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Australia

New regulatory framework for foreign financial services providers

The Australian Securities and Investment Commission (ASIC) has released its new regulatory framework for foreign financial services providers (FFSPs) providing financial services to Australian wholesale clients.

The new regulatory framework 'facilitates Australian wholesale access to foreign investment opportunities, preserves market integrity against misconduct in wholesale markets, and strengthens ASIC's ability to take effective regulatory and supervisory action', said ASIC Commissioner Cathie Armour. 'Our ability to effectively supervise all participants in Australian markets is crucial for the confident participation of investors.'

The new framework has two key elements:

- A new foreign Australian financial services (AFS) licensing regime for FFSPs
 - (i) From 1 April 2020, new foreign providers may apply to obtain a foreign AFS licence to provide financial services in Australia to wholesale clients. To be eligible, the foreign provider must be authorised

under an overseas regulatory regime that ASIC has assessed as sufficiently equivalent to the Australian regulatory regime.

- (ii) An FFSP holding a foreign AFS licence will be exempt from certain obligations that apply to AFS licensees, such as financial requirements, as ASIC acknowledges that similar regulatory supervision and outcomes will be achieved by the equivalent overseas requirements.
 - (iii) Foreign providers currently relying on pre-existing relief will have a two-year transition period until 31 March 2022 to make arrangements to continue their operations in Australia, which may include applying for a foreign AFS licence.
- Licensing relief for providers of funds management financial services seeking to induce some types of professional investors.
 - (i) Funds management licensing relief will commence on 1 April 2022. The relief is available to foreign providers inducing certain types of Australian

professional investors to use the funds management financial services it provides. Under the relief, a licence is not needed for that inducing conduct.

- (ii) Foreign providers must separately consider if they need to hold a licence to actually provide financial services.

The new framework, which has been developed through extensive consultation with industry and overseas regulators, replaces ASIC's previous licensing exemptions for foreign providers.

There is a two-year transition period to this new regime.

For further information, please access [ASIC's updated Regulatory Guide 176 Foreign financial services providers \(RG 176\)](#), which contains the details of the new framework.

Source: *Australian Securities and Investments Commission*, March 2020

British Virgin Islands

New regulatory regime for closed-ended funds in the British Virgin Islands

The Securities and Investment Business Act, 2010 ("SIBA") has been amended by the Securities and Investment Business (Amendment) Act, 2019 to introduce a new regulatory regime for closed-ended funds (termed private investment funds) in the British Virgin Islands ("BVI").

The amendments to SIBA and the related Private Investment Funds Regulations, 2019 (the "Regulations"), have been implemented as a response to European Union ("EU") and other international recommendations and reflect the BVI's continued commitment to retain its status as a co-operative jurisdiction.

In recognition of the jurisdiction's compliance with EU standards for tax transparency, fair taxation and anti-base erosion and profit shifting, the BVI was confirmed as being on the EU list of fully cooperative tax jurisdictions. This follows a decision made by the EU Finance Ministers at the Economic and Financial Affairs Council meeting on 18 February 2020.

What is a private investment fund?

A private investment fund ("PIF") is defined as a

company, partnership, unit trust or any other body that:

(a) collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and

(b) issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, partnership, unit trust or other body.

Recognition Process and Timing

Subject to certain exceptions, any BVI company, partnership, trust or any other body that operates as a PIF will need to apply to the Financial Services Commission (the "FSC") for recognition and will be subject to the ongoing requirements of SIBA and the Regulations.

PIFs in existence prior to 1 January 2020 have until 1 July 2020 to apply to be recognised by the FSC.

New PIFs must apply for recognition within 14

days of commencing business and are permitted to operate for up to 21 days without being recognised by the FSC, provided they comply with all other provisions of SIBA and the Regulations applicable to PIFs.

Requirements for Eligibility

The FSC will recognise a PIF if it satisfies the following conditions:

(a) it is incorporated, registered, formed or organised under the laws of the BVI or of a country outside the BVI;

(b) its constitutional documents specify that:

(i) it is not authorised to have more than 50 investors; or

(ii) an invitation to subscribe for, or purchase fund interests shall be made on a private basis only; or

(iii) the fund interests shall be issued only to professional investors with a minimum initial investment (other than for certain exempted investors) as may be prescribed in the Regulations (such amount currently being US\$100,000);

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c) it meets such criteria as may be specified in the Regulations;

(d) upon recognition, it will be compliant with SIBA, the Regulations and any applicable practice directions; and

(e) it is not against the public interest to recognise the PIF.

Key Regulatory Obligations

In addition to the requirement to be recognised by the FSC, PIFs must:

(a) operate in accordance with any restrictions on numbers or types of investors or in the offering of interests as may be prescribed in its constitutional documents;

(b) offer fund interests using an offering document or a term sheet;

(c) maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented;

(d) appoint an authorised representative in the BVI;

(e) prepare and submit audited financial statements within six months of the end of the financial year end, subject to any extension or exemption; and

(f) comply with the various notification requirements set out in the Regulations.

