

GLOBAL COMPLIANCE REGULATORY UPDATE

December 2020





A global viewpoint of regulatory changes that have occurred or anticipated to occur, demonstrates direction to stimulate investment and access to capital whilst navigating the uncertainty of Covid-19.

A snapshot of the regulatory changes across 2020:

- **ESG & Sustainability** the integration of the UN initiatives, through European regulations, the Taskforce on Climate Related Financial Disclosures and domestic implementation continues to accelerate the direction of capital flows into ESG and sustainable investments. The forthcoming disclosure regime will become a focal point for the industry in the New Year as the first implementation deadline of March 2021 approaches.
- **US** regulatory changes are indicative of the desire to facilitate access to capital by widening the definition of Accredited Investors and Qualified Institutional buyers to streamline the Exempt offering process for small businesses and entrepreneurs.
- **UK & Europe**, the primary focus being the implications of Brexit and to consider the proposed changes through the Financial Services Bill including the proposed Overseas Funds Regime (OFR) will mitigate the loss of the EU passporting regime and opens up the question of whether EU will reciprocate the proposed OFR. Further announcements by the Chancellor in relation to the phased integration of sustainability disclosures to align with the EU regulations indicate the UK's intention to remain aligned with EU post-Brexit.
- **Middle East** regulatory changes continue to create conducive, low cost regulatory regimes, to facilitate Fund Manager establishment and current stimulus schemes for Venture Capital Fund Managers to seek regulatory licensing and fund launches to access capital across the region. Further regulatory strategies through the UAE Fund Protocol facilitate cross- jurisdictional marketing of funds, further widening access to investor capital.
- **Singapore** continues to provide a tech enabled financial services sector with more flexible legal structures to accommodate multiple investment strategies (VCC) combined with MAS backed FSDF grant schemes to economically align Singapore as the regional hub for business across APAC.



Climate Change risk mitigation remains a core focal point across the globe with the UN initiatives, including the Paris Agreement driving countries to commit to preventing the global temperature from rising by more than 1.5-2 degrees, reduce the carbon footprint and direct capital flows into ESG and sustainable investments. To achieve this, a concerted global effort through legal and regulatory change was agreed for implementation into domestic and European legislation.

Financial services institutions must also prepare for the regulatory changes that have been set forth in a number of EU regulations some of which are anticipated to take effect in March 2021, notwithstanding delays in the application of Level 2 regulatory technical standards (RTS).

- EU Sustainable Finance Disclosure Regulations (2019/2088)- SFDR
- EU Taxonomy Regulation (2020/852)
- EU Climate Change Benchmarks
- Draft Commission Delegated Regulations amending:
 - EU 231/2013 for sustainability risks and sustainability factors to be taken into account by AIFMs
 - EU 2010/43/EU for sustainability risks and sustainability factors to be taken into account for UCITS
 - EU 2017/565 integration of sustainability factors, risks and preferences into certain organisation requirements and operating conditions for investment firms (MiFID II)
 - EU 2017/593 integration of sustainability factors and preferences into the product governance obligations (MiFID II)
- ESA's issued a consultation on ESG Disclosures with a Template Principal Adverse Impacts Statement



Cayman Island

Cayman Removed from EU Blacklist

The Cayman Islands were removed from the European Union “EU” Annex I list of non-cooperative jurisdictions for tax purposes on October 6, 2020. The EU finance ministers added Cayman to the EU blacklist on February 18, 2020 because it “does not have appropriate measures in place relating to economic substance in the area of collective investment vehicles”.

The Cayman Islands passed additional collective investment vehicle legislation, the Private Funds Law, 2020 and the Mutual Funds (Amendment) Law 2020, on February 7, 2020 in order to address the EU’s concerns regarding the Cayman Island’s collective investment vehicle regulation. The Private Funds Law, 2020 (as amended) resulted in the registration of 12,328 private funds with the Cayman Islands Monetary Authority as at the August 7, 2020 registration deadline under that law.

The Cayman Islands Monetary Authority (“CIMA”) has implemented rules for both Mutual Funds and Privates covering the segregation of assets and the calculation of Net Asset Value. CIMA has also introduced new rules for the contents of offering documents for Mutual Funds, marketing materials for Private Funds and Cybersecurity requirements for all Cayman Islands Regulated Entities.

The Mutual Funds (Annual Returns) (Amendment) Regulations, 2020 came into effect on March 17, 2020 to further strengthen anti-money laundering and counter financing of terrorism measures in the Cayman Islands. Mutual funds are now required to provide additional data to CIMA for its use in assessing money laundering and terrorism financing risks posed by the investment funds sector. The new regulations require expanded information on the fund administrator, investors, and asset allocation.

