

# Global Registration Services Market Update – Q4 2023

**Period: 1 October 2023 – 31 December 2023**

## Updates this quarter include:

- a) A new regulatory framework for investment funds in Brazil;
- b) New Q&As from the European Securities and Markets Authority ("ESMA") on PRIIPs;
- c) Updated Q&A from the Central Bank of Ireland ("CBI") for both UCITS and AIFs;
- d) New Q&A from the Belgian Financial Services and Markets Authority ("FSMA") on UCITS; and
- e) Updated regulatory fees for Denmark, Finland and Slovenia.

## Europe and United Kingdom Reminder

### *Annual UCITS KIID Update*

UCITS funds registered for marketing to professional investors only in the EEA and/or registered for marketing under the Temporary Permissions Marketing Regime ("TMPR") towards retail investors in the United Kingdom must update their UCITS Key Investor Information Documents ("KIIDs") within 35 calendar days of 31 December (i.e. prior to 19 February 2024).

## Australia

### *Updated Foreign Financial Service Providers Bill Under Review*

On 30 November 2023, the Australian Government tabled a bill proposing Australian Financial Services Licence ("AFSL")

exemptions for foreign financial service providers ("FFSPs") in Australia.

The bill's proposed exemptions would replace the current limited connection relief exemption and class order relief for certain FFSPs which are due to expire on 31 March 2025.

The new bill is substantially similar to the exposure draft bill released in August 2023 but some important improvements have been made to it. If passed, it will provide much needed certainty for FFSPs and their Australian clients.

The bill will introduce a new exemption similar to the Australian Securities and Investments Commission ("ASICs") current sufficient equivalence relief. However, it is broader as it will apply to all types of regulated financial services and products and (unlike the professional investor exemption) it applies to services provided to all wholesale clients.

### *Professional Investor Exemption*

FFSPs may be exempt where:

- a) they provide a financial service only to professional investors and from a place outside Australia (though representatives are permitted in Australia for marketing visits of up to 28 days annually);
- b) the FFSP's head office and principal place of business are located at one or more places outside Australia; and
- c) the FFSP reasonably believes providing the same or substantially the same financial service would not contravene any law from where the financial services are provided.

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FFSPs would be eligible for this exemption for all categories of financial services and products. FFSPs must adhere to certain conditions, such as complying with reasonable requests for assistance from ASIC and submitting to the Australian courts' jurisdiction.

### *Comparable Regulator Exemption*

FFSPs who provide financial services to wholesale clients, and maintain and administer authorisations, registrations or licences necessary to legally provide the same, or substantially the same, financial service in a comparable jurisdiction by a comparable regulator (as identified by ASIC) may also be entitled to this exemption.

FFSPs must consent to information sharing between ASIC and its comparable regulator, have an agent in Australia, and notify ASIC of any significant action or investigation undertaken against it by any authority in a place outside Australia.

For both exemptions, FFSPs must do all things necessary to provide financial services within Australia efficiently, honestly and fairly. Failure to adhere to obligations may result in a civil penalty, imposition of additional conditions or cancellation of an exemption.

Parliament will likely address the bill in February 2024. If passed, the exemptions will operate from 1 April 2025. Prior to this date, FFSPs will need to make a decision about the most appropriate regulatory structure for their Australian business. The suggested timeframe for making that decision is during Q2 2024 (if they are looking to obtain a foreign AFSL) or Q3 of 2024 if they are seeking to rely on one of the relevant exemptions.

### **Brazil**

#### *New Regulatory Framework for Investment Funds*

On 2 October 2023, Resolution CVM 175 (the "Resolution") partially entered into force to regulate investment funds in Brazil.

The Resolution consolidates 38 existing regulations into one and brings some important new rules about the formation, operation and information disclosure of investment funds, as well as rules about investment funds' services providers. We have provided below a summary of some of the key features introduced by the Resolution.

