INTERNATIONAL ASSET MANAGEMENT AND INVESTMENT FUNDS REVIEW

2024 / 25

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The International Asset Management & Investment Funds Review 2024/25

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AIMA

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Tom Kehoe joined AIMA as research manager in October 2008 and heads up all research and communications globally for the association. In this role, Tom is responsible for creating and executing the association's strategies to develop and maintain strong external stakeholder relationships. In doing so, he constructs the association's narrative through original research and thought leadership as well as design, implement and promote the association's communications and brand. In this capacity, he has authored more than 50 research and thought leadership pieces, which have been mentioned widely across the trade and business press as well as commented on radio and television.

He has been involved with hedge funds for 15 years. Prior to joining AIMA, Tom spent four years working in hedge fund research and due diligence with BNP Paribas in New York and Dublin.

Tom holds a Masters in Finance from the National College of Ireland, a graduate certificate in Investment Management from Dublin City University and is a Chartered Alternative Investment Analyst member (CAIA).

AIMA
THE ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

Clearer Skies Ahead for Hedge Funds in 2024

For good or for ill, by the end of 2024, the alternative investment industry is likely to have a greater degree of certainty on three fronts in many parts of the world where, recently, there has been nothing but politics, interest rates, and regulation. Alas, AIMA's influence on central bank decision-making and voter intentions is beyond our powers of persuasion, so I will focus on our advocacy efforts on behalf of the alternative asset management industry.

"Although the US regulatory landscape will continue to evolve in several key areas this year, the emphasis is shifting to implementation.

Unsurprisingly, the US will continue to be the focus of AIMA's policy and regulatory work in 2024.
The SEC has a considerable rulemaking agenda, resulting in AIMA submitting more regulatory proposal responses last year in North America than in any other region and more than at any other time in our history. In another first in the history of our association, AIMA felt compelled to take the unprecedented step to launch legal action against the national regulator regarding three of their final adopted rules, which we deem harmful to the industry we represent and are an overreach of the agency's statutory authority: the Private Funds Adviser Rules, and the Short Sales and Securities Lending Rules. The court's should make their decision in these cases this year.

Looking ahead to further changes to the industry that the SEC is likely to introduce. We expect further impactful rules regarding the definition of "Dealer", safeguarding client assets, use of predictive data analytics, cyber risk management and outsourcing by investment advisers to be adopted in 2024 along with the adoption of the joint SEC/CFTC rewrite of many of the systemic risk reporting requirements in Form PF.

Although the US regulatory landscape will continue to evolve in several key areas this year, the emphasis is shifting to implementation, which will inevitably bring a degree of certainty for the industry. Further respite should arrive from the second half of this year as the intensity of new industry policy initiatives lessens with the Biden administration entering its latter phase, and all efforts shift to the US elections in November.

The picture will be much the same in the EU and UK as industry policymakers dial down the intensity of any new rulemaking as they prepare for upcoming elections.

Although this brief overview of the most pressing regulatory items expected to be finalised this year may appear largely negative in their potential impacts on the alternative investment industry, there will be some undeniable benefit to having clarity on what these rules will entail in their final version, especially if the Court finds in our favour where we have acted. The coming year will, therefore, no doubt be challenging, but alternative investment fund managers are nothing if not resourceful and have a proven track record of adapting to altered situations.

AIMA members can find out more about these issues – and many others besides – and access our library of resources to help with their implementation at AIMA.org.

AUSTRALIA

Foreign Financial Service Providers – Navigating the new regulatory landscape

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Nikki is a partner in the Ernst & Young, Australia (EY Australia) Financial Services Law team. Nikki has a demonstrated track record of assisting clients in the wealth and asset management sector on a full range of corporate, commercial, and regulatory issues facing their businesses.

Nikki has a particular focus on financial services regulation, regulated and unregulated corporate transactions and structuring new financial products and investment funds, with a particular focus on alternative investments. Nikki regularly assists offshore managers entering the Australian market.

Nikki has been recognised as a leading lawyer in Investment Funds and Financial Services Regulation by Chambers Asia Pacific since 2012. Nikki is currently the Hon. Legal Counsel and Chair of the Regulatory Committee of AIMA (Alternative Investment Management Association) Australia. Nikki is also a member of the executive committee of the Australian chapter of 100 Women in Finance.

Building a better working world

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Building a better working world

BIO

Tania has over 21 years' experience as a financial services lawyer, having worked previously at large global financial institutions in Australia, Hong Kong and London. She has particular experience in advising clients in fund structures, establishment of new funds and advising on global investments.

Tania has experience working with superannuation funds as well as trustees and service providers. She has deep industry knowledge of the regulatory environment for banks as well as custodians (both in Australia and globally). She is also a member of the Responsible Investment Association Australasia and a committee member for the Australian Custodial Services Association.

Tania is passionate about building deep relationships with her clients, her team and being a trusted advisor. Tania is particularly concerned about the environment and has managed to interplay her personal interest in this area by assisting clients with their ESG legal risk frameworks and driving sustainable finance goals.

Introduction

The landscape of the Australian funds management industry has been evolving dynamically, with a notable annual growth rate of approximately 9% over the last 30 years.[1] This upward trajectory, largely fuelled by compulsory superannuation fund contributions, has rapidly increased the total funds managed to AU$3.49 trillion as of July 2023.[2] Part of this growth is attributable to the growth of foreign financial service providers (FFSPs) establishing asset management operations in Australia.

As FFSPs enter Australia, they are also needing to understand the changing regulatory landscape. This article will examine upcoming changes to the regulation of FFSPs and managed investment schemes (MIS) which will directly impact how international managers operate in Australia.

1. Investment Company Institute, Quarterly Worldwide Mutual Fund Market, Historical Worldwide Public Tables, Second Quarter 2020
2. https://fsc.org.au/news/media-release/funds-management-industry-report-2023

Building a better working world

Introduction

In a significant development for FFSPs, the regulatory landscape will transform with the passage of the Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2024 (FFSP Bill). Scheduled to take effect from 1 April 2025, this overhaul legislates the existing "sufficient equivalence relief" with some modifications and eliminates longstanding uncertainty of the existing regime paving a streamlined path for new entrants to the market. Furthermore, the Professional Investor Exemption replaces the current "limited connection relief" provided by ASIC. This section of the article delves into the key aspects of the new regime, highlighting the exemptions provided under the FFSP Bill and their implications for FFSPs.

Timeline of transition

The existing regime, introduced by ASIC in 2003, consists of "sufficient equivalence relief" and "limited connection relief" which allows FFSPs to conduct financial services in Australia without the need to hold an Australian Financial Services Licence (AFSL). Subsequently, in August 2023, the Australian Treasury released the FFSP Bill for industry consultation. It is expected that, in February 2024, the FFSP Bill will pass both houses of Parliament, with the proposed effective date set for 1 April 2025, contingent upon receiving Royal Assent. Until then, FFSPs can continue relying on the existing exemptions, which are due to expire on 31 March 2025.

The exemptions

- I. Comparable Regulator Exemption

The Comparable Regulator Exemption replaces the expiring "sufficient equivalence relief." Under this provision, FFSPs that are authorised, registered or licensed by a regulator approved by the Australian Government, will be exempt from holding an AFSL when providing financial services to wholesale clients.[3] Notable regulators in this category who are anticipated to be approved by the Australian Government include the United States Securities and Exchange Commission, Monetary Authority of Singapore, and the UK Financial Conduct Authority or Prudential Regulation Authority. These regulators are currently recognised by ASIC under the expiring "sufficient equivalence relief".

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> It is expected that, in February 2024, the FFSP Bill will pass both houses of Parliament, with the proposed effective date set for 1 April 2025.

FFSPs seeking to rely on the new Comparable Regulator Exemption will also need to notify ASIC that they intend to rely on the exemption and consent to information sharing between ASIC and the comparable regulator. There is currently no "grandfathering" of FFSPs still relying on the existing "sufficient equivalence relief" and these FFSPs will need to reapply to ASIC before 1 April 2025. Unfortunately, new market entrants will have to continue exploring other licensing options (including individual relief, becoming a corporate authorised representative, or relying on another applicable exemption) until the new legislation comes into force. Furthermore, compliance with specified conditions, such as maintaining any authorisations, registrations, or licences necessary to legally provide the relevant financial services in their home jurisdiction, are a prerequisite for using this exemption.

3. Wholesale client is defined in section 761G of the Corporations Act.

• II. Professional Investor Exemption

The FFSP Bill introduces an AFSL exemption for FFSPs providing financial services to Professional Investors,[4] which will replace the existing Professional Investor Exemption available in s911A(2E) of the Corporations Act 2001 (Cth) (Corporations Act). To qualify, the financial service must be provided from outside Australia or during a permitted "marketing visit" (permitted up to 28 days per financial year). The FFSP must also reasonably believe that it complies with relevant laws, including the laws of the location it is providing the financial service from, and the laws at the location of its head office and principal place of business.

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> The Market Maker Exemption, allows FFSPs to provide financial services related to making a market for derivatives traded on a licensed market.

• III. Market Maker Exemption

A novel addition, the Market Maker Exemption, allows FFSPs to provide financial services related to making a market for derivatives traded on a licensed market. Compliance with specified conditions, such as providing services from outside Australia, is essential. This exemption is another facet of the FFSP Bill aimed at fostering a conducive environment for market activities. Similar to the Professional Investor Exemption, to qualify for the Market Maker Exemption, the FFSP must reasonably believe that it complies with relevant laws, including the laws of the location it is providing the financial services from, and the laws at the location of its head office and principal place of business.