New CIMA Registrations

On February 7, 2020, laws were enacted to demonstrate that the Cayman Islands have made ‘positive and tangible progress’ in implementing the CFATF’s 63 recommendations, which were set out in its Cayman Islands Mutual Evaluation 2019 report. These are the Private Funds Law, 2020 and Private Funds (Savings and Transitional Provisions) Regulations 2020 [Closed Ended Funds] and Mutual Funds Law (2020 Revision) and Mutual Funds (Amendment) Law, 2020 [Open Ended Funds]. Funds that fell under the criteria of these laws were required to register with CIMA by August 7, 2020.

Deadline to file outstanding application information is November 30, 2020.

FATCA / CRS

Both FATCA and CRS 2019 reporting deadlines have been extended to December 16, 2020. On April 15, 2020, the Cayman Department for International Tax Co-operation (“DITC”) released a new CRS Compliance Form. The purpose behind the CRS Compliance Form is to enable the Tax Information Authority (“TIA”) to use the information collected to analyse and assess compliance with, and effective implementation of, the CRS within the Cayman Islands. The deadline for submission of the first CRS Compliance Form, relating to the 2019 reporting period, is December 31, 2020. Automatic fines will be imposed, failing to meet the filing deadline.

The Cayman Islands Automatic Exchange of Information (“AEOI”) Portal is currently online and DITC is currently developing a new ‘DITC Portal’ for registration (notification) and reporting purposes, which will eventually encompass all legislative frameworks, including economic substance.

Public Searches

The Companies Amendment (No.2) Law, 2020 and the Limited Liability Companies (Amendment) (No.2) Law, 2020 have been amended and gazetted on August 20, 2020, to allow for certain information on Cayman Islands companies and limited liability companies to be publicly searchable from October 1, 2020 upon request to the Registrar of Companies for a fee.

For Cayman Islands company - the following information shall be publicly searchable:

- Name of the company.
- Location of the company's registered office in the Cayman Islands.
- Authorised capital (including par value details).
- Name and address of initial subscriber(s) and number of shares taken by the subscriber(s).
- Date of execution and filing of the Memorandum of Association.
- The company number allocated by the Registrar of Companies.
- The nature of the company's business.
- The date of the company's financial year end.

For Cayman Islands limited liability company ("LLC") - the following information shall be publicly searchable:

- The name of the LLC.
- The location of the LLC's registered office in the Cayman Islands.
- If the LLC has not been formed for an unlimited duration, its term.
- The names and addresses of the initial members of the LLC.
- The nature of the business of the LLC.
- The date of the LLC's financial year end.

The Registrar is also requiring provision of the 'general nature of business' and financial year end for Cayman Islands Exempted Limited Partnerships ("ELPs"), and provision of the nature of business and financial year end for foreign companies that are registered in the Cayman Islands. The Registrar's record of each ELP and the statements filed in relation to the ELP are open to public inspection.

The additional information required for existing companies,



LLCs, ELPs and foreign companies registered in the Cayman Islands will be collected by the Registrar on an ongoing basis, including by way of certain up-keep filings made with the Registrar.

Bermuda

Bermuda appointed a Privacy Commissioner and the remaining substantive issues related to the implementation of the Personal Information Protection Act 2016. The legislation is drafted around a set of EU-style "data protection principles" with the express intention of securing EU "adequacy" status to enable personal information to move freely between the EU and Bermuda. It is anticipated that the Commissioner will in time make an application to the EU for "adequacy" status.

The Bermuda Monetary Authority has recently issued proposed changes to the Investment Funds Act 2006 (the "IFA" or the "Act") and the Investment Funds (Definition) Order 2019 (the "Definition Order"). The changes are expected to be passed by the end of the year. We also expect Bermuda to continue to enhance its reputation as a leader in the fight against financial crime by further updating the AML/ATF Guidance Notes, which we expect to be released later this year.



USA

Office of Compliance & Examinations (OCIE) & Covid-19

In August 2020, the Office of Compliance Inspections & Examinations (OCIE) published an alert pertaining to Covid-19 related issues relevant to SEC registered investment advisers and broker-dealers. The OCIE's observations and recommendations fell into the following:

- Protection of investors assets
- Supervision of personnel
- Practices relating to fees, expenses and financial transactions
- Investment fraud
- Business continuity
- Protection of investor and other sensitive information

SEC adopts amendments to Accredited Investor Definition - August 2020

The SEC announced proposed amendments to the definition of 'accredited investor' to clarify the definition of 'institutional and individual' investors. The changes are to be made to the definition of 'accredited investor' under Rules 215 and 501a to enable individuals, certain family offices, under certain categories, to qualify as accredited investors. Subsequent changes will also be made to the definition of 'qualified institutional buyer' under Rule 144A.