- Prior to the entry into force of the Resolution, only unlimited liability funds were permitted. The Resolution allows for the existence of limited liability funds with investment funds' members having their liability limited to the value of their membership interest, so long as the funds' regulation expressly establishes so.
- The Resolution allows investment funds to invest up to 100% of its net asset value abroad, as long as they comply with the Resolution's rules. There are still limits for Financial Investment Funds (FIFs) that have foreign investments: the applicable limit for classes destined to the general public is of 20% of its net asset value, and the limit for classes destined exclusively to qualified investor is of 40% of its net asset value.
- Another important change is the regulation of funds' service providers. The investment fund manager will now have the title of an essential service provider, and, alongside the fund administrator, will perform the fund's core operational activities.

Whilst the Resolution may be partially in force, there are a number of items which will not come into effect until 1 April 2024 as follows:

- Funds will be permitted to create multiclass structures with funds being divided into classes and subclasses, each of them having its individual assets, rights and

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obligations. This will enable single funds to cater to the needs of multiple investors within a single investment vehicle.

- In order to guarantee more transparency to its members, funds will have the obligation to disclose administration, management and maximum distribution fees. That means that the funds' regulations will have to disclose separately the remuneration of the administrator, manager and distributors in its text. Previously, the funds only needed to disclose the fee as a whole; it was not necessary to disclose the information separately.

### Ireland

#### *Updates to UCITS Q&A and AIFMD Q&As*

On 27 November 2023, the Central Bank of Ireland ("CBI") issued updates to its UCITS Q&A and AIFMD Q&A (the "Q&As").

The Q&As provide updates on the CBI's filing requirements for funds which are required to produce PRIIPs KIDs.

A new ID 1109 in the UCITS Q&A confirms that, from 1 January 2024, UCITS authorised prior to 1 January 2023 that are required to produce a PRIIPs KID should submit the KID through the CBI's portal (the "Portal"). The Q&A does not necessitate that all UCITS authorised prior to 1 January 2023 must file a PRIIPs KID with the CBI, but applies to those UCITS which are "required to produce" a PRIIPs KID i.e. UCITS which are made available to EU "retail" investors.

The filing may be made through the Portal as an ad hoc return but it will not be a scheduled return on the Portal. Notably the CBI have not sought to impose any deadlines/timelines on when filings must be made. Rather the CBI's updated PRIIPs guidance notes that it is the responsibility of each UCITS "to be aware of and comply with its regulatory reporting

obligations in respect to the initial filing and the submission of any subsequent amendments to the PRIIPs KID".

The PRIIPs KID will need to be accompanied by a declaration from the responsible person or legal advisor that the PRIIPs KID complies in full with the requirements of the PRIIPs Regulation and Level 2 PRIIPs Regulation and that it does not conflict with the fund's prospectus.

UCITS funds authorised post 1 January 2023, and which were required to produce a PRIIPs KID, were already required to submit a PRIIPs KID to the CBI as part of their authorisation application.

Where a PRIIPs KID that has been previously submitted to the CBI is updated, the amended PRIIPs KID should also be submitted to the CBI through the Portal.

Where a UCITS produces both a UCITS KIID and PRIIPs KID, the latest versions of both should be filed with the CBI through the Portal.

### Europe

#### *ESMA Publishes New Q&A*

On 5 December 2023, the European Securities and Markets Authority ("ESMA") updated its PRIIPs Q&As (the "Q&A").

A new question 5 was inserted querying in the case of a UCITS or AIF, if the manufacturer of the PRIIP can be an entity to which collective portfolio management functions, or other functions, have been delegated to by the fund or by the management company or alternative investment fund manager of the fund.

The Q&A confirms that even if the fund delegates functions to third parties, the PRIIP manufacturer can only be the management company or the alternative investment fund manager of the fund, or, in particular in the case

of a self-managed UCITS or internally managed AIF, the fund itself.

A further question was included on whether the rules concerning the UCITS key investor information document (KIID) still apply.