• IV. Fit and Proper Person Test Exemption

Addressing the "fit and proper person" test inherent in AFSL applications, the FFSP Bill introduces an exemption for FFSPs not relying on one of the above exemptions. To qualify, FFSPs must maintain necessary authorisations, registrations, or licenses in their home jurisdiction, with the administering regulator approved by the Australian Government, and provide financial services to wholesale clients. This exemption streamlines the AFSL application process, facilitating efficiency for FFSPs bypassing the "fit and proper" test normally required for AFSL applications. However, this exemption, as part of the AFSL process, only applies to foreign entities and does not apply to Australian subsidiaries of FFSPs.

Specified conditions and what's next?

Under the FFSP Bill, FFSPs intending to rely on any exemption must adhere to specified conditions, including notifying ASIC, cooperating with requests for information, and ensuring clients are informed about the reliance on an exemption. With these changes currently scheduled for 1 April 2025, existing transitory relief, encompassing both "sufficient equivalence relief" and "limited connection relief," remains available until 31 March 2025.

Conclusion

The financial services industry in Australia is on the precipice of a new regulatory environment, and proactive adaptation will be the key to success in this evolving landscape. As the proposed Bill ushers in a new era for FFSPs in Australia, navigating the complexities of the regulatory landscape becomes crucial. The proposed exemptions aim to strike a balance between facilitating global financial services and ensuring compliance with Australian standards. FFSPs are encouraged to assess their operations, understand the implications of the new regime, and seek professional advice if needed.

Introduction

In Australia, Managed Investment Schemes (MIS) play a pivotal role in connecting both retail and wholesale clients to a wide range of investment opportunities. In August 2023, the Australian Government initiated a review of the regulatory framework for MIS (MIS Consultation), considering various aspects from wholesale client thresholds to insolvency regimes. This section will focus specifically on the potential changes to wholesale client thresholds and outline some of the positions, questions and issues raised by the industry on these matters.

What is an Australian Managed Investment Scheme?

The Australian MIS is a type of collective investment vehicle defined by the Corporations Act 2001 (Cth) ('Corporations Act') as having the following features:

- people contribute money or money's worth as a consideration to acquire rights to benefits produced by the scheme;
- any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people who hold interests in the scheme; and
- the members do not have day to day control over the operation of the scheme.

In essence, a MIS allows investors to collectively invest their funds for mutual financial gain. These schemes often take the form of unit trusts, where investors receive units corresponding to their investment amount. The financial returns usually include scheme distributions and potential increases in unit capital value.

Wholesale client thresholds

- I. Financial thresholds

A main area of focus for the MIS Consultation is the financial thresholds that determine whether an investor is a wholesale client.[5] In Australia, financial products or services are generally considered as being provided to retails clients (who enjoy greater regulatory protections), unless the client is classified as a wholesale client. This section will focus on two tests used to determine whether an investor is a wholesale client. The current tests are as follows:

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> Managed Investment Schemes (MIS) play a pivotal role in connecting both retail and wholesale clients to a wide range of investment opportunities.

1. The product value test – where the value of the financial product to which a financial service relates, is AU$500,000 or more.

2. The individual wealth test – where the client has net assets of at least AU$2.5 million or gross income of at least AU$250,000 per year for the last two financial years.

The Australian Government is considering whether these financial thresholds for investors to qualify as wholesale clients should be increased and, if so, what the new values should be and why.

The static nature of the product value test and individual wealth test has resulted in a significant proportional increase in the number of households that qualify as wholesale clients since the introduction of both tests in 2001. Australian regulator, ASIC has submitted to the MIS Consultation that the financial thresholds for the product value and individual wealth tests should be increased to account for inflation since these tests were introduced over 20 years ago. ASIC also submitted that legislation should be introduced to facilitate periodic increases to the thresholds to account for inflation.

5. Wholesale client is defined in section 761G of the Corporations Act.

Some industry voices argue that raising the product value test could risk investors being overly concentrated in a smaller number of financial products and prevent them from constructing a diverse portfolio. However, there is a consensus that the thresholds need to change and that any changes should be "grandfathered" in, taking into the account the current arrangements so that existing investors are not disproportionally affected.

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> Other important areas of the MIS Consultation included scheme registration and the right to withdraw from schemes.

• II. Excluded assets

In comparison to the current wholesale client threshold in Australia, comparative jurisdictions such as the United States and the United Kingdom, have lower financial thresholds under their equivalent individual wealth tests.

However, in both these instances, an individual's primary residence is excluded when determining an investor's net assets for the net asset part of the individual wealth test.

Industry members note that the exclusion of the primary residence from the wealth test could potentially lead to undesirable outcomes, by incentivising excessive borrowing by investors. For instance, a client owning property without a mortgage may not qualify as a wholesale client if the property were excluded from the wealth test. However, if this client could borrow AU$2.5 million against their property, they would qualify as a wholesale client despite no changes in their net equity.

There is also some debate surrounding whether superannuation (compulsory pension contributions) should be excluded from the individual wealth test. The individual wealth test assumes that an increase in an individual's wealth correlates to stronger financial literacy. However, where such wealth is tied up in an investor's superannuation balance due to compulsory contributions, this may not be an accurate assumption. This line of reasoning also applies to the primary residence, especially in an environment where property values in Australia have soared over the last 20 years.

• III. Consent requirements

Some industry bodies argue that the product value test should be lowered, with a consent requirement being introduced as an alternative method of protection. However, ASIC does not consider that a consent requirement is an effective means of ensuring that investors fully understand the consequences of being classified as a wholesale client. This is based on the inherent limitations of disclosure as a method of consumer protection. ASIC's position is that disclosure and warnings do not necessarily result in informed consumers, and consequently, do not correlate with good consumer outcomes.

Other areas of the MIS Consultation

Other important areas of the MIS Consultation included scheme registration and the right to withdraw from schemes. In relation to scheme registration, there is broad support for the existing 14-day process (where ASIC has a statutory obligation to register a scheme within 14 days), as well as discussions to automate the scheme registration process. Additionally, there has also been some industry support on an expedited scheme registration process for low-risk funds, as well as general discussions on the kind of information ASIC should collect at registration to assist in its surveillance.

There is also general industry support for the flexible definition of liquid assets and liquidity under section 601KA of the Corporations Act. ASIC has made a case for obtaining accurate data to pinpoint key trends, risks, and issues related to scheme liquidity, in line with the International Organisation of Securities Commission's liquidity recommendations. In addition, ASIC is seeking a statutory power to periodically gather data on liquidity from responsible entities and trustees.

Conclusion

The review of the regulatory framework for MIS in Australia has sparked significant discussion, particularly around the financial thresholds that classify an investor as a wholesale client. The Australian Government's consideration of increasing these thresholds has been met with varied responses. While ASIC advocates for an increase to account for inflation, industry voices express concerns about the potential risks, such as over-concentration of investments and disruption to current investors.

The debate also extends to the types of assets considered in the individual wealth test. The exclusion of primary residences, as applicable in the United States and the United Kingdom, could potentially incentivise excessive borrowing against the primary residence, leading to undesirable outcomes.

These discussions underscore the complexity of updating the MIS framework. It is crucial for the Australian Government to strike a balance that ensures investor protection, maintains market integrity, and promotes a healthy investment environment. As the legislation develops, careful consideration of all stakeholders' perspectives is imperative to shaping a robust and effective regulatory framework for Australia's MIS.

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> The Australian Government's consideration of increasing these thresholds has been met with varied responses.

Disclaimer

The views expressed in this article are the views of the author, not Ernst & Young. The article provides general information, does not constitute advice and should not be relied on as such. Professional advice should be sought prior to any action being taken in reliance on any of the information. Liability limited by a scheme approved under Professional Standards Legislation.


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The better the question.
The better the answer.
The better the world works.
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BRITISH VIRGIN ISLAND

Investment Fund structuring trends in the British Virgin Islands

TRAVERS THORP ALBERGA

BIO

Shameer is principal of Travers Thorp Alberga's New Zealand office, in Auckland.

Shameer brings to the firm significant expertise from his years of practice in London and then the Cayman Islands, and over 24 years of legal practice experience overall, specifically in advising Cayman Islands and British Virgin Islands hedge and private equity funds and investment managers on all aspects of open and closed ended fund structuring, formation and ongoing governance and regulatory requirements. More recently, Shameer has worked extensively on advising investment managers and their investment funds, globally, in the Digital Asset space including in Australia and New Zealand.

Shameer also regularly advises strategic and seed investors on pre-IPO financing and advises on acquisitions, joint ventures and a wide range of other corporate and intellectual property law matters.

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The British Virgin Islands ("**BVI**") is a popular domicile for a variety of different types of collective investment schemes (i.e. investment funds) and investment managers. As of 31 October 2023, there were a total of 2,120 investment funds registered with the BVI Financial Services Commission ("**FSC**")"[1]. The BVI has long been seen as an attractive and sophisticated alternative to the Cayman Islands, as a jurisdiction for the establishment of investment funds and mangers, in part due to business-friendly environment and robust regulatory standards. In this article, I will look at interesting structuring trends and options in the BVI investment funds market, and look at a summary of the various key products available which contribute to its continued success.

> "The BVI has long been seen as an attractive and sophisticated alternative to the Cayman Islands.

In recent years, strategic initiatives and forward-thinking regulatory policies have propelled the BVI to introduce new products and legal changes, fostering growth in the investment funds market. This adaptability has attracted a broad spectrum of fund managers, from traditional asset managers to specialists in alternative investment strategies.

Diversity in Fund Structures:

One of the hallmarks of the BVI investment funds market is its flexibility in accommodating a wide array of fund structures. From open-end and closed-ended funds to hedge funds, private equity funds, and venture capital funds, the BVI offers a versatile regulatory framework that caters to the unique needs of different investment strategies. This diversity has been a crucial factor in the jurisdiction's appeal, allowing fund managers to tailor their structures to optimise tax efficiency and regulatory compliance.

The jurisdiction has proactively aligned its regulatory framework with global standards, enhancing transparency and compliance. This dedication to regulatory excellence has not only fostered trust among investors but has also contributed to the BVI's resilience in the face of a rapidly changing financial landscape.

