

Global Registration Services – Market Update Q3 2021

Cross-Border Distribution of Funds

As discussed in our 2 August 2021 client update¹, EU Member States ("Member States") are required to implement EU Directive 2019/1160² and Regulation 2019/1156³ on the cross-border distribution of collective investment funds (the "CBFD Directive" and "CBFD Regulation"). For information on other aspects of the EU regime on the cross-border distribution of investment funds, please see our previous updates on New ESMA Guidelines for Fund Marketing Communications⁴; Cross-Border Distribution of Funds - Implementing Technical Standards⁵ and New EU Rules in Force: Pre-Marketing and De-Registration of UCITS and AIFs⁶.

The Maples Group's Global Registration Services team ("Maples Group GRS") is actively monitoring the CBFD implementation progress, please contact us for more information⁷.

¹ <https://maples.com/en/knowledge-centre/2021/6/eu-cross-border-fund-distribution-rules-are-you-ready>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1160&from=EN>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1156>

⁴ <https://maples.com/en/knowledge-centre/2021/7/new-esma-guidelines-for-fund-marketing-communications>

⁵ <https://thoughts.maples.com/post/102h0j0/cross-border-distribution-of-funds-implementing-technical-standards-its-publi>

⁶ <https://maples.com/en/knowledge-centre/2021/8/new-eu-rules-in-force-pre-marketing-and-de-registration-of-ucits-and-aifs>

⁷ <https://maples.com/en/campaigns/grs-legislation-tracker>

Europe

ESMA Marketing Communication Guidelines

On 2 August 2021, ESMA published the translated versions of its marketing communications guidelines⁸ that will enter into force in early February 2022.

The guidelines will apply to all marketing communications addressed to investors or potential investors for UCITS and AIFs. They establish common principles on the identification of such marketing communications; the description of risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner; and the fair, clear and not misleading character of marketing communications; taking into account online aspects of such marketing communications. Requirements on information on past performance and expected future performance and information on sustainability related aspects are also addressed. They do not intend to replace existing national requirements to the extent these are compatible with any existing harmonised EU rules.

In accordance with Article 16(3) of the ESMA Regulation⁹ national competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

⁸

https://www.esma.europa.eu/system/files_force/library/esma_a34-45-1272_guidelines_on_marketing_communications.pdf?download=1

⁹ <https://www.esma.europa.eu/document/regulation-establishing-esma>

UK

As outlined in our previous market update¹⁰, the UK FCA has allocated landing slots for AIFMs marketing AIFs under the UK Temporary Marketing Permissions Regime ("TMPR"). Any EU AIFM wishing to continue to market their AIF, EuVECAs and / or EuSEFs in the UK will need to have submitted written notification to the FCA under the National Private Placement Regime ("NPPR") no later than 11:59pm (UK time) on 1 November 2021.

Denmark

Investment Fund Tax Changes

Following a Supreme Court ruling on 24 June 2021 on the tax treatment of foreign investment funds, Denmark has changed its tax rules. From 1 January 2022, foreign investment funds will be treated in the same manner as Danish investment funds and a withholding tax of 15% on dividends will become payable.

New Executive Orders for Foreign Funds

On 1 July 2021, Denmark transposed the CBF Directive requirements through two new executive orders, replacing the previous 2014 versions. The orders cover the marketing of foreign UCITS in Denmark and foreign AIFs to retail investors:

- A local Danish representative is no longer required for foreign UCITS or AIFs marketed or distributed to Danish retail investors.
- Specified facilities services that the fund is required to maintain to all investors must be provided to Danish investors in Danish.

¹⁰ <https://maples.com/en/knowledge-centre/2021/7/global-registration-services---market-update-q1-and-q2-2021>

Germany

Fee Changes for AIFs

On 1 October 2021, BaFin updated its fees for notifications and material change notifications in its 2013 guidance note for marketing units or shares of EU AIFs on (available only in German¹¹).

Fees for the initial notification of a single AIF or a single sub-fund of an umbrella AIF have been increased slightly from €435 to €466. Fees for a material change notification for a single AIF or a single sub-fund of an umbrella AIF have been increased significantly from €290 to €952.

Fee Changes for UCITS

On 1 October 2021, BaFin updated its fees for notifications and de-registrations in its guidance note on marketing units of EU UCITS (available only in German¹²).

Fees for an initial UCITS sub-fund notification in Germany (and any additional sub-fund notification) have been reduced from €380 to €322. Fees for deregistration of a single sub-fund of a UCITS have increased substantially from €280 to €637.

Updated UCITS Guidance Following Transposition of EU Directive 2019/1160

On 17 August 2021, BaFin issued updated guidance on marketing of EU UCITS in Germany that implements changes to the content of the notification letter and requirements for marketing.