The Q&A clarifies that the rules concerning the UCITS KIID still apply in certain specific situations. In particular, where a UCITS is not made available to retail investors in the EU in accordance with Article 5(1) of the PRIIPs Regulation, the UCITS management company is required to draw up a key investor information document in compliance with the rules in Directive 2009/65/EC (the UCITS Directive), unless it has decided to draw up a KID as out in the PRIIPs Regulation.

### Belgium

#### *FSMA Publishes New Q&A on UCITS*

On 25 October 2023, the Belgian Financial Services and Markets Authority ("FSMA") published a new Q&A (the "Q&A") on its website providing guidance on questions relating to UCITS. The Q&A are aimed at Belgian and foreign UCITS.

In addition to providing certain clarifications on legal requirements, the new Q&A also outlines what it considers as permissible or appropriate practices.

#### *Provision of PRIIPs KIDs*

Where a UCITS is only made available to professional investors, the Q&A confirms that the UCITS is permitted to either provide (i) a PRIIPs Key Information Document or (ii) a UCITS Key Investor Information Document ("KIID") (if the UCITS fund is not offered to retail investors and no PRIIPs KID is drawn up).

#### *Amendments to Documents*

The Q&A clarifies that any modified prospectus must be provided to, and later be

approved by, the FSMA before being published and made available to investors. The Q&A provides some specific examples of situations where prior approval of prospectus updates is required (e.g. an update to the investment policy of the UCITS). It also provides clarity on when prior approval by the FSMA is not required.

#### *Additional Clarifications*

The Q&A also clarifies the following:

- what possible investments may fall within the UCITS 10% trash ratio.
- under what conditions the FSMA plans to grant an exemption from the risk distribution rule for public securities.
- the types of share classes that may be created and the disclosure to investors required.
- the information to be transmitted to the FSMA with a view to creating a new UCITS which will designate a management company.
- information to be transmitted to the FSMA with a view to creating a new compartment within an existing UCITS.
- information to be transmitted to the FSMA with a view to creating a new class of shares within an existing compartment.
- requirements for the publication of net asset value of UCITS.
- requirements for publication of UCITS press releases.
- from what turnover rate a justification should appear in the periodic reports of a UCITS.
- how funds of funds break down portfolio composition.
- how UCITS should report on its investors.
- how shares of non-registered foreign ETFs may be offered in Belgium.

#### *Offering Non-Belgian UCITS in Belgium*

The Q&A clarifies for foreign UCITS, the registration obligation persists when units are placed through a 'financial intermediary'. Whether a financial institution is considered a

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financial intermediary should be assessed on a case-by-case basis. The FSMA explicitly states that a financial institution that directly or indirectly receives a fee related to the public offer of non-Belgian UCITS is deemed to be a financial intermediary. In that case, the non-Belgian UCITS must be registered prior to public offering in Belgium. Conversely, providing the customer with the possibility to acquire units from a non-Belgian UCITS through the service of receiving and transmitting orders, while receiving a fee or benefit for this service from the customer (and hence not from non-Belgian manufacturers), is possible without a prior registration of the non-Belgian UCITS in Belgium. In this scenario, the financial institution is not considered a financial intermediary, as it is only acting on behalf of the client.

The above is a summary only. The full Q&A is available online in French or Dutch only<sup>1</sup>.

### Denmark

#### *Revised Index for Regulatory Fees 2023*

On 8 December 2023, Finanstilsynet (the Danish FSA) revised and published its index for 2023 regulatory fees. Regulatory fees in Denmark are set at the 2016 level and adjusted with an index which is revised annually. The 2023 fees have an index of 155.17.

Danish regulation requires foreign UCITS notified in Denmark to pay a basic annual fee of DKK 17,500 in 2016 prices. Additionally, for each notification or application on cross-border marketing, a basic fee of DKK 5,500 in 2016 prices is due. Consequently for 2023, foreign UCITS are expected to pay an annual fee of DKK 27,154.75 plus DKK 8,534.35 for each marketing notification.