Related Legislative Changes

The Anti-Money Laundering Regulations 2009 have been amended to include PIFs within the definition of a 'Relevant Person'. This means that PIFs are required to comply with the same anti-money laundering standards and obligations that already apply for open-ended funds.

For further information, please refer to the [industry update](#), prepared by the Maples Group.

Source: *BVI Financial Services Commission*, March 2020

Cayman Islands

Cayman Islands Private Funds Law, 2020

On 7 February 2020, the Cayman Islands Government published the Private Funds Law, 2020 and the Private Funds (Savings and Transitional Provisions) Regulations 2020 (together, the "Law"). The Law provides for the registration of certain closed-ended funds (termed "private funds") with the Cayman Islands Monetary Authority ("CIMA"). The Law commenced on 7 February 2020 (the "Commencement Date").

When will private funds need to register?

The regulations provide certain transitional provisions for private funds that have commenced carrying on business at any time prior to the date which is six months after the Commencement Date (each a "transitional private fund").

For these purposes, a private fund will be carrying on business if it has received capital contributions from investors for the purpose of investment.

A transitional private fund will have six months from the Commencement Date to register with CIMA and comply with the Law, i.e. until 7 August 2020.

No registration fee will be payable upon the initial registration of a transitional private fund but an annual fee will be payable in January of each following year.

Any private fund which commences carrying on

business after this six month transitional period will need to register with CIMA in accordance with the timing requirements set out in the Law.

When will transitional private funds be required to file audited accounts?

A transitional private fund will be required to file audited accounts with CIMA within six months of the end of each financial year. This requirement will apply with respect to the current financial year in which the transitional private fund first registers with CIMA and for each financial year thereafter.

Audited accounts that are filed with CIMA must be audited by an approved Cayman Islands- based auditor.

- For further information, please refer to the [industry update](#) from Maples Group.

Source: *Cayman Islands Government (CIG)*, February 2020

Cayman Islands and the EU's Annex I list of non-cooperative tax jurisdictions

On 18 February 2020, the ECOFIN committee of the European Union ("EU") resolved to move the Cayman Islands to the EU's Annex I list of non-cooperative jurisdictions for tax purposes ("Annex I") as it "...does not have appropriate measures in place relating to economic substance in the area of collective investment vehicles...".

The Cayman Islands Government ("CIG") statement, in response, points out that: (i) the jurisdiction passed the necessary investment funds legislation on 31 January 2020 which came into force on 7 February 2020; (ii) the Cayman Islands has been fully cooperative with the EU's requests; and (iii) the Cayman Islands remains fully committed to cooperating with the EU and will continue to constructively engage with them with the view to being delisted as soon as possible.

The Cayman Islands Government has already contacted EU officials to begin the process of being removed from the EU list of non-cooperative jurisdictions as soon as possible, which is understood to be October this year, said the Cayman Islands Premier, the Hon. Alden McLaughlin.

For further information, please refer to the [brief](#) prepared by the Ministry of Financial Services & Home Affairs, Cayman Island Government.

Source: *Ministry of Financial Services, Cayman Islands Government*, February 2020

Cayman Islands

AEOI 2020 Amendments

The Cayman Islands Department for International Tax Cooperation ("DITC") issued an industry advisory on 2 March 2020 (the "Advisory") highlighting a number of updates with respect to FATCA and CRS (together, "AEOI") compliance, including an amended deadline for reporting by Cayman Islands Financial Institutions ("Cayman FIs"), and an update on the status of the AEOI Portal (soon to be replaced by the DITC Portal).

This Advisory follows recent updates to the Cayman Islands AEOI regime, pursuant to amendments to FATCA and CRS regulations. Specifically, the Tax Information Authority (International Tax Compliance) (United States of America) (Amendment) Regulations 2020 (the "FATCA Amendment Regulations"), and the Tax Information Authority (International Tax Compliance) (Common Reporting Standard) (Amendment) Regulations 2020 (the "CRS Amendment Regulations"), effective 20 February 2020 (together, the "AEOI Amendments").

Reporting Deadline

The AEOI Amendments have seen the annual reporting deadline for both FATCA and CRS reporting for Cayman FIs change from 31 May to 31

July annually, in respect of the year following the calendar year to which the return relates. The notification / registration deadline of 30 April remains unchanged.

The Advisory communicated a further update to the reporting deadline for reporting due in 2020, in respect of the 2019 financial year. The AEOI Portal is currently offline and a new DITC Portal is under development, but will not be available until June 2020. As a result, the reporting (only) deadline for 2019 under both FATCA and CRS has been extended to 18 September 2020.