Of great interest to us is how the BVI is increasingly serving as an excellent compliment to the Cayman Islands, and we are seeing greater client take up on hybrid Cayman-BVI products (covering both investment funds, and investment managers), as well as use of the BVI as an initial start-up zone or stepping stone for more heavily regulated and seeded Cayman products.

Recent key changes

As my colleague, Lucy Anderson discusses in her parallel article on "Key developments and the latest trends in the Cayman Islands", the Cayman Islands offers a highly sophisticated and regulated investment funds landscape. While the increasing regulation has allowed the Cayman Islands to maintain its status as the leading offshore jurisdiction, it has also made the threshold for entry quite high for new managers, with very little availability of exemption or low regulation products.

At the same time, the BVI has brought in certain products over the last few years (for example, the Incubator Fund and the Approved Fund) which solve for this. The set-up costs are much lower, and the regulation is sensibly lighter (subject to certain thresholds), and accordingly these products are increasingly attractive for new managers.

1. q3_2023_statistical_bulletin.pdf (bvifsc.vg)

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The Incubator Fund for example does not require the appointment of an auditor or a fund administrator, which are significant cost savings in the early days of a new launch. The Incubator has additional start-up features as set out below. Some key speed to market aspects are the lack of need to have a full offering document, and the fact that the Incubator Fund can commence business after two business days of submission of the application with the FSC.

The Approved Fund is a larger product, and the next in line after the Incubator Fund as a relatively low regulation option for start-up managers. Assets under management cannot exceed US$100,000,000, and an auditor is not required. However there is a requirement to have an administrator.

Closed-ended funds. The Incubator Fund and the Approved Fund are open-ended products. The closed-ended investment funds space has also seen recent legislative changes which have offered the BVI as a good alternative jurisdiction, particularly behind the backdrop of being a lower cost jurisdiction in terms of set up and on-going costs. In 2017, refreshed partnership legislation was introduced in the BVI. Partnership structures are the preferred and more common choice for closed-ended investment funds. The new legislation provides a flexible and modern structuring tool for closed-ended investment funds.

The BVI limited partnership regime contains certain refinements over and above those of certain other popular jurisdictions in the investment fund industry. For example non-domestic entities can serve as the general partner of a BVI partnership, and under the law a non-BVI entity does not need to first register as a foreign company in the BVI to be eligible to act as general partner of a BVI limited partnership (as is the need in some other jurisdictions).

Another key refinement is the ability for BVI limited partnerships to be formed with a separate legal personality – an option that is not available in some other competitor jurisdictions.

Approved Managers. Prior to the introduction of the Approved Manager regime, all BVI managers of open-end funds and closed-ended funds were required to be fully licensed.

The BVI recognised that the risks posed by start-up and existing mid-sized managers of both open-ended and closed-ended funds are generally acknowledged to be lower than for those managing larger sums of investor money, and therefore the application of the same regulatory requirements for all managers can lead to a disproportionate level of regulatory compliance costs for smaller managers. The Approved manager regime was introduced to address this problem, and it has become a popular choice. There were 782 managers registered under this regime at the end of October 2023.[2].

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> A BVI Approved Manager may act as an investment manager or investment advisor to open-ended and closed-ended investment funds.

The regime is popular due to economical incorporation costs, registration fees and ongoing maintenance costs. Furthermore, BVI Approved Managers are not currently subject to economic substance requirements, significantly lowering burden on smaller managers.

A BVI Approved Manager may act as an investment manager or investment advisor to open-ended and closed-ended investment funds. There are some specific limitations, however, which should be considered in each instance. For example, there are assets-under-management limitations: (a) US$400 million in the case of open-ended funds; and (b) aggregate capital commitments of US$1 billion in the case of closed-ended funds.

2. q3_2023_statistical_bulletin.pdf (bvifsc.vg)

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Trends

As a result of the above, we are seeing some key trends emerging.

1. Take-up of BVI start-up products

As I have described above, the BVI offers sensible light touch start-up options, and we are seeing increasing take-up on these products.

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> We are seeing increasing interest in setting up closed-ended funds in the BVI due to the amendments in the partnership law.

The BVI's reputation as a first-class jurisdiction has meant that fund managers and their investors are content to choose the BVI as a jurisdiction for launch.

2. Approved Managers

The Approved Manager regime has also proven to be an excellent product and solution for clients looking to establish an investment management entity offshore. This is particularly attractive for clients who are multi-jurisdictional in their make up (meaning where the principals are domiciled in multiple jurisdictions, and are looking for a neutral jurisdiction in which to establish their management entity).

3. Digital Asset Fund Managers

We are seeing increasing number of start-up funds and managers in the Digital Asset space, and such managers are increasingly attracted to the BVI for their investment fund launch because of the points set out in the paragraphs above. Moreover, often the principals, because they operate in the Digital Asset space, naturally come together from multiple jurisdictions and therefore look for an investment management solution in a neutral jurisdiction.

4. Closed-ended Funds

We are seeing increasing interest in setting up closed-ended funds in the BVI due to the amendments in the partnership law, and the versatility offered by this, and especially the ability to elect to have the partnership fund be registered as a separate legal entity.

5. Hybrid structures with the Cayman Islands

Two areas where we are seeing hybrid products launched (with products covering the Cayman Islands and BVI) are:

- *BVI Approved Managers with Cayman Islands Investment Funds*. As I have noted, the BVI Approved Manager regime offers a fantastic solution for investment management offshore. Therefore, fund managers launching Cayman Islands investments, are often pairing this with a BVI Approved Manager.

- *BVI start-up investment fund product feeding into a Cayman Islands investment fund* (which can take its own direct investors as well), and this may also be paired with an onshore feeder fund. This allows fund managers to take advantage of the more flexible start-up products in the BVI for smaller investors (especially friends and family) while also offering a Cayman Islands investment fund to larger investors, as part of the same structure.

A summary of investment structures in the BVI

Investment funds in the BVI are regulated by the FSC pursuant to the Securities and Investment Business Act ("SIBA"), the primary governing legislation of investment funds in the BVI, and its associated statutory instruments. In particular, SIBA provides a governing framework for five different types of open-ended fund products, along with one closed-ended fund product, and we set out a brief summary herein.

1. Open-Ended Funds

The BVI offers the following open-ended fund types (noting that all must be registered with the FSC, and that each has different qualifications):

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1.1 Incubator Funds

The key features, in summary only, of an Incubator Fund are as follows:

1. No more than 20 "Sophisticated Private Investors".
2. Initial investment for all investors of at least US$20,000.
3. Assets under management cannot exceed US$20,000,000.
4. Maximum lifetime of two years (with a possible extension of one year, by way of application to the FSC) after which the fund must be converted into a different product, or the business of the fund must be terminated.
5. Financial statements are required to be submitted, but they do not need to be audited.
6. The fund must appoint an authorized representative.
7. A summary of terms (or offering document in lieu) must be submitted to the FSC as part its application.
8. Can commence business after two business days of submission of the application with the FSC.

1.2 Approved Funds

The key features of an Approved Fund, in summary only, are as follows:

1. No more than 20 investors are permitted at any one time (investors do not need to be "Sophisticated Private Investors" or "Professional Investors").
2. There are no minimum subscription requirements.
3. Assets under management cannot exceed US$100,000,000.
4. No term limit.
5. Financial statements are required to be submitted, but they do not need to be audited.

3. The fund must appoint the following service providers:
    a. authorised representative; and
    b. administrator.

6. A summary of terms (or offering document in lieu) must be submitted to the FSC as part its application.
7. Can commence business after two business days of submission of the application with the FSC.

1.3 Professional Funds

The key features of a Professional Fund, in summary only, are as follows:

1. No limits on the number of investors. However, all investors must be "Professional Investors".
2. An initial investment for all investors of at least US$100,000 or a foreign currency equivalent (there are certain exemptions available).

4. No restriction on assets under management.
5. No term limit.
6. Audited financial statements are required to be submitted to the FSC within six months of the end of financial year.
7. The fund must appoint the following service providers (subject to certain exemptions):
    a. authorised representative;
    b. administrator;
    c. fund manager
    d. custodian; and
    e. auditor.
8. A summary of terms (or offering document in lieu) must be submitted.
9. Can commence business for a period not exceeding 21 days, and shall submit an application with the FSC within 14 days after the commencement of business.

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1.4 Private Funds

The key features of a Private Fund, in summary only, are as follows:

1. No more than 50 investors are permitted at any one time, or, this number may be exceeded if an invitation to subscribe for, or purchase, fund interests issued by the fund are made on a "private basis" only. Investors do not need to be "Sophisticated Private Investors" or "Professional Investors".
2. There are no minimum subscription requirements.
3. No restriction on assets under management.
4. No term limit.
5. Audited financial statements are required to be submitted to the FSC within six months of the end of financial year.
6. The fund must appoint the following service providers (subject to certain exemptions):
    a. authorised representative;
    b. administrator;
    c. fund manager;
    d. custodian; and
    e. auditor.
7. A summary of terms (or offering document in lieu) must be submitted.
8. Can commence business for a period not exceeding 21 days, and shall submit an application with the FSC within 14 days after the commencement of business.

> "The British Virgin Islands has undoubtedly carved a niche for itself in the global investment funds market.

1.5 Public Funds

The Public Funds regime is designed for retail funds, and therefore has significant regulatory requirements (which cannot be covered in this article).

2. Closed-Ended Funds

Closed-ended funds are registered under the PIF regime. The acronym is used to distinguish between these funds and the open-ended Private Funds.