Similarly, foreign alternative investment fund managers (AIFM) which have notified AIFs for distribution in Denmark must pay a fee of DKK 4,400 per fund and an additional fee of DKK

4,400 per sub-fund in 2016 prices which equates to DKK 6,827.48 and DKK 6,827.48 respectively. More information is available in Danish online<sup>2</sup>.

### Finland

#### *New Schedule of Processing and Supervision Fees*

The Financial Supervisory Authority of Finland (FIN-FSA) has issued a new schedule of processing fees, effective 1 January 2024.

The processing fees for foreign UCITS funds marketing in Finland increased to €1,820 + €208 per each additional sub-fund. The total maximum amount has been increased by €140 to €3,640.

The fee for the marketing of an Alternative Investment Fund ("AIF") in Finland which is managed by an entity authorised or registered in the EEA or another EEA country has been increased by €50 to €1,300.

The full schedule of the processing fees may be accessed in English<sup>3</sup>.

### Luxembourg

#### *CSSF FAQ – SIF and SICAR that Do Not Qualify as Alternative Investment Funds (AIFs)*

On 17 November 2023, the Commission de Surveillance du Secteur Financier ("CSSF") updated its FAQ on SIF and SICAR that do not qualify as alternative investment funds.

The update was undertaken to replace the term 'central administration' with 'UCI administrator' in line with CSSF Circular 22/811 on the authorisation and organisation of entities acting as UCI administrators.

<sup>1</sup> New Communication with FAQs about UCITS | FSMA

<sup>2</sup> Betaling af afgifter til Finanstilsynet

<sup>3</sup> New schedule of processing fees and amendments to Supervision Fees Act to take effect on 1 January 2024 - 2023 - [www.finanssivalvonta.fi](http://www.finanssivalvonta.fi)

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## Slovenia

### *Renewal Fees for UCITS and AIFs Authorised for Distribution*

Slovenia has introduced new guidelines regarding the fees for EU UCITS and EU AIFs registered for marketing in Slovenia as follows:

#### EU UCITS:

- Registration fee of €235 (50 points\*)
- Annual supervisory fee of €940 (200 points\*)

#### EU AIFs targeting professional investors:

- Registration fee of €235 (50 points\*)
- Annual supervisory fee of €235 (50 points\*)

#### EU AIFs targeting non-professional investors:

- Registration fee of €352.50 (75 points\*)
- Annual supervisory fee of €940 (200 points\*)

\*€4.7 = 1 point

Registration fees must be paid upfront on the submission of the notification and since November 2023, apply to all new notifications. The annual supervisory fees are due to be paid in advance of 31<sup>st</sup> May in each calendar year.

## United Kingdom

### *Fund Operators Need to Prepare for New UK Overseas Funds Regime*

As outlined in our earlier update UK Update: *Fund Operators Need to Prepare for New UK Overseas Funds Regime*<sup>4</sup>, the UK Government will introduce a new regime to enable overseas funds to access the UK market.

The application process will be more complex and costly, requiring an online submission, a

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<sup>4</sup> UK Update: *Fund Operators Need to Prepare for New UK Overseas Funds Regime* (maples.com)

detailed review and approval by the Financial Conduct Authority ("FCA").

In addition to an annual submission, fund operators will have ongoing notification requirements to the FCA and fund operators will be subject to enhanced disclosure requirements to UK investors.

#### *What You Need to Do*

Review the FCA's consultation paper and provide feedback by 12 February 2024.

## Switzerland

### *FINMA Circular Proposal*

The Swiss Financial Market Supervisory Authority (FINMA) intends to adopt a circular on the rules of conduct under the Swiss Financial Services Act (FinSA).

Any financial service provided in Switzerland or to Swiss investors falls within the scope of FinSA, and its ordinance, the Financial Services Ordinance (FinSO).

The aim of the circular is to interpret FinSA and FinSo and to clarify important questions for practitioners and market players. The circular will also concern the rules of conduct under FinSA, which apply to financial service providers.