Further AEOI Amendment

The AEOI Amendments made a number of other notable updates to the Cayman Islands AEOI regime.

(a) the FATCA Amendments introduced the concept of an Authorised Person to the FATCA regime, in addition to the CRS regime. The role of the Authorised Person is to liaise with the Tax information Authority ("TIA") when a Principal Point of Contact ("PPOC") is changing;

(b) the AEOI Amendments now permit a 'person' (which can include a legal person or entity) to be appointed as an Authorising Person or a PPOC, rather than an individual. This is a significant benefit to Cayman FIs, as the functions can be undertaken by authorised persons within an entity, without

transitions interrupting the continuity of the role; and

(c) the CRS Amendment Regulations amended regulation 9, concerning returns made to the TIA, to require Cayman FIs making returns to provide "information reasonably required by the Authority to ensure effective implementation of, and compliance with, the reporting and due diligence procedures in accordance with the Common Reporting Standard" (a "CRS Compliance Declaration"). It is not yet clear what form the CRS Compliance Declaration will take, however we expect further detail on this to be published by the TIA in due course.

- For further information, please refer to the [industry update](#) from Maples Group.

Source: *Department for International Tax Cooperation Cayman Islands*, March 2020

European Union

New EU ESG Disclosure requirements for Asset Managers.

The EU has introduced a new piece of legislation in relation to sustainability-related disclosures in the financial services sector (the "Disclosure Regulation"). This prescribes disclosures to be made by asset managers and investment funds relating to sustainable investments and sustainability risks from 31 March 2021.

The Disclosure Regulation introduces requirements for a wide range of entities providing investment management and advisory services to clients, including AIFMs, UCITS management companies, investment firms authorised under MiFID providing portfolio management services (collectively referred to as "financial market participants") and firms providing investment advice services under MiFID ("financial advisers").

Non-EU Asset Managers can be in Scope

While EU asset managers are fully in scope, the Disclosure Regulation can also apply to non-EU asset managers.

There are a range of legal and operational elements to consider from a scope perspective for non-EU asset managers. Relevant factors will include the nexus of their funds, their marketing activity and their clients to the EU.

ESG-Focussed Funds

The Disclosure Regulation contains requirements that apply to asset managers directly. It also sets out requirements that apply to any investment funds (or segregated mandates) that they manage.

Additional requirements apply to certain types of "ESG-Focussed Funds", as follows:

- ESG-labelled investment funds (i.e. investment funds which promote environmental or social characteristics);
- Sustainable investment funds (i.e. investment funds with a sustainable investment objective); and
- Carbon reduction investment funds (i.e. investment funds that aim to reduce carbon emissions).

Key Points

There are three key elements of the Disclosure Regulation that asset managers will need to consider:

Website disclosures – to include disclosure on:

- (i) how the firm integrates sustainability risk into the investment process;
- (ii) how the firm integrates sustainability risk into its remuneration policy; and

- (iii) for any ESG-Focussed Funds it manages, details on the ESG objectives of these funds and how they are measured.

Offering documentation / pre-contractual disclosures to include disclosure on:

- (i) how sustainability risks are factored into investment decisions;
- (ii) the adverse sustainability impact of the investment decisions; and
- (iii) for any ESG-Focussed Funds it manages, details on the ESG objectives of these funds and how they are measured.

Annual report disclosures – the annual report of an ESG-Focussed Fund will need to provide details of how the relevant ESG objectives are being met.

- For further information, please refer to the [Regulation \(EU\) 2019/2088 of the European Parliament and the Council](#).

Source: *Maples Group*, February 2020

Hong Kong

Bill providing for new registration regime to enable funds to be set up in form of limited partnerships gazetted.

The Hong Kong Government has gazetted the Limited Partnership Fund Bill to provide for a new registration regime to enable funds to be constituted in the form of limited partnerships in Hong Kong.

In particular, the Bill is intended to attract investment funds, including private equity and venture capital funds, to set up and operate in Hong Kong, in order to strengthen Hong Kong's position as an international asset and wealth management centre and drive demand for the related professional services in Hong Kong.

The new limited partnership fund regime will be an opt-in registration scheme administered by the Companies Registry. It is intended to cater for the operational needs of investment funds with elements of investor protection built in.

- For further information, please refer to the [Limited Partnership Fund Bill](#).

Source: *The Government of Hong Kong SAR*, March 2020

Hong Kong Budget 2020-2021: Carried Interest Tax Concession

The Financial Secretary announced in the 2020-21 Budget that it would introduce a tax concession for carried interest which is designed to further cement Hong Kong as Asia's leading Private Equity hub.

Given the importance of the PE and broader asset management industry to Hong Kong's economic growth, the Hong Kong Government has undertaken a range of initiatives to help Hong Kong maintain its status as Asia's leading asset management and PE hubs.