The key features of a PIF are as follows:

1. Interests can be offered to either:
    a. no more than 50 investors; or this number may be exceeded if an invitation to subscribe for, or purchase, fund interests issued by the fund are made on a "private basis" only (investors do not need to be "Sophisticated Private Investors" or "Professional Investors"); or
    b. "Professional Investors" only.
2. There are no minimum subscription requirements.
3. No restriction on assets under management.
4. No term limit.
5. Audited financial statements are required to be submitted to the FSC within six months of the end of financial year.
6. The fund must have a person (referred to as an "appointed person") responsible for undertaking:
    a. the management of fund property;
    b. the valuation of fund property; and
    c. the safekeeping of fund property, including the segregation of fund property.
7. The fund must appoint the following service providers:
    a. authorised representative; and
    b. auditor.
8. A summary of terms (or offering document in lieu) must be submitted.
9. Can commence business for a period not exceeding 21 days, and shall submit an application with the FSC within 14 days after the commencement of business.

Conclusion and outlook

The British Virgin Islands has undoubtedly carved a niche for itself in the global investment funds market. The current trends, marked by recent revisions and additions to the product offering within the BVI, and a commitment to global regulatory compliance, position the BVI as a dynamic and forward-looking hub in the world of investment funds. While the BVI investment funds market has experienced significant success, it is not immune to challenges. Increased global regulatory scrutiny, geopolitical uncertainties, and the evolving landscape of international tax regulations will continue to require frequent adaptation and evolution, and we believe that the BVI is well positioned for this.

CAYMAN

Key developments and the latest trends in the Cayman Islands

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BIO

Lucy is a senior member of the firm's Corporate and Investment Funds team, and the principal of the firm's Australian operations. She works with clients primarily located in East Asia, the United States, and Australia, on matters concerning Cayman Islands and British Virgin Islands corporate law and investment funds law.

Lucy's corporate practice covers the full spectrum of corporate transactions, with a focus on preferred equity financings, mergers/acquisitions, restructurings, privatisations and IPOs. On the investment funds side, Lucy has extensive expertise in the formation of Cayman Islands investment funds, and advising on the associated ongoing legal and regulatory issues.

Lucy has been practising law for over 25 years, including 8 years as a partner of Travers Thorp Alberga. Lucy is also a senior tutor in corporations law at the Australian National University.

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ATTORNEYS-AT-LAW

Key developments and the latest trends in the Cayman Islands

Large streams from little fountains flow, Tall oaks from little acorns grow…[1]

To put the remarkable history of the Cayman Islands in perspective, it was not until 1966 that Grand Cayman welcomed its first telephone service.[2] Following this key event and others, years of hard work and entrepreneurship created the two pillars of the Cayman Islands economy – financial services and tourism.[3] In the present day, the gross domestic product of the Cayman Islands has reached US$6.84 billion,[4] and the value of Cayman Islands regulated open- and closed-ended funds is estimated at around US$7.5 trillion.[5]

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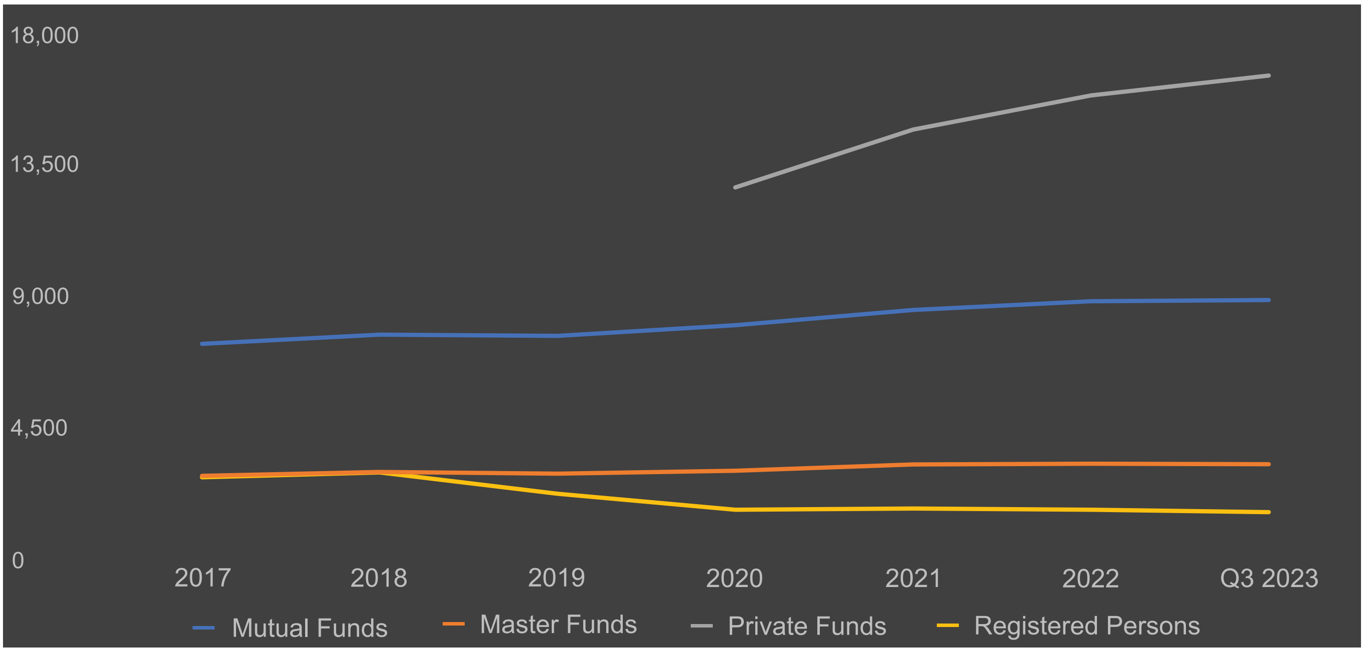
Over recent years, despite focused competition from other jurisdictions, the Cayman Islands has continued to be the leading offshore jurisdiction for the establishment of hedge funds, private equity funds and their advisors. Currently, there are around 9,000 open-ended investment funds, 3,000 master funds, and 16,500 closed-ended private funds regulated by the Cayman Islands Monetary Authority (CIMA).[6] There are also over 1,500 'registered persons' conducting securities investment business (typically, entities engaged in fund management and advisory services).[7]

Figure 1: CIMA registrations[8]



1. Version of a common proverb often attributed to D. Everett, in The Columbian Orator, 1797
2. Craton and the New History Committee, Founded upon the Seas: a History of the Cayman Islands and Their People, Ian Randle Publishers, 2003, p 355
3. For further reading, see Craton and the New History Committee, Ibid.
4. https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=KY
5. Molnar, Mansi and von Finckenhagen, 'Robust liquidity solutions for complex Cayman Islands fund structures' Fund Finance 2023, Seventh Edition, p 206
6. cima.ky/investment-statistics
7. cima.ky/securities-statistics
8. Underlying statistics from cima.ky/investment-statistics and cima.ky/securities-statistics

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Private funds were brought into the CIMA registration regime in 2020, and the growth in their numbers reflects the strong performance of private equity over the period 2020 to 2022. Registered mutual funds have shown more modest growth, evidencing the challenging conditions for hedge funds in what was, up to 2022, a low interest-rate environment. The number of registered persons (known as 'excluded persons' until 2020) has dropped since a peak in 2018. The most likely explanation for this is the introduction of the Cayman Islands economic substance (ES) requirements in January 2019, which imposed ES obligations upon Cayman Islands-domiciled fund managers (but not those engaged in an advisory-only role).

Overview of relevant laws

There are several Cayman Islands statutes that govern investment funds, including the Mutual Funds Act (MFA), the Private Funds Act (PFA), the Securities Investment Business Act (SIBA) and the Directors' Registration and Licensing Act (DRLA).

The MFA regulates open-ended funds in the Cayman Islands. A Cayman Islands-based pooled fund (whether formed as a company, unit trust or partnership) that offers redeemable equity interests to investors must register with CIMA under the MFA. In addition, certain trading subsidiaries of registered funds are defined as 'master funds' and are also required to register. The MFA was amended in 2020 to require previously exempt Section 4(4) funds ('15 investors or less' funds) to be registered.

Introduced in 2020, the PFA brought all closed ended funds (i.e., those that do not provide the investor with a right to redeem), including private equity funds, under a CIMA registration regime. A private fund is a company, unit trust or partnership that offers or issues investment interests, the purpose or effect of which is the pooling of investor funds with the aim of enabling investors to receive profits or gains from investments, where the investments are managed by or on behalf of the operator of the fund and investors do not have day-to-day control over the investments. Funds regulated under the MFA are specifically excluded from the scope of the PFA, as are 26 'non-fund arrangements', among them, joint ventures, proprietary vehicles, holding vehicles, preferred equity financing vehicles and individual investment management arrangements.

SIBA governs the registration and licensing of fund managers and fund advisors that are domiciled, or have established a place of business, in the Cayman Islands. Most Cayman Islands fund managers and fund advisors take advantage of the 'registered person' pathway under SIBA, which is available to (among others) those providing services to sophisticated and/or high net worth clients (including investment funds that meet this definition). Registration under this category is simpler and quicker than obtaining a full licence under SIBA, and has been the traditional route for fund managers and fund advisors for many years.

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The MFA was amended in 2020 to require previously exempt Section 4(4) funds ('15 investors or less' funds) to be registered.

The DRLA and its accompanying regulations require registration or licensing of directors of, among others, a registered Cayman Islands mutual fund. Non-professional directors (those acting for less than twenty of such entities) must be registered, and professional directors (those acting for twenty or more covered entities) and corporate directors, must be licensed. The registered office of the relevant fund will receive a unique identification number for each director of the fund. Registration or licensing is then undertaken by the relevant director via CIMA's web portal.

Directors of Cayman Islands funds that are structured as corporate vehicles, and directors of corporate general partners, are subject to common law directors' duties. These duties are derived from principles of English common law, which have been substantially confirmed by various decisions of the Courts of the Cayman Islands. Broadly, directors' duties fall into two categories: fiduciary duties, and duties of care and skill.