SEC Adopts Modernised Regulatory Framework for Derivatives Use by Registered Funds and Business Development Companies - October 2020.

SEC proposed amendments to enhance the regulatory framework for derivatives use by registered investment companies, including mutual funds (other than money market funds), exchange traded funds (ETFs) and closed-ended funds, as well as business development companies. This reflects the Commissions commitment to designing regulatory programmes that reflect the ever-broadening product innovation and investor choice available whilst taking into account the risks associated with the funds' increasingly complex portfolio composition and operations. The Investment Company Act limited the ability of registered funds and business development companies to engage in transactions that involve potential future payment obligations, including obligations under derivatives such as forwards, futures, swaps and written options. The new rule would permit funds to enter into these transactions if they comply with certain conditions designed to protect investors, such as adopting a derivatives risk management and limits on leverage related risk.

SEC Harmonises and Improves 'Patchwork' Exempt Offering Framework - November 2020

SEC proposed amendments to harmonise registration exemptions, eliminating complexity and facilitating access to capital and investment under the exempt offering framework without compromising investor protections. The existing regime requires all securities offerings be registered with the SEC or qualify for an exemption. Small businesses and entrepreneurs have had to rely on the exemption and the layers of application and approvals to source a safe harbor. The SEC is proposing to simplify the existing layers of complexity to facilitate capital formation for small and medium-sized businesses.



The UK regulatory landscape has been defining a number of enhancements for greater investor and consumer protection. From changes proposed to the process around approval of Financial Promotions, responsibilities on Principals of Appointed Representatives, to enhanced governance through the Senior Management & Certification Regime (SM&CR). Other highlights across the UK landscape include:

Assessment of Value Reports (AoV)

Transparency in the investment management industry has also been a focus for the regulator with the implementation in 2019 of the annual assessment of value reports (AoV). Stemming from the duty of managers to act in the interest of investors, the AoV reports seek to consider the costs and overall impact in the context of the performance of funds, ultimately what value does the manager bring? 2020 represents the first year when such reports have been released and will be subject to scrutiny by the regulator to see if the core criterion of i) comparable market rates ii) Manager costs iii) comparable services iv) Performance v) quality of service vi) Economies of scale vii) Share classes have been adequately and accurately considered in such reports.

FCA Client Assets Arrangements

The FCA issued a 'Dear CEO' letter on September 30 2020 on the requirement to have adequate Client Assets arrangements including effective governance and oversight, oversight over third parties, including Third Party Administrators, acknowledgement letters for all client money accounts and accurate and up to date CASS Resolution packs.

FCA Business Plan 2020/2021

Among other themes, the FCA has indicated their focus on consumer protection and transparency will remain in addition to assessing the quality of climate-change disclosure to enable informed decision making relating to 'green products'. The FCA will also focus on examining the use of Artificial Intelligence (machine learning) to make effective use of data for regulatory purposes.

The FCA will further focus on the UK investment management industry and harm that may arise from poor governance, insufficient focus on delivering good value, and lack of investment in technology and operational resilience. Further

focus on effective governance, including the implementation of the SM&CR and how 'host' Authorised Corporate Director firms' discharge their responsibilities to the fund.

Basel 3 Reforms- November 2020

As the Financial Services Bill continues its progress through Parliament, HM Treasury, the FCA and the PRA consider it appropriate to update industry on planned timelines for introducing the UK's Investment Firms Prudential Regime (IFPR) and implementation of Basel 3 reforms which make up the UK equivalent to the outstanding elements of the EU's 2nd Capital Requirements Regulation.

FCA warns firms to be responsible when handling client data- November 2020

The FCA reminded the industry to organize and control their affairs responsibly and effectively and ensure client data is transferred only if it is in the interests of the client pursuant to Principle 3 and 7 and have due regards to the Data Protection Act 2018, GDPR, privacy an electronic communication regulations. GDPR requires firms to provide information to clients clearly setting out 'privacy information', which includes the purposes for which they are collecting or processing client data, and individuals' rights when their data is processed.

At the end of the Brexit transition period the GDPR provisions will form part of retained EU law, with amendments made by DP exit regulations under the European Union (Withdrawal) Act 2018.