The consultation is ongoing. The adoption of the circular is scheduled for the second trimester of 2024, with the entry in force is planned for the third trimester of 2024.

## Hong Kong

### *Circular on Distributors Providing Additional Returns and Other Services or Arrangements When Marketing SFC-Authorised Funds*

The Securities and Futures Commission (SFC) has issued a circular to set out its recent observations of licensed corporations' practices in offering and promoting SFC-authorized funds. The

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circular outlines how intermediaries who distribute these funds (distributors) have been offering additional returns or other incentives that may divert the client's focus from properly considering the risks and features of the underlying funds. The circular also highlights the legal and regulatory requirements to be met by distributors.

In summary, the circular sets out the SFC's findings on:

- the promotion of guaranteed returns or lock-up periods beyond the product features set out in the funds' offering documents.
- the use of idle money in a client's securities trading account with an aim to generate additional returns, albeit without any guaranteed or specific rates.

The circular provides guidance that distributors should act fairly and in the best interests of their clients in providing services and should not restrict a client's right to redeem his or her investment in a fund pursuant to the dealing frequency specified in the fund's offering documents.

Full circular is available online<sup>5</sup>.

### *Circular on Disclosure / Use of Annualised Returns for Money Market Funds*

On 25 October 2023, the SFC issued a circular issuing guidance for fund managers and intermediaries regarding the presentation of annualised returns by money market funds for periods of less than one year (Annualised Returns) in factsheets, marketing materials or other documents (Relevant Materials), subject to the general principles and requirements set out in the circular and appendix.

The detailed requirements and illustrative examples are set out in the circular document<sup>6</sup> and Appendix<sup>7</sup> available to download.

<sup>5</sup> Circular on distributors providing additional returns and other services or arrangements when marketing SFC-authorized funds | Securities & Futures Commission of Hong Kong

### *SFC's Enhanced Position Limit Regime to Take Effect*

The SFC announced that the amendments to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (the "Rules") came into effect on 22 December 2023.

The amendments enhance the position limit regime in several ways by:

- a) clarifying the application of the Rules to asset managers who manage funds or sub-funds of umbrella funds and the regulatory expectations for trustees in respect of the Rules' requirements;
- b) expanding the list of "specified contracts" for granting excess position limits;
- c) introducing an excess position limit regime for clearing participants;
- d) raising the statutory position limits for certain futures and options contracts;
- e) prescribing position limits and reporting levels for some new contracts; and
- f) imposing large open position reporting requirements for holiday trading contracts.

The changes aim to give more clarity on regulatory requirements related to funds, facilitate compliance and provide more flexibility to the market.

To help market participants understand the amendments, the SFC has also published an [FAQ](#) and updated the guidance note on related regulatory requirements.

## Malaysia

### *New Framework for Foreign Exempt Schemes and Enhancements to Offering of Wholesale Funds*

On 29 August 2023, the Securities Commission Malaysia introduced the Foreign Exempt Scheme

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<sup>6</sup> <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=23EC49>

<sup>7</sup> <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/openAppendix?refNo=23EC49&appendix=0>

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("FES") framework which enhances onshore access to foreign investment funds.

The revised Guidelines for the Offering, Marketing and Distribution of Foreign Funds (the "Guidelines") introduce the FES framework, for the offering of foreign funds by local fund management companies or their related corporations to certain accredited investors and high-net worth entities of Part 1, Schedule 6 and Schedule 7 of the Capital Markets and Services Act 2007 (the "CMSA"). Accordingly, a new subparagraph (e) has been added to paragraph 3.01 of the Guidelines.

The requirements of Chapters 4 to 13 of the Guidelines are disapplied to an FES but the FES must comply with the requirements in Appendix 4 of the Guidelines (new paragraph 3.03).