The anti-money laundering and combatting of terrorist financing regime of the Cayman Islands applies to all Cayman Islands-based funds. The regime also applies to fund managers, advisors and placement agents licensed or registered under SIBA. The regime requires the implementation of procedures for the identification and prevention of money laundering and the combating of terrorist and proliferation financing. In the case of Cayman Islands based funds, typically the procedures are delegated to the administrator or manager of the fund after suitability and legal review.

> "Fund structures may be as simple as a single legal entity, or comprised of multiple entities, such as a master-feeder structure, or a single fund entity that makes its investments through separate special purpose vehicles.

Additionally, Cayman Islands funds and SIBA registrants and licensees are required to have regard to financial sanctions in force in the Cayman Islands, which include all United Nations and United Kingdom sanctions.

Typical organisational forms

Cayman Islands funds may be formed as companies (including exempted companies, segregated portfolio companies and limited liability companies), partnerships or unit trusts. The choice of organisational form and the broader fund complex structure will be driven by the legal, tax, regulatory and marketing requirements of the fund promoter, the location of the investors and the nature of the target investments. The Cayman Islands legal and regulatory regime allows maximum flexibility in the structuring of funds to meet these commercial imperatives.

That said, hedge funds and other open-ended funds are usually structured as exempted companies, with the segregated portfolio company form sometimes being utilised where ring-fencing of assets and liabilities within separate cells is desirable. It is also certainly possible, and often preferred, to use an exempted limited partnership or a unit trust as an open-ended fund. Closed-ended funds, including venture capital and private equity funds, are usually structured as exempted limited partnerships because they offer the ability to make distributions more flexibly, in line with capital accounts arrangements. However, again, it is permissible and sometimes desirable to use another type of legal entity for a closed-ended fund.

Fund structures may be as simple as a single legal entity, or comprised of multiple entities, such as a master-feeder structure, or a single fund entity that makes its investments through separate special purpose vehicles.

Legal and regulatory developments

FATF:

In October 2023 the Financial Action Task Force (FATF) announced that the Cayman Islands had been removed from the FATF list of "jurisdictions under increased monitoring". This was the culmination of a process that began in 2021, when the FATF recognised that while the Cayman Islands had satisfied 60 of the 63 actions on its action plan to strengthen its anti-money laundering, counter-terrorism financing and counter-proliferation financing measures, it should be included on the FATF monitoring list pending completion of the final three measures. The Cayman Islands is now regarded by FATF as compliant or largely compliant with all 40 of the FATF's recommendations.

CIMA rules:

In 2023, CIMA published two new rules relating to internal controls and corporate governance, and a revised statement of guidance on corporate governance. The main implication of these changes was an expansion in scope from mutual funds, to both mutual funds and private funds. In addition, these changes rendered corporate governance 'failures' of investment funds capable of giving rise to substantial administrative fines under CIMA's administrative fining regime.

Further, investment funds, for the first time, became subject to a rule on internal controls. Investment funds were always under AML internal controls requirements pursuant to the Anti-Money Laundering Regulations and associated guidance; however, the new CIMA rule on internal controls goes to internal controls for the broader business and operations of regulated entities.

In acknowledgement of commercial realities, both new rules allow for proportionate application based on the size, complexity, structure, nature of business and risk profile of a regulated entity's operations. Further, CIMA recognises that the various documentation requirements may be satisfied via typical fund documents.

These changes also affect Cayman Islands-domiciled investment advisors.

De-registration of funds:

In 2022, CIMA changed its policy on the procedures for de-registration of funds, with the main change being to remove the interim 'Licence under Termination/Liquidation' options. These options previously enabled funds to receive a 50% reduction in CIMA's annual fees pending completion of a de-registration. Since the change, funds instead remain fully registered and liable for the full annual fee amount, until all the requirements for de-registration have been satisfied. The audit requirements for a de-registering fund are strict, with a registered fund being required to submit audited financial statements either from the date of the last financial year-end to the date of the final distributions to investors, or from the date of the last financial year-end to the date of the final net asset value calculation. In limited circumstances, an audit waiver may be available.

Cases:

The Grand Court of the Cayman Islands tries most types of civil disputes. The Financial Services Division of the Court was established in 2009, in order to handle more complex civil cases arising out of the financial sector. Special procedures were adopted by the Financial Services Division in acknowledgement of the needs of litigants in this area. Decisions of the Grand Court may be appealed, first to the Cayman Islands Court of Appeal, with the final appellate level being His Majesty's Judicial Committee of the Privy Council.

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In 2023, CIMA published two new rules relating to internal controls and corporate governance, and a revised statement of guidance on corporate governance.

In the recent Financial Services Division case of *Aquapoint LP v Xiaohu Fan CICA 14 of 2022, unreported 4 October 2023* (in which Travers Thorp Alberga acted for the successful petitioner), the Court of Appeal, upholding Justice Doyle's first instance decision, confirmed that the Court has jurisdiction to wind up an exempted limited partnership upon the presentation of a just and equitable petition by one of the limited partners. The Court emphasised that whether it is just and equitable to wind up a partnership (or a company) will depend heavily on the facts and the evidence before the Court, however in this case the conflicts of interest in the general partner's decision making was a key factor in Justice Doyle's decision to grant the petition. The Court's comments on conflicts of interest and the importance of proper compliance with local requirements will be of particular relevance to directors acting on behalf of general partners, and continues the trend of the Cayman Islands Courts enforcing limited partners' rights in recent cases.

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Also of note is the 2023 decision of the Judicial Committee of the Privy Council, *FamilyMart China Holding Co Ltd v Ting Chuan* (Cayman Islands) Holding Corporation [2023] UKPC 33, which concerned the interaction of the Cayman Islands statutory winding up provisions, and those relating to arbitration. It was held that, while the winding-up of a company is exclusively to be determined by the Grand Court, there may be elements within a winding-up that can be referred to arbitration, notwithstanding that winding-up proceedings remain extant.

> "By far the most popular structure for venture capital, private equity and other less-liquid alternative assets is the exempted limited partnership.

Fund strategy trends

Naturally, fund investment strategies are very sensitive to market conditions. Investment strategies adapt in response to, and in anticipation of, developments in global markets, major political events and macro-economic factors. Examples are the growth of continuation funds and private credit funds in recent years. Continuation funds are created by private equity managers in order to acquire their own funds' portfolio companies, thereby creating liquidity for investors, and they also offer the benefit of enabling managers to hold on to investments for longer, with the aim of improving returns. A private credit fund is an investment fund that makes loans, ranging from senior secured debt to junior unsecured loans, challenging traditional institutional lenders in this market, which is estimated to be worth US$1.4 trillion globally.[9] The Cayman Islands supports such innovation, and imposes no limitations on the investment strategies that funds may adopt.

Fund structuring trends

In contrast to investment strategy, the preferred choice of legal structure is more static and, for the most part, not influenced by market developments. In the structuring of Cayman Islands funds, many considerations are relevant, although familiarity remains of prime importance to promoters and investors. For that reason, most fund managers tend to adopt a market-standard legal structure, which is slow to adopt change.

An example of such market preference for maintaining the status quo is the introduction of limited liability companies (LLCs) in the Cayman Islands in 2016. A Cayman Islands LLC is a body corporate with separate legal personality, which confers limited liability upon its members. Upon introduction, the LLC form was of great interest to funds lawyers because it has many flexible features, while retaining legal and equitable concepts familiar to users of Cayman Islands exempted companies and exempted limited partnerships. The Limited Liability Companies Act was in-part modelled on the Delaware equivalent legislation. For that reason, LLCs can enable the establishment of an offshore fund vehicle that is a close parallel to an existing Delaware counterpart. However, currently only 218 out of 16,500 registered private funds are structured as LLCs, showing general hesitancy in the market to adopt novel legal forms for fund vehicles, even where there may be many benefits to doing so.[10]

As previously noted, by far the most popular structure for venture capital, private equity and other less-liquid alternative assets is the exempted limited partnership. A trend that continues strongly, especially for start-up fund managers, is the use of a simple and efficient version of this structure. In this model, typically the general partner of the fund will be a Cayman Islands exempted company, and there will be no separate investment manager in the structure. The benefits of this way to organise a smaller fund are that it is simple – which minimises costs – and it is well-understood and recognised in the market. There is also a cost saving in having the general partner hold management discretion over the investment of the fund's assets, as opposed to establishing a separate regulated entity for this purpose. The key documents for this type of fund are an exempted limited partnership agreement and a subscription agreement. An offering memorandum is not essential for a private fund, as certain limited mandatory disclosures may be simply attached to the subscription agreement.

9. https://www.morganstanley.com/ideas/private-credit-outlook-considerations
10. There has also been no significant use of Cayman Islands foundation companies (introduced in 2017) as investment funds, although they are a popular choice for decentralised autonomous organisations (DAOs).

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He is a member of the Cyprus Bar Association and Lincoln's Inn, Inns of Court (Barrister at Law).

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I. OVERVIEW

When considering traditional funds jurisdictions, Cyprus was not usually a destination that comes on the top of the list; however, the island nation located in the eastern Mediterranean sea, completely changed its funds regulatory landscape in the mid-2010s by enacting new legislation (including the transposition of the UCITS Directive and AIFMD into local law) and switching regulators from the Central Bank to the Securities and Exchange Commission (the "CySEC") and the rest as they say, is history. Since 2018, Cyprus investment funds were further enhanced and regulated with the revision and amendment of the 2014 framework on alternative investment funds, the Alternative Investment Funds Law 124(I)/2018 (the "AIF Law") which also introduced the registered alternative investment fund (the "RAIF"). The sector was thus made more attractive to both local and foreign players whom placed their trust in Cyprus, as evidenced by the total number of management companies and undertakings in collective investments, which has doubled since the overhaul.