¹¹

https://www.bafin.de/SharedDocs/Downloads/DE/Merkblatt/WA/dl_130722_merkbl_323KAGB_wa.html

¹²

https://www.bafin.de/SharedDocs/Downloads/DE/Merkblatt/WA/dl_130722_merkbl_310KAGB_wa.html

The notification letter should now contain the name, address, email and phone number of one contact person for the receipt of regulatory invoices. The previous requirement to disclose the German listing agent and paying agent (where relevant) is no longer required.

The revised guidance contains a link to the BaFin's overview of UCITS marketing requirements. It provides that a UCITS management company must ensure that the tasks in Article 92(1) of the CBF Directive are carried out satisfactorily. Legal documents must be made available in a durable medium or electronically on a website, as well as in paper form for free on request. Investor notices which must be published in a durable medium, should principally be published electronically.

An addendum to the prospectus is still required in German or a language customary in the international finance sphere. The addendum must now contain:

- The name and address of the entity in charge of subscriptions, redemptions, and payments and details on how investors can redeem or exchange units and benefit from payments
- The name and address of the entity tasked with provision of documents and other facilities services
- A statement that the issue and redemption process and other information and documents to be published in the EU UCITS home Member State is available free of charge from the entity performing facilities tasks
- Information on procedures and arrangements on the exercise and safeguarding of investor rights, including regarding complaints

Luxembourg

Pre-Marketing by Luxembourg AIFMs to Potential Professional Investors

On 4 August 2021, the CSSF published updated guidance¹³ on requirements on pre-marketing by AIFMs in accordance with the CBF Directive requirements. Specifically, it sets out details of the procedures in the following scenarios:

- Pre-marketing by Luxembourg AIFMs to potential professional investors in Luxembourg and other Member States
- Pre-marketing by EU AIFMs to potential professional investors in Luxembourg
- Pre-marketing by non-EU AIFMs to potential professional investors in Luxembourg

Notification Procedures for UCITS and UCITS Marketing Units in Luxembourg

On 28 July 2021, Circular CSSF 21/778¹⁴ was issued amending Circular CSSF 11/509 on the notification procedures to be followed by a UCITS governed by Luxembourg law wishing to market its units in another Member State and by a UCITS of another Member State wishing to market its units in Luxembourg by integrating technical modifications related to the CBF Directive.

Sweden

New Procedures for KIID Submission for Foreign UCITS

On 1 September 2021, the Swedish FSA issued a notification¹⁵ detailing the new procedure for filing KIIDs in Sweden.

¹³ <https://www.cssf.lu/en/pre-marketing-by-aifms/>

¹⁴ <https://www.cssf.lu/en/Document/circular-cssf-21-778/>

¹⁵ <https://www.fi.se/contentassets/af684441833140f5a48557da01c51e5c/notifications-of-ucits.pdf>

Under Article 93 (7) and (8) of Directive 2009/65/EC, a foreign UCITS established in another Member State authorised for marketing in Sweden must send annual updates of KIID(s) or updated KIID(s) of share class(es) authorised for distribution in Sweden to the FSA. From 1 September 2021, these must be sent to a dedicated email address.

Detailed requirements on the form and content of the notification are also set out.

Switzerland

FINMA Recommendation to Portfolio Managers and Trustees on Licence Applications

Portfolio managers and trustees now require a licence. While some 2,400 of those already operating prior to the 1 January 2020 have registered with FINMA, only 180 have to date submitted a licence application. Therefore, FINMA issued a press release¹⁶ on 17 September 2021 highlighting that if licence applications are not received before the 31 December 2022 deadline, companies could be criminally sanctioned.

FINMA also drew attention to the provisions on the duty to register client advisers (in force since 21 January 2021). This registration may also be necessary for foreign financial intermediaries, particularly where they advise private clients in Switzerland. Since 1 August 2021 this has also applied to client advisers of foreign banks' and financial institutions' Swiss representative offices. FINMA has indicated it will spot check for compliance and reminded financial service providers and their client advisers that any breach of the duty to register is a criminal offence.

¹⁶ <https://www.finma.ch/en/news/2021/09/20210916-mm-halbzeit-finig/>

Swiss Financial Services Act Compliance

Further to our client update on Proposed Changes to Swiss Distribution Rules¹⁷ and related updates issued in Q3 2020¹⁸ and Q4 2020¹⁹, foreign fund managers / promoters seeking to market funds to Swiss clients and prospective investors, who are qualified investors are reminded of the need to comply with the Swiss Financial Services Act (FINSA) on 1 January 2022. Relevant obligations relate to:

- The duty to join a local mediation body
- The duty to register the manager employee(s) providing a financial service to Swiss clients on a client advisor register
- The classification or segmentation of Swiss clients under institutional, professional or private / retail prior to marketing a fund to those clients
- Internal rules on employee qualification and supervision, delegation rules, conflict of interests and transparency regarding fees at least equivalent to FINSA rules
- Internal conduct rules on information, appropriateness and suitability, reporting and due execution at least equivalent to FINSA rules

South Africa

Revised Regulatory Fees for Foreign Collective Investment Schemes

On 11 August 2021, the Financial Sector Conduct Authority ("FSCA") revised its

¹⁷ <https://maples.com/en/knowledge-centre/2019/4/proposed-changes-to-swiss-distribution-rules>

¹⁸ <https://maples.com/en/knowledge-centre/2020/10/grs-market-update-q3-2020>

¹⁹ <https://maples.com/en/knowledge-centre/2021/1/global-registration-services---market-update-q4-2020>

levies²⁰ on financial institutions with the issuance of Notice 465 of 2021.