Proposals announced

In light of the impending limited partnership fund regime designed to encourage fund managers to domicile their funds in Hong Kong, the Government has announced that it will look at introducing a new tax concession for carried interest.

The Government has not stated what taxation model it has in mind for carried interest, although consultation is expected to take place shortly. The model could conceivably be in the form of a full or partial exemption from tax on carry distributions, or simply reflect how carry should be taxed under the existing tax provisions for grants and other awards.

- For further information, please refer to [Tax Alert](#) from KPMG.

Source: *KPMG*, March 2020

Japan

Green Bond Guidelines 2020 and Green Loan and Sustainability Linked Loan Guidelines 2020

The Ministry of the Environment (MoE) has published the further revised version of the Green Bond Guidelines (originally drafted in 2017, revised in 2018) to ensure consistency with international principles and practical developments, especially those being developed in the EU, although there is no taxonomy equivalent to the EU sustainable finance taxonomy.

In conjunction with the revision and with a view to promoting further issuance of green loans and sustainability linked loans, MoE has also published the Green Loan and Sustainability Linked Loan Guidelines to align with the Green Loan Principles and the Sustainability Linked Loan Principles developed by the Loan Market Association (LMA) and others in 2018 and 2019 respectively.

- For further information, please refer to the [Press Release issued by the Ministry of Environment](#). (Japanese)

Source: *Ministry of Environment, Japan*, March 2020

April 2020

Korea

Korea Government prepares to launch Asia Region Funds Passport in May

The government has revised the enforcement decree of the Financial Investment Services and Capital Markets Act and other relevant rules for the implementation of the Asia Region Funds Passport. The ARFP will be launched on May 27, 2020 after a 40-day of promulgation and screening of regulations.

The ARFP is a multilateral investment promotion initiative between the five member economies (Korea, Australia, New Zealand, Japan and Thailand) and intended to promote cross-selling of publicly offered local funds in each other's economies through a standardised and streamlined registration process. The members signed a memorandum of cooperation (MOC) in April 2016, and have worked on domestic legislative changes for the implementation.

Amongst other things, the key revised provisions include the following:

- Registration for local funds – under this provision, publicly offered local funds in Korea that meet the requirements relating to management and fund qualification can apply to be registered as passport funds to be offered in overseas markets;
- Registration for foreign passport funds – under this provision, foreign passport funds, by submitting a registration statement, will be available for sale in Korea through a streamlined process. However, if an infringement of the MOC is found to have occurred by another member

country, or Korean funds face unfair sales restrictions overseas, the government may withdraw the privilege. Moreover, foreign passport funds sold in Korea will be subject to the same rules, regulations and investor protection measures as the local publicly offered funds; and

- Regulation for investor protection – under this provision, all passport funds will be subject to compliance audits regardless of the size of the fund. The fund managers will also be required to report to both the home and host countries relevant information regarding funds, such as cancellation, delayed payments, violation of laws, etc.

- For further information, please refer to the [press release](#) from the Financial Services Commission.

Source: *Financial Services Commission (FSC)*, Korean Government, January 2020

Singapore

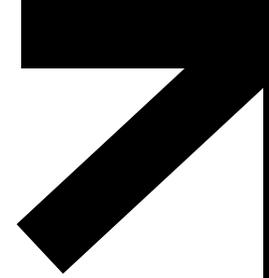
Revised guidelines on licensing, registration and conduct of business for FM companies

The Monetary Authority of Singapore (MAS) has revised its existing guidelines on licensing, registration and conduct of business for fund management companies.

Previously, the guidelines stated that the MAS may, where appropriate, require a licensed fund management company to procure the letter of responsibility from its parent company. The revision to the guidelines has been made to state that the MAS may, where appropriate, require a registered fund management company to procure the letter of responsibility from its parent company.

- For further information, please refer to the [Guidelines on licencing, registration and conduct of business for fund management companies](#) issued by the MAS.

Source: *Monetary Authority of Singapore*, March 2020.



COVID-19 Library

Considering the current COVID-19 outbreak, governments across the globe have taken various regulatory and tax measures, which have direct impact on real estate investments. Drawing on the vast expertise across ANREV's membership, we would like to share access to various web pages for country specific COVID-19 related regulatory guidance.

EY

- [Tax Covid-19 Response Tracker](#), helps you monitor rapidly emerging government policy and stimulus responses to COVID-19.

Maples Group

- [COVID-19 resource hub](#), a repository of Maples Group's related updates with jurisdictional coverages including Cayman Islands, Ireland and Luxembourg

Mayer Brown

- [COVID-19 Portal](#), providing you dynamic agile and informed advice.

PWC Global

- [Explore the latest COVID-19 tax, legal and economic response by territory](#)

Sidley

- [COVID-19 Resource Center](#)