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> Alternative investment funds invest in diverse sectors, with assets under management being primarily invested in private equity and real estate.

According to the CySEC Management Companies and Undertakings of Collective Investments Sector Quarterly Statistics for the third quarter of 2023 (published January 2024), the majority of assets under management are in alternative investment funds (94.4%) with the remaining being in UCITS. Alternative investment funds invest in diverse sectors, with assets under management being primarily invested in private equity and real estate. Other alternative sectors are also popular, with (a) 7.02% of assets under management being invested in shipping, (b) 6.22% in energy, and (c) over 3% in fintech and sustainable investments. 73% of assets under management are invested abroad, with the remaining 27% being invested locally, conveying the fact that Cyprus is becoming a jurisdiction of choice for cross-border investments, a feature which was traditionally reserved and implemented from funds established in more conventional funds jurisdictions. The investor base for UCITS is retail (99.2%) while for alternative investment funds, investors are predominantly well-informed investors (68.1%) and professional investors (20%), with the remaining 12.7% comprising of retail investors.

In addition, Cyprus is a democracy, a fully-fledged European Union member and a commonwealth country, has a hybrid legal system stemming mainly from common law but also adapting certain continental law aspects, while simultaneously complying with EU legislation and regulations. It follows International Financial Reporting Standards and has a cost-effective tax environment supported by over 60 Double Tax Avoidance Agreements. The result is a flexible system in which legal, accounting and financial practices adapt to and complement each other, to the benefit of the local practices and economy, while simultaneously being attractive to foreigners due to its effectiveness and lack of rigidity and complexity.

II. THE REGISTERED ALTERNATIVE INVESTMENT FUND

It was expected that the RAIF would be a popular choice for fund managers, due to its quick and convenient registration process, as the vehicle does not undergo separate authorisation scrutiny by the regulator. Once the RAIF is registered as an investment company or limited partnership with the Cyprus Registrar of Companies, or if structured as a common fund its common fund rules are drafted, the external manager (the RAIF is always externally managed) submits to CySEC within one month the RAIF documents, and information about its investment strategies, for the purposes of registration of the RAIF in the relevant CySEC register. This has been proven to be true, as since their introduction, registration of RAIFs being on the rise on a year-to-year basis. 2023 was a record year, with the registration of 26.6% of the currently existing RAIFs, while in 2022, 22.2% of the RAIFs were registered.

Entities that can act as an external manager are: (a) a licensed AIFM (of Cyprus, or another EU member state, or of a non-EU state passporting its services in accordance with the AIFMD rules and having determined an EU member state as its state of reference), or (b) a non-AIFM entity, being a UCITS Management Company, or AIF Manager (other than AIFM) licensed in Cyprus or another Member State to manage the investments of an AIF (provided that assets under management do not exceed AIFMD thresholds) or a Cyprus Investment Firm (or MiFID-compliant firm under the relevant national law), only if the RAIF in question is established as a closed-ended limited partnership (with or without a separate legal personality), and with at least 70% of its assets being illiquid.

RAIFs are very flexible in terms of structuring, the investment policies that they can pursue and the assets in which they may invest. They may be set up in corporate form (variable capital or fixed capital investment company), or contractual form (limited partnership, with or without legal personality, and common fund). All forms may be set up as single schemes, or with more than one investment compartments, each compartment having the ability to pursue different objectives and policies, and to hold different assets. Investment compartments are segregated between them, with investors' rights deriving only from the assets of the compartment in which they invested. An investment compartment may also issue shares of different classes, with the ability of each such class to have different features or rights or obligations, inter alia with regard to their fee structure, distributions, currency, lock-up period duration, or to be offered to different types of eligible investors for the purposes of compliance with various or specific jurisdiction legislation. Classes will be commonly invested and there is no ring-fencing between them.

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> RAIFs are very flexible in terms of structuring, the investment policies that they can pursue and the assets in which they may invest.

Minimum capital requirements apply when the RAIF is managed by an AIFM, as it must raise from investors at least €500,000 worth of capital in the first 12 months following its registration, and in case of multiple investment compartments, such obligation applies to each such compartment.

RAIFs must always have a depositary, which may be: (if the external manager is an AIFM) a Cyprus credit institution, Cyprus investment firm (subject to own funds and capital adequacy requirements, and being authorised to provide ancillary services of safekeeping and administration of financial instruments), or another category of institution which is subject to prudential regulation and falls within the institution categories determined by EU Member States to be eligible depositaries. If the RAIF is classified as closed-ended (meaning that there are no redemption rights for 5 years) and generally invests in assets which are not subject to safekeeping, the depositary may be an entity which carries out depositary functions as part of its professional or business activities in respect of which such entity is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct, and which can provide sufficient financial and professional guarantees to enable it to perform effectively the relevant depositary functions and meet the commitments inherent in those functions (the "Eligible Depositary"). If the external manager is not an AIFM, the depositary may be a credit institution, or investment firm, or another category of institution which is subject to prudential regulation and ongoing supervision and further falls within the categories of institution which have been defined by their home state as eligible to be a depositary. If the RAIF invests in assets which are not subject to safekeeping, it may appoint as depositary an entity carrying on business of a depositary within the scope of its activities and is subject to registration and may provide adequate monetary and professional guarantees. Such depositary must have its registered office in Cyprus or another Member State, or a third country provided that the CySEC has signed a memorandum of understanding and exchange of information with the competent authorities of such third country.

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> In November 2023, the Cabinet of Ministers of the Republic of Cyprus approved the draft bill establishing the legal framework for the set up and regulation of fund administrators.

Eligible investors of RAIFs are professional investors (as defined under MiFID) and well-informed investors (as defined in the AIF Law).

III. UPCOMING ENACTMENT OF THE LEGAL FRAMEWORK ON INVESTMENT FUND ADMINISTRATORS

In November 2023, the Cabinet of Ministers of the Republic of Cyprus approved the draft bill establishing the legal framework for the set up and regulation of fund administrators. The bill will be brought to the Cyprus Parliament, to be eventually passed into law. The rationale for the enactment is to further enhance the funds industry and market integrity, with a uniform, regulated service which shall further be subject to ongoing supervision. It also aims to provide further security to investors while attracting fund managers, who may, by obtaining services from a licensed and regulated fund administrator, redirect their resources to the amplification of their main activities, such as portfolio and risk management.

Although administrative services may be undertaken by the external manager or the fund itself, they are ancillary, or back-office activities and for such reason they tend to be delegated to a fund administrator. In order for a provider to conduct such activity, especially since certain services are viable to the fund's operations (such as monitoring liquidity risk, monitoring redemption requests, ensuring fair treatment between investors), the Cyprus funds industry identified the need for legally requiring the providers of such services to have and/or maintain adequate expertise, experience and resources. In addition, an administrator is vital in the proper flow of information and communication between the fund, the administrator, the external manager, the depositary and the investors, and for such purposes there need to be proper systems and controls, and business continuity arrangements in place. There was a degree of regulation of the fund administration service, as the services tend to be offered by persons or firms regulated by their relevant professional bodies or the Administrative Service Providers law (the regulatory body being the CySEC) however the regulation of, and the introduction of clear organisational, operational bespoke rules for fund administration services has been long desired by the sector, as persons operating in the funds industry have identified the lack of regulatory and operating framework for fund administrators as an industry disadvantage.

Under the law, licensed fund administrators will be able to provide services to both AIFs and UCITS, AIFMs, sub-threshold fund managers (both local and foreign). It will also be possible for a fund administrator to obtain authorisation to offer additional services in order to provide the services of a depositary for closed-ended alternative investment funds (with a lock-up period of five years) whose assets are not subject to safekeeping (for example private equity); this being in line with the AIF Law provisions allowing for Eligible Depositaries (as the term is described above) to perform depositary functions.

Minimum capital requirements will apply, in a fixed Euro amount plus an additional professional indemnity insurance and a pre-calculated business continuity cost.

IV. OTHER DEVELOPMENTS THAT INDIRECTLY RELATE TO THE FUNDS INDUSTRY

A. TAX BENEFITS FOR HIGHLY SKILLED INDIVIDUALS

There is no doubt that in Cyprus, personnel is highly skilled and competent, with the majority of the people employed in the legal, accounting and financial sectors having received higher institution education and continuous practice development in their chosen sectors, over the course of their employment.

At the same time, the Cyprus markets and governing bodies are always eager to attract highly trained, educated, experienced persons (and in extent their families) (including both non-Cypriots, and repatriated Cypriots working abroad) to work from Cyprus.

Incentives include certain income tax exemptions on employment income for non-Cypriot individuals ("NCIs") for relocating to Cyprus for employment. 50% of the remuneration from employment within Cyprus is exempted for 17 tax years, provided that the NCI was not a Cyprus resident for at least 15 consecutive years immediately prior to the commencement of their first employment in Cyprus and the income exceeds €55,000 per annum. The exemption is granted for any year during which the remuneration exceeds the threshold, irrespective of whether during any year the remuneration fell below the threshold, provided that during the start of their employment, the NCI's remuneration exceeded the threshold and the Tax Commissioner is satisfied that the fluctuation in income is not the result of an arrangement seeking to avail from the exemption. Additionally, NCIs who were resident outside Cyprus, or were employed outside Cyprus by a non-Cypriot employer for at least three consecutive years before the commencement of their employment in Cyprus, can avail from a tax exemption on 20% or €8,550 (whichever lower) of remuneration from their employment in Cyprus. The NCI will need to commence employment in Cyprus after July 2022, and starting from the tax year following the year of employment, can avail from this exemption for seven years. It needs to be noted that an NCI benefitting from one of the exemptions set out in this paragraph, cannot concurrently avail from the other exemption.

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> Incentives include certain income tax exemptions on employment income for non-Cypriot individuals ("NCIs") for relocating to Cyprus for employment.