Further consultation issued by the FCA:

- PS20/12 Extending implementation deadlines for the Certificated Regime and Conduct Rules
- PS20/10 Prohibiting the sale to retail clients of investment products that reference crypto assets



Brexit

Following the UK's departure from the European Union, the implications for the asset management industry, specifically with respect to UCITS and AIFM, will pose considerable uncertainties as the EU passporting regime is repealed. Alternative marketing schemes (Overseas Funds Regime) are being debated through parliament to protect the UK's position as one of the world's most prominent financial centres post Brexit.

Financial Services Bill

UK Parliament has begun its review of the proposed Financial Services Bill which will, inter alia, consider the prudential regulation of investment firms and a new route for overseas funds to market under the proposed Overseas Funds Regime (OFR) to enable access for recognised collective investment schemes from countries or territories approved by HM Treasury. The proposed bill seeks to:

- Enhance the UK's prudential standards to promote financial stability;
- Promote openness between the UK and international markets by simplifying the process to market overseas investment funds in the UK;
- Commitment to provide long-term access between the UK and Gibraltar for financial services firms;
- Maintain effective financial services regulatory framework and sound capital markets
- Benchmark regulation and proposed amendments under the Financial Services Bill November 2020

Overseas Funds Regime

The proposed Overseas Funds Regime set forth by HMT indicates the UK's openness to enable overseas funds to market into the United Kingdom through a proposed equivalence and recognition regime seen in other financial centres. Enabling access to UK investors based on an 'outcomes-based equivalence' regime. This would extend to retail investment funds and money market funds.

The 'outcomes-based equivalence' regime is anticipated to be given effect through a new Section 271A of the FSMA.

The equivalence regime for money market funds would additionally, need to ensure the overseas country was equivalent to the Money Market Fund Regulation, under EU2017/1131.



European Banking Association - Product Oversight & Governance

The European Banking Association (EBA) published its report on the implementation of the EBA Guidelines on Product Oversight and Governance Arrangements (POG). The outcome of the review suggested that many financial institutions did not sufficiently put the required focus on ensuring that consumer needs are met in line with the Guidelines.

Covid-19 Risk Assessment - EBA, EIOPA, ESMA

The 3 European Supervisory Authorities issued a joint risk assessment report on the financial sector since the outbreak of the Covid-19 pandemic. The report highlighted the need to implement policy in the following areas:

- Monitor risks and perform stress testing- the use and adequacy of liquidity management tools in the investment fund sector should be continuously monitored;
- Foster flexibility where and when needed to enable liquidity buffers to absorb losses;
- Support to the real economy through capital relief during prolonged periods of downturn;
- Prepare for any disruptions as a result of the UK's transition from the EU; and
- Supervise digital transformation and associated security risks.

Schrems II Ruling

In a recent Court of Justice of the European Union judgment known as Schrems II, the EU-US agreement for data transfers, known as the Privacy Shield, has been struck down. The Privacy Shield was never a valid transfer condition under the Cayman Islands Data Protection Law, 2017, and Apex has utilized Standard Contractual Clauses in its agreements, which are still valid following the ruling. However, it is expected that additional changes to the Standard Contractual Clauses will be forthcoming.

ESMA issues Consultation Paper on marketing communications under the Regulation on cross-border distribution of funds. November 2020

The consultation sets out the proposed guidelines to give effect to EU 2019/1156 on facilitating cross-border distribution of collective investment undertakings by fund managers. Sustainability-related information contained in marketing communication must be commensurate with the level to which the investment strategy promotes environmental or social elements or sustainable objectives of EU 2019/2088. ESMA will consider future guidelines to reflect the sustainability disclosures required under EU 2019/2088 (SFDR) in line with the final provisions of the Level 2 requirements.



The Middle East continues to see growth and business through the 2 core international financial free zones, the DIFC and ADGM. Significant events have taken place with the opening of relations with Israel and facilitation of economic ties under the coined 'Abrahamic Accord'.

The region has seen further growth in insurance wrapped products supporting an emerging trend in investment in infrastructure, distressed assets and real estate more generally. Further alignment of ESG in the Sharia segment raises further opportunities across the Middle East.

Islamic Finance

The region continues to see innovation in Islamic finance specifically the use and alignment of ESG into Sharia compliant investment objectives. Investors have continued to seek out investments which have a social element to the investment strategy which has accelerated the growth in ESG and regulators are now focused on enhancing disclosure regimes pertaining to socially responsible investment to ensure informed decisions making of investors.

Dubai International Financial Centre (DIFC)

The (DIFC) and Abu Dhabi Global Market (ADGM) the financial free zones created based on international laws and regulations, operating within a common law infrastructure, continue to develop regulation to facilitate international business.