For foreign collective investment schemes, the amount per fund and sub-fund that is paid in four quarterly instalments will increase slightly. The variable amount and composition of the fee remain the same as before.

The current applicable levies per quarter are:

- ZAR 12,300 (€712) per umbrella fund
- ZAR 6,671 (€386) per sub-fund
- 0.00031231% variable based on net assets under management on behalf of South African investors

The variable sum is calculated based on provided statistics that are to be submitted to the FSCA within 30 days after the end of the preceding quarter.

Asia Pacific

Australia

Consultation on Relief to Foreign Financial Service Providers

Between 9 July 2021 and 30 July 2021, the Australian Treasury sought stakeholder feedback to its Consultation Paper²¹ on relief to Foreign Financial Service Providers ("FFSPs") on options that aim to:

- Provide Australian licensing relief to FFSPs that are already similarly licensed and regulated in other jurisdictions, that want to enter the Australian market
- Provide Australian licensing relief to FFSPs not based in Australia that provide financial services to their Australian clients

²⁰ [https://www.fsca.co.za/Regulated Entities/Regulated Entities Documents/2021 Levies.zip](https://www.fsca.co.za/Regulated%20Entities/Regulated%20Entities%20Documents/2021%20Levies.zip)

²¹ <https://treasury.gov.au/sites/default/files/2021-07/c2021-189465-cp.pdf>

- Fast-track the licensing process for FFSPs that require a licence to operate in Australia

The consultation (which outlines questions to discuss preferred options and their implications) follows an Australian Government announcement that it would consult on options to restore regulatory reliefs for FFSPs that wish to establish more permanent operations in Australia. The proposed measures are intended to reduce duplicate regulation and barriers for FFSPs entering the Australian market.

Hong Kong

Updated Code and Guide

On 17 August 2021, the SFC updated its Frequently Asked Questions on Code on Unit Trusts and Mutual Funds²² to add a new question 21B on the reinvestment of cash collateral received from sale and repurchase transactions in investments. Its Guide on the Use of Financial Derivative Instruments for Unit Trusts and Mutual Funds²³ was also updated to include a new paragraph 9 in Chapter 4 on the limitations and requirements for the reinvestment of cash collateral received from sale and repurchase transactions in investments.

Singapore

Revised Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies

On 11 August 2021, MAS published revised Guidelines on Licensing, Registration and Conduct of Business for Fund Management

²² https://www.sfc.hk/-/media/files/PCIP/FAQ-PDFS/FAQ_Code_on_Unit_Trusts_and_Mutual_Funds_20210817.pdf

²³ https://www.sfc.hk/-/media/files/PCIP/FAQ-PDFS/Guidance-on-the-use-of-FDI_20210817.pdf

Companies²⁴. They set out the eligibility criteria and application procedures for licensed fund management companies, venture capital fund managers and registered fund management companies. They also address the ongoing conduct of business rules for these entities including requirements relating to custody, valuation and reporting, conflicts of interest mitigation, disclosure and submission of periodic returns.

Japan

Proposed Changes to FIEA

On 19 May 2021, the Diet enacted amendments to the Financial Instruments and Exchange Act ("FIEA") introducing new exemptions for foreign investment managers. A consultation on draft regulations implementing the amended FIEA closed on 6 September 2021. The amended FIEA will come into effect later this year, within six months after its promulgation.

Two new exemptions are being proposed as part of the Japanese Government's commitment to expanding Japan's role as an international financial hub.

The first proposed foreign investor exemption would mean that a general partner may offer limited partnership interests to investors in Japan and manage the partnership assets by investing more than 50% of such assets in securities and derivatives without any registration or license under the FIEA by filing a notification with the relevant regulator and satisfying certain conditions.

²⁴ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/Guidelines/SFA--Guidelines-on-Licensing-Registration-and-Conduct-of-Business-for-FMCs-11Aug21.pdf>

The second foreign investment manager temporary exemption is intended for foreign investment managers who wish to commence their operations in Japan by completing the investment management registration process or by applying for the existing exemption known as the specially permitted business for qualified institutional investors (QII Exemption) or the foreign investor exemption referenced above within five years. Under this exemption, a foreign investment manager may engage in a list of specially permitted businesses for a transition period through its local office in Japan for up to five years by filing a notification with the regulator.

How the Maples Group Can Help

The Maples Group GRS supports UCITS²⁵ and AIFMS²⁵ 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 contact the following or any member of the Maples Group GRS team.

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The Maples Group's Irish legal services team is independently ranked first among legal service providers

²⁵ Domiciled in Ireland and Luxembourg.

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 2020).

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