Exemptions may be available from contributing to the Cyprus social insurance scheme for some time, to expatriate EU nationals who commence their employment in Cyprus (starting from 01st January 2024, the social insurance contributions are at a rate of 8.8% of the employee's gross income, which maxes out on the annual income of €57,408). Employees and employers are also subject to contributions to the General Healthcare System at 2.65%, while employers contribute an additional 2% to the Social Cohesion fund.

A person who is non-domiciled in Cyprus (irrespective of their tax residency status) is exempt from tax on dividend and interest income, any gains arising from the disposal of shares, bonds and other similar financial instruments (including options and rights thereon), subject to contributions to the General Healthcare system at 2.65% for trading income only. Further, Cyprus does not impose any estate duty, wealth tax, gift tax or inheritance tax.

> "Cyprus remains committed to strengthen and promote the funds industry.

B. DOUBLE TAX TREATIES

Cyprus has a range of double tax avoidance treaties with various jurisdictions, including (but not limited to) Canada, Ireland, Luxembourg, the Netherlands, Saudi Arabia, South Africa, Switzerland, the UAE, the United Kingdom, the USA. Under certain conditions, these can provide for a nil or reduced withholding tax rates on certain aspects.

In December 2023, the double tax treaty between Cyprus and France was updated, demonstrating the intentions of the two countries to further enhance trade and economic ties between them, safeguarding fairness and equitability, and aims at further promoting Cyprus as an international business centre.

V. CLOSING REMARKS

Despite various setbacks in the funds and investments sectors, following recovery from the local pandemic and recent geopolitical unrest, the nation remains committed to strengthen and promote the funds industry, by being at the forefront of the sector's developments and needs, and adapting to the same at a quick pace. Cyprus's small size has proven to be working to its benefit as the local sectors and their regulators have a more direct relationship, and each is quick to listen to and respond to the requirements and needs of the other, shown in the surge of registrations of alternative investment funds as well as the upcoming enactment of the fund administrators' law, a long-standing request from the funds industry. Combined with its flexibly legal system, attractive tax environment and plethora of highly skilled and expert professionals throughout various sectors of the economy, Cyprus has put itself on the map as an attractive destination to structure investment vehicles, investment managers and their service providers.

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BIO

Ralf Brenner is a banker and lawyer, he has worked as Head of Legal and Compliance and as an anti-money laundering officer since 2006. He has also been a managing director at Société Générale Securities Services GmbH since the beginning of 2018. Ralf Brenner joined GSK Stockmann in 2021 and advises asset managers, banks and funds providers on regulatory issues as well as outsourcing. Furthermore, he supports foreign asset managers, particularly in the Master-KVG business.

In his 20 years as an in-house expert, team leader and head of entire departments within legal and tax divisions of asset management firms, he has gathered extensive experience in consulting on and implementing regulatory issues, in particular under the German Investment Code (KAGB), the German Banking Act (KWG) and the German Securities Trading Act (WpHG), including responsibility for the establishment, re-licensing and takeover of asset management firms (M&A).

GSK
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2022 marked a turning point for the asset management industry in Germany. The war in Ukraine, together with the energy crisis, inflation and rising interest rates on the stock and bond markets, has led to significant price declines. As a result, the sector has been undergoing a massive transformation in response to challenges such as fee pressure, rising costs and shifting investor preferences, including growing interest in alternatives, thematic investment needs and digital engagement preferences in 2023. These challenges have been worsened by an economic environment characterised by market volatility as well as specific crises like in the digital assets market.
The following trends and factors will play a key role in developments in 2024:

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> Asset managers have to incorporate ESG factors into their investment decisions.

1. Increased Automation

Automation is revolutionising global asset management, and the story is not different in Germany. Artificial intelligence, machine learning, and robotic process automation are increasingly being harnessed for functions such as risk assessment, pattern-based predictions, and routine management tasks. This helps to eliminate human errors, optimise processes, and enhance efficiency. However, it is crucial that asset managers ensure transparency and ethical use of these technologies to mitigate any unfair practices. The financial services industry has been on a journey over the past five to ten years to implement digital operating models. Unfortunately, most asset managers are lagging behind. However, due to the impact of COVID-19 and the explosion in fintech, there is a new sense of urgency to implement and improve digital operating models.

2. Sustainable Investing

Interest in sustainable or ESG (environmental, social and governance) investing has been growing and is now becoming more and more mainstream as investors are becoming aware of the impact of their investments on the environment and society as a whole. Asset managers have to incorporate ESG factors into their investment decisions. The implementation is still the biggest challenge due to unclear and changing regulations and missing data.
Channelling capital based on ESG factors has an impact: “It creates pressure on companies to disclose more about what they're doing and to potentially also change their practices,” says Ioannis Ioannou, a professor of sustainable investment at London Business School[1] and a visiting professor at Miami Herbert University.
Sustainable investing is on the rise globally, with assets under management having surged from USD 30.7 trillion in 2018 to USD 35.3 trillion in 2020, according to the Global Sustainable Investment Alliance.[2]

3. Data-driven Decisions

The use of big data and predictive analytics in investment decisions is expected to continue to expand. Having access to real-time data and analytics enables asset managers to make more informed decisions and improve returns. Data is also key to successfully implementing ESG. According to McKinsey,[3] leading firms are applying advanced analytics throughout the entire asset management value chain—with real-world results.
More and more asset managers are applying these tools to improve distribution effectiveness, investment performance, and productivity in their middle and back offices.

1. https://www.europeanbusinessreview.eu/page.asp?pid=5806.
2. https://www.weforum.org/agenda/2022/02/sustainable-investing-esg-finance-future-norm/.
3. https://www.mckinsey.com/industries/financial-services/our-insights/advanced-analytics-in-asset-management-beyond-the-buzz

4. Personalised Services

Digital platforms and technologies are enabling a shift toward more tailored services in asset management. These tools allow asset managers to create individualised investment strategies based on clients' unique goals and risk tolerance. Delivering personalised experiences can enhance client satisfaction and loyalty. Again, balancing this personalisation with robust data security measures is imperative.

5. Cybersecurity

As the reliance on digitalisation increases, so does the importance of cybersecurity. Asset management firms need to take robust measures to protect clients' sensitive information and guard against potential cyber threats. Unfortunately, cyberattacks are also part of the digital future. An investment in advanced cybersecurity technologies, employee training, and establishing a culture of security is key to maintaining trust and confidence among clients. A wide pool of technologies and procedures are available to mitigate the impact of potential cyberattacks.

6. Regulatory Changes

The asset management industry is already heavily regulated and changes in these regulations have an impact on trends. Asset managers will need to stay up-to-date on any changes within this challenging regulatory landscape, which is driven by general topics such as ESG and the Retail Investment Strategy in addition to industry-specific issues, namely effects from the Alternative Investment Funds Directive (AIFMD), the Regulation on European Long Term Investment Funds (ELTIF) as well as the Undertakings for Collective Investments in Transferrable Securities Directive (UCITS). In addition, asset managers in Germany are faced with local developments.

Over recent years, asset managers have faced a significant volume of new **ESG regulations** and requirements, and evolving interpretations of these rules. These companies are seeking to meet their clients' evolving preferences and expectations, while minimising regulatory and reputational risks.
Within the context of ESG regulation, the potential for greenwashing remains one of the main concerns for regulators. This concern is reflected in a variety of new rules and disclosure requirements. However, all of these new rules depend on or presuppose a common understanding of what is meant by the term "sustainable".

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> Digital platforms and technologies are enabling a shift toward more tailored services in asset management.

The regime under the Sustainable Finance Disclosure Regulation (SFDR) remains a work in progress. Asset managers need to adopt a coherent and comprehensive approach to monitoring, understanding and implementing further regulatory guidance.
In addition, the legislator will have to decide if reporting standards will adhere more closely to the SFDR approach or the Corporate Sustainability Reporting Directive (CSRD).

In addition to disclosure requirements, the EU was the first out of the blocks with the development of a sustainability label (Ecolabel) for investment products, but it has delayed issuing a formal proposal. Around Europe there is a common focus on fund names and the use of ESG terms. The outcome of the latest proposals will require fund managers to review their products and documentation.

The European Securities and Markets Authority (ESMA) has proposed guidelines on fund names. It does not intend for the guidelines to interfere with existing requirements under the SFDR or the EU taxonomy, but it has proposed quantitative thresholds with minimum investment holding requirements in the case of EU funds using ESG- or sustainability-related words in their names. Any SFDR Article 6 funds using ESG-related terms will be particularly impacted by the proposals.

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> As the work of the International Sustainability Standards Board progresses, many jurisdictions are introducing mandatory reporting on climate risks for listed corporations.

In the meantime, some member states have implemented their own requirements.

EU firms have been required to embed sustainability considerations in their day-to-day operations. ESMA guidelines on suitability and on product governance to complement the underlying rules have also been finalised. In addition, the EBA has published a report that sets out how regulators should incorporate ESG risks in their supervisory approach.

As the work of the International Sustainability Standards Board progresses, many jurisdictions are introducing mandatory reporting on climate risks for listed corporations, but with different timeframes and with different sizes and types of companies effected. Without alignment, it will remain challenging for managers to gather the data and information they need regarding their investments for the purposes of making such disclosures.

Following a 2021 consultation, the European Commission has published proposals for an EU “**Retail Investment Strategy**” as part of its Capital Markets Union initiative. The proposals aim to modernise and streamline the investment framework in order to increase trust, transparency and investor participation. Notably, the ESMA and the European Insurance and Occupational Pensions Authority (EIOPA) will have important roles to play, with increased powers and resources.