### *Criteria for FES*

An FES must meet the following criteria:

- a) established and managed by an operator that is:
  - i. licensed or otherwise regulated and supervised by the relevant regulator in a foreign jurisdiction to carry on the activity of fund management and must be a related corporation to a holder of a Capital Markets Services Licence for fund management in relation to portfolio management ("Relevant CMSL"), but does not include digital investment management; or
  - ii. a holder of a Relevant CMSL, but does not include digital investment management;
- b) only offered, marketed or distributed to accredited investors and high-net worth entities in Part 1, Schedules 6 and 7 of the CMSA. In the case of accredited investors, the FES must not be offered, marketed or distributed to:
  - i. a chief executive officer or a director of any person referred to in paragraphs 3, 4, 5, 6 and 7 of Part 1, Schedules 6 and 7 of the CMSA; and

- ii. an individual who is a licensed person or a registered person; and
- c) is not a listed collective investment scheme that invests primarily in real estate.

### *Offering of FES*

All information and documents as set out in the Guidelines must be lodged with the SC before an FES may be offered, marketed or distributed in Malaysia.

Any advertisement to promote the FES through any means must be disseminated exclusively to the investors set out above.

Any person offering the FES must ensure investors are informed that:

- a. the FES is established in a foreign jurisdiction and regulated by the relevant regulator in the foreign jurisdiction;
- b. the FES is not authorised or recognised by the Securities Commission; and
- c. investors must rely on their own evaluation to assess the merits and risks of investing in the FES (collectively "Mandatory Statements").

The operator of the FES remains responsible for all continuous obligations to its investors, including informing investors of any material and significant changes affecting the FES as well as any changes to the material information previously provided to its investors.

### *Representative of FES*

For the offering, marketing or distribution of the FES, the operator must:

- a. appoint a representative in Malaysia who is the holder of a Relevant CMSL and is a related corporation to the operator; and
- b. ensure that there is a representative
  - i. throughout the duration of the FES being offered; and
  - ii. so long as there is a unit holder in Malaysia for such FES.

The representative is to submit or make available to the SC any information relating to the FES as set out in the UCMP Guidelines.



Where the operator is a holder of a Relevant CMSL, the operator must carry out all the duties of the representative in Appendix 4 of the Guidelines.

The operator is to be responsible for the conduct and obligations of the representative. Where the position of the representative becomes vacant, the operator is required to notify the SC of the appointment of the new representative and immediately cease the offering, marketing and distribution of the FES.

### *Distributor of the FES*

For the purpose of offering, marketing or distribution of the FES, the operator must appoint:

- a. a registered distributor; or
- b. a distributor who is a holder of a Relevant CMSL and is a related corporation to the operator.

The distributor must provide relevant information relating to the FES as requested by the appointed representative of the FES. It must also ensure that investors are informed of the Mandatory Statements.

### *Statistical Returns and Documents*

The representative of the FES must provide the statistical information and documents as specified by the Securities Commission within 14 business days after 31 December of each year or a longer period as may be allowed by the SC, including the year in which the offering, marketing or distribution of the FES ceases.

### *Requirements for Investments, Borrowing and Lending*

The Guidelines also clarify that rules on investments, borrowing and lending applicable to such foreign fund must be substantially similar to the requirements imposed on a fund primarily regulated in Malaysia.

### *Foreign Exchange Traded Funds*

There are a number of additional obligations of an operator of a Foreign Exchange-traded funds. These include, among others, the following requirements:

- a) to maintain a website that includes information prescribed in sub-paragraphs (a) to (k) of paragraph 7.01 of the Guidelines;
- b) to ensure that the documents such as the offering document, latest annual report, other periodic reports and all notices and public announcements issued by the foreign ETF, are available to Malaysian investors through its website or such other channels as the Securities Commission considers appropriate; and
- c) to notify the Securities Commission of certain events, such as a change in the composition or weightings of the constituents of the index.

### **How the Maples Group Can Help**

Maples Group GRS supports UCITS<sup>8</sup> and AIFMs<sup>8</sup> 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 in Ireland in terms of

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<sup>8</sup> Domiciled in Ireland and Luxembourg.

*total number of funds advised (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2022).*

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