The DIFC consulted on its proposed Venture Capital (VC) Regime with a suite of regulatory incentives comparable with ADGM and Singapore, all of which have equivalent VC Regimes presenting unique opportunities and a regulatory platform built on regulatory equivalence to enable Fund Managers to consider multiple jurisdictions for the domicile of both the Fund Manager and Funds.

The DIFC further consulted on a periodic Fund Return requiring detailed information on the nature of funds managed from the DIFC (both Domestic Funds and External Funds), including the types and value of assets breakdown of geographical exposure which will present an enhanced obligation on DIFC Fund Managers.

Abu Dhabi Global Market (ADGM)

The ADGM remains a strong jurisdiction for access to regional capital with a visible increase in VC Fund Managers seeking licensing. The ADGM FSRA launched its VC Fund Manager regime, in line with Singapore, to enable start up managers with considerable individual track record to become licensed.

ADGM has been actively engaging opportunities with Israel and beyond, including with other prominent organisations. Abu Dhabi Investment Office (ADIO) the central government hub, has been tasked with enabling opportunities for domestic and foreign investors aligned with Abu Dhabi's economic priorities to continue to position Abu Dhabi as a strong economic centre.



Singapore

The MAS launched regulations and incentives to further deepen Singapore's position as a hub for funds, in particular the launch of the Variable Capital Company (VCC).

The launch of the Variable Capital Company in 2020 has garnered much interest as a flexible and highly adaptable investment vehicle for Fund managers. It provides a flexible legal structure for investment funds. It can be a single standalone fund or an umbrella fund with sub-funds and benefits from tax incentives under 13R and 13X of the Income Tax Act. Singapore remains a favourable jurisdiction for access into APAC and the use of the new VCC structure, benefits from the MAS Financial Services Development Fund (FSDF) demonstrating the commercial foresight of Singapore to be a business enabler.

The VCC regime has been popular with family offices and MAS in further collaboration with the Institute of Banking and Finance, Singapore has been focusing on building resource capability of Family Office advisors as this segment continues to see growth.

Exemption Framework for Cross-Border business arrangements

Singapore has been an attractive jurisdiction for international assets and fund managers. Further proposals by the MAS in June 2020 in relation to an Exemption Framework for Cross-Border business arrangements of Capital Markets

Intermediaries could provide a platform to enable foreign recognised corporations (FRC) of financial institutions in Singapore to provide cross-border services to customers in Singapore without having to hold a license. Such provisions facilitating access into Singapore.

MAS Consults on Identity Verification - November 2020

MAS issued a consultation on the identity verification required for non-face-to face contact. The proposals require more specific cryptographic information or unique biometrics in order to mitigate fraud and impersonation which may increase as Covid-19 makes face to face interaction difficult. The increased use of encrypted evidence must also comply with MAS's Guidelines on Risk Management Practices-Technology Risk.

MAS Consults on Competency Requirements for Representatives Conducting Regulated Activities under the Financial Advisers Act and Securities and Futures Act. - September 2020

MAS consults on enhancements and clarifications on the competency framework for representatives, including ethics and more focus product knowledge modules. The revised examinations will be coordinated via the IBF and SCI for roll out in Q1 2021.



Hong Kong

SFC Consults on Proposed Amendments to the Guidelines on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and Associated Entities) - September 2020

SFC consults to incorporate in the AML/CFT Guidelines several new areas such as institutional risk assessments and third-party deposits and payments. Other areas include deepening the understanding of ML/TF risks posed by cross-border financial flows and some types of high-risk customers and implementing risk mitigating responses accordingly; strengthening the enhanced AML/CFT measures for foreign politically exposed persons (PEPs), non-resident customers and customers that have sanction exposure as well as putting in place more effective suspicious transaction monitoring systems.

SFC Concludes Consultation on Proposed Enhancements to the Open-ended Fund Companies Regime and Further Consultation on Customer Due Diligence Requirements - September 2020

SFC consultation focused on (1) whether other types of entities could be eligible as private OFC custodians; (2) the investment scope of private OFCs; and (3) whether public OFCs could be exempt from keeping a significant controllers register (SCR). The proposals to expand the custodian eligibility requirements for private OFCs and remove the investment restrictions on private OFCs have been accepted and will take immediate effect upon gazettal of the revised OFC Code. The proposal to introduce a re-domiciliation mechanism to enable overseas corporate funds to re-domicile to Hong Kong will take immediate effect upon completion of the legislative process.



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