacion/FAQ/FAQ_MiFIDII_ene2020_EN.pdf

This regime will require all individual foreign shareholders to be registered with the Danish tax authorities, via the shareholder's custodian bank, prior to the dividend payment to obtain a unique identification number. This number will be used to identify the shareholder's shares and tax rate.

It is envisaged that the new regime will come into effect in 2023.

Netherlands

AFM Views on AIFMD Review

On 17 June 2020, the AFM published a position paper⁶ setting out its recommendations for the review of AIFMD.

While generally satisfied that AIFMD aims are being met, it sees room for improvement in the following areas:

- (a) **Third Country Passport and National Private Placement Regimes ("NPPRs").** The AFM note that it is currently envisaged that NPPRs will be replaced when the third country passport has been operational for three years under AIFMD. However, the AFM recommends that NPPRs remain in place for a longer period in tandem with the third country passport until the passport is working adequately in practice.
- (b) **A Single Data Point for AIFMD Data and the Improvement of Data Quality.** In order to ensure that information is readily accessible and of good quality, the AFM believes that this can best be accomplished if ESMA, or a third party service provider, is the single recipient of the data and that each NCA (and ESMA) is

able to access this database in respect of its 'own national population'.

- (c) **Improvements to EU Management and Marketing Passport.** The AFM would welcome further harmonisation efforts in documentation to be produced and fees and charges levied so that AIFMD services can be offered more seamlessly on a cross-border basis.
- (d) **Equal Interpretations of AIFMD Definitions and Provisions.** Given that Member States interpret and apply definitions under AIFMD differently, the AFM propose more clarification on level 1 as well as further harmonisation through level 2 legislation or level 3 guidance.
- (e) **Private Equity Transparency Notifications and Asset Stripping.** AIFMD includes certain transparency requirements for private equity managers vis-à-vis NCAs. The AFM questions the relevance of receiving such transparency notifications if the aim of this requirement is to detect asset stripping as the AFM believe that more specific reports could be designed for this purpose.

United Kingdom

Temporary Measures for Firms Submitting Regulatory Returns

On 22 April 2020, the FCA announced that they would allow flexibility on the submission deadlines for certain regulatory returns⁷. The FCA allowed firms to apply for two month extensions to the deadline for returns due up to and including 30 June 2020.

⁶ <https://www.afm.nl/en/nieuws/2020/juni/aanbevelingen-aifmd-herzieningen>

⁷ The full list of regulatory returns that can apply for extensions can be found at: <https://www.fca.org.uk/firms/regulatory-reporting/changes-regulatory-reporting-during-coronavirus#Update22April>

The extension also applies to the filing of annual reports.

Switzerland

FINMA Licenses Reviewing Bodies for Prospectuses

On 28 May 2020, FINMA granted BX Swiss AG and SIX Exchange Regulation AG licences to act as reviewing bodies for prospectuses from 1 June 2020.

Both reviewing bodies are regulated in accordance with the Financial Services Act ("FinSA") and have to check prospectuses published in connection with a public offer of securities or the admission of securities to trading on a stock exchange with regard to their completeness, coherence and clarity.

This intention is to ensure a uniform and adequate quality of the prospectuses.

While both reviewing bodies are licensed by FINMA they will not be subject to prudential supervision by FINMA.

In addition, from 1 December 2020 all prospectuses which have been approved by the reviewing bodies must be published ahead of a public offer of securities or the admission of securities to trading on a stock exchange.

Singapore

Offers of Units in Collective Investment Schemes (including REITs) FAQs

On 4 May 2020, the MAS published FAQs on offers of units in collective investment schemes, including real estate investment trusts ("REITs").

They provide clarification and additional guidance on the regulatory requirements that managers of funds and REITs are expected

to comply with under the SFA during COVID-19.

The topics covered include:

- Swing pricing
- Communication of changes to MAS
- Prior notice for changes required by MAS
- Changes to the settlement period of redemptions

Canada

Temporary Relief from Certain Regulatory Filings

On 20 May 2020, the Canadian Securities Administrators published two blanket orders that give temporary relief to investment funds and non-investment fund issuers from certain regulatory filings and delivery obligations due to COVID-19.

For investment funds, the blanket relief provides a 60 day extension for certain filing, delivery and prospectus renewal obligations normally required to be made during the period from 2 June 2020 to 30 September 2020.

It is worth noting that investment funds that have already used the prior relief to extend any filing, delivery and prospectus renewal deadline occurring on or before 1 June 2020 cannot use this relief to further extend the deadline.

India

Union Budget 2020

On 1 February 2020, India's Finance Minister, Nirmala Sitharaman, presented the Union Budget 2020.

Notable changes on the taxation of dividends and alleviation of conditions related to offshore funds were announced as follows:

- (a) **Taxation of Dividends.** Effective 1 April 2020, the Dividend Distribution Tax has been abolished.

Following same, taxation of dividends has been introduced at the level of the investor at the following rates: (i) 20% on dividend income and income on units of mutual funds; (ii) 10% on dividends relating to GDRs; and (iii) 10% on dividends distributed by business trusts.

- (b) **Offshore Funds.** To strengthen the onshoring of fund management activity in India, the Finance Minister has relaxed the following conditions:
- The need to maintain a monthly sum of at least INR 1 billion within a period of six months from the date of incorporation has been extended to a period of 12 months.
 - While the aggregate participation by Indian tax residents in foreign funds may not exceed 5% of the amount of such funds, it has been clarified that the contribution made by an Indian fund manager of up to INR 250 million in the first three years will not be taken into consideration in determining the total participation by Indian tax residents in the fund.

How the Maples Group Can Help

Maples Group Global Registration Services ("Maples Group GRS") supports UCITS⁸ and AIFMs in their multi-market distribution strategies by providing an integrated global network of experts coordinated by a dedicated central team supporting all legal and regulatory aspects governing the cross-border marketing of investment funds on both a private placement and public offer basis.

Further Information

Should you require any further information or assistance in this regard, please do not hesitate to contact the following or any member of the Maples Group GRS team.

Emma Conaty

+353 1 619 2708

emma.conaty@maples.com

Jamie Quirke

+353 1 619 2113

jamie.quirke@maples.com

The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland *in terms of total number of funds advised and total number of new Irish sub-funds established (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2019).*

JULY 2020

© MAPLES GROUP

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice for the countries covered herein, other than Ireland. Published by Maples and Calder LLP.

⁸ Domiciled in Ireland and Luxembourg.