The Commission’s initial considerations, including the introduction of a “semi-professional” client category and a potential ban on inducements, have been debated and discussed in industry circles. In the case of the former, the Commission has proposed only a small number of adjustments to the definition of professional client. In the case of inducements, the Commission is now proposing only a partial ban. However, various other amendments to enhance investor protections have been proposed, including a form of “value for money” assessment. Given the provisions would apply only 18 months after the amendments enter into force, as well as the scale of the proposed changes, the implementation timeline is likely to be challenging.

A wide range of firms will be impacted by the proposals, including fund, wealth and asset managers, banks providing retail investment services, insurers offering investment products, platforms, investment advisers and retail brokers.

The proposals take account of the ESMA’s recent opinion on considering “undue” costs in UCITS and AIFs, including assessing the eligibility of costs, developing a structured pricing process that has to consider various factors, and reimbursing investors in a timely manner, where required. MiFID and IDD firms will also need to implement a structured pricing process. Notably, the ESMA and EIOPA would be given a mandate to regularly update cost and performance benchmarks, against which manufacturers would need to compare their products before offering them on the market. New reporting obligations on costs and charges would feed these publicly available benchmarks, although the goal is to base the reporting requirements on existing data where possible. In addition, aspects of the product governance requirements (e.g., on the product approval process) will be amended.

5. CP155 - Consultation paper on ELTIF chapter in the AIF Rulebook
6. Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

Firms would need to display risk warnings for "particularly risky" products (to be defined by the ESMA and EIOPA); disclosures would be provided in electronic format by default (aligning IDD requirements with MiFID); firms would have to provide a new annual statement to clients; there would be a standardised format for presenting information on costs, associated charges and third-party payments; and a standard disclosure document would be introduced for life insurance products.

New obligations on marketing communications are being considered, such as the requirement for management bodies to define, approve and oversee a policy on marketing communications, a clearer division of responsibility between manufacturers and distributors, and enhanced record-keeping requirements.

Changes to MiFID for clients requesting to be treated as "professional" would include reducing the minimum wealth criterion from EUR 500k to EUR 250k, and adding a new criterion for professional experience and education.

New requirements to strengthen the knowledge and skills of investment advisers and wealth managers, including maintaining these through continuous yearly training and development (to be evidenced with a certificate).

Adapting the advice suitability and appropriateness test requirements: New obligations (such as explaining the purpose of the assessment in a clear and simple way) and expanding the appropriateness test to encompass the client's risk tolerance and capacity to bear full or partial losses. Notably, a streamlined suitability assessment is envisaged where firms could provide advice on a limited range of diversified, non-complex and cost-efficient financial instruments.

Tackling bias in the advice process: A ban on manufacturers paying inducements to distributors for execution-only sales (i.e., no ban on advised sales — though this position could be reviewed three years after the proposals come into force), rules to "further substantiate" the need for firms to act in their clients' best interests, and new tests for advisers to consider when recommending products.

Strengthening supervisory enforcement: New powers would be given to national competent authorities to act in cases where investors may be harmed (for example, to take swift action against misleading market practices and carry out "mystery shopping" exercises), and to introduce reporting on cross-border services.

Promoting financial literacy: Member states would be required to promote measures to improve the education of retail clients.

Amendments to the PRIIPs Regulation: In addition to the above changes that will be brought about through a new directive, the Commission has proposed amendments to the PRIIPs Regulation. They include changes to the PRIIPs Key Information Document (KID) such as introducing a new section ("product at a glance"), removing elements that are not considered effective (e.g. the "comprehension alert"), and the addition of a new sustainability section that builds on existing ESG disclosures ("how environmentally friendly is this product?"). There are also measures to modernise and simplify the KID and a preference for electronic formats.

The Commission's proposal has already been debated in the Committee on Economic and Monetary Affairs (ECON) of the European Parliament and is highly disputed. It will have to be further debated, negotiated and agreed between the European Parliament and the Council, which could result in various amendments to the proposals. The Commission is assuming the legislation will enter into force in 2025. In the meantime, some may question whether the proposals go far enough to improve retail customer outcomes, but others may argue that some developments are better than none.

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The Commission's proposal has already been debated in the Committee on Economic and Monetary Affairs (ECON) of the European Parliament and is highly disputed.

In Germany the asset management industry faces an additional challenge, as the German regulator wants to **digitalise the reporting process** for the industry by using the existing reporting tools of the German regulator, which more than anything else will mean more work for asset managers.

The European Commission has adopted proposals to **amend** the **AIFMD** and the **UCITS Directive**. These proposals include the harmonisation and tightening of the minimum substance requirements for AIFM and UCITS management companies, new liquidity management requirements for UCITS and open-ended AIFs, targeted amendments to rationalise the requirements for depositories and new eligibility, conduct and reporting requirements for AIFs that engage in lending. There is no mention of the long-promised AIFMD passport for non-EU AIFMs. Non-EU AIFMs operating under the Article 42 AIFMD regime should be aware that some of the new requirements will apply to them.

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> The digital revolution, coupled with the rise of AI and machine learning, has set the stage for a more efficient era of asset management.

The Commission has amended the **ELTIF Regulation** as it was noted that the advantages of ELTIFs were diminished by restrictive fund rules and barriers to entry for retail investors. The Commission’s amendments aim to increase the popularity of ELTIFs among retail investors by broadening the scope of eligible investments, reducing barriers preventing retail investors from accessing ELTIFs and easing the rules restricting fund distribution solely to professional clients. The first new products were already launched in the beginning of 2024.

7. Conclusion

The digital revolution, coupled with the rise of AI and machine learning, has set the stage for a more efficient era of asset management. However, the emphasis on automation will not decrease the need for human expertise. Rather, it will change the nature of expertise required, with a greater focus on data analysis, ethical considerations, and AI oversight.

The rise of ethical investing calls for a holistic approach where investments are not just financially but also socially and environmentally profitable. Cultivating such an environment will not only help guard against the existential threat of climate change but can also unlock new markets and opportunities for growth.

The focus on big data and predictive analytics enables a proactive approach to decision-making. Asset managers are poised to better understand the market trends and their clients’ individual needs. However, the ethical use of data will be of paramount concern. Ensuring that data is handled responsibly and securely encourages trust and fosters long-term client relationships.

The customisation of services, facilitated by digital platforms and technology, is another trend tailored to improve customer satisfaction. However, asset managers must balance personalisation with data security concerns to protect clients’ interests and maintain their trust.
Lastly, the potential regulatory changes in a post-COVID-19 world require a high degree of adaptability. Staying up-to-date with regulatory shifts and demonstrating flexibility in business strategies will be key factors in surviving and thriving in this dynamic ecosystem.

In conclusion, asset managers in Germany who can successfully navigate these trends are the ones who will be best positioned in 2024. Importantly, the evolution of asset management in Germany will hinge not just on the adoption of new technologies but on mitigating their risks and leveraging their potential responsibly. Asset management is about to enter a digital, sustainable and data-driven era, filled with potential for innovation and rich in opportunities for those ready and willing to adapt.

IRELAND

Ireland well placed to meet growing demand for private assets

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Colin regularly advises on the taxation implications of cross-border alternative investment structures as well as corporate group investments and divestments. Colin is the Head of Financial Services Tax for PwC Ireland and the PwC Ireland Financial Services tax policy leader.

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Laura is an international tax director in the PwC Ireland Asset and Wealth Management tax practice with over 10 years experience in Financial Services.

Laura has a broad range of experience across the financial services sector and advises private equity funds, hedge funds, sovereign wealth funds and pension funds on international tax structuring projects. Laura regularly advises on the taxation implications of cross-border investment using all forms of Irish investment platforms including both regulated and unregulated fund and limited partnership structures.

Laura worked on the Irish tax desk in PwC New York where she advised Global asset managers and multi-national groups on Irish corporate and product tax structuring.

She is an active member of the Irish Debt Securitisation Association tax working group, the Irish Funds ELTIF working group and the Invest Europe Tax Committee working group.

Laura is a qualified Chartered Accountant with the Institute of Chartered Accountants in Ireland and a member of the Irish Taxation Institute.

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Ireland Overview

Ireland has long been renowned as a key location from an asset management perspective, offering a full suite of locally domiciled solutions and acting as a gateway to Europe for asset managers. It is the fastest growing major European domicile for funds and accounts for 19.1% of all European fund assets.[1] As of October 2023, the total number of regulated investment funds domiciled in Ireland reached 8,764, with net assets totaling over €3.8 trillion.[2] Similarly, in an unregulated context, assets held by Irish Special Purpose Vehicles reached the highest amount on record in Q3-2023, surpassing €1.1trillion.[3] Ireland is a major hub for cross border distribution and Irish funds are sold in 90 countries across Europe, the Americas, Asia and the Pacific, the Middle East and Africa. Over 1,000 fund promoters have chosen Ireland to domicile and/or service their fund structures.[4]

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> Ireland is the fastest growing major European domicile for funds and accounts for 19.1% of all European fund assets.

Housing traditional 'long only' to more bespoke alternative strategies, and everything in between, Ireland offers innovative product solutions to cater to a broad range of investment strategies. Ireland continues to prove popular as a domicile in the alternatives space being at the forefront of product innovation to cater for the more complex needs of this sector. While the Irish Collective Asset-Management Vehicle and Section 110 company remain the most popular Irish regulated and unregulated structure, respectively, the broader product suite has continued to develop and expand to meet the changing needs of the industry.

As well as access to the EU market, which provides a number of regulatory and tax benefits, fund managers can rely on a diverse product suite which can be serviced locally by an experienced 'ecosystem' of high-quality service providers and caters for a wide range of investment strategies. In addition, the Irish tax regime has been, and continues to be, one of the key growth drivers of the funds industry in Ireland. This is further supported by Ireland's extensive and expanding double tax treaty network with over 70 treaty partners.

Recent trends and developments

Globally, the alternative fund industry continues to evolve fuelled by changing investor preferences, an increasing focus on sustainability, regulatory requirements, technological disruption and volatility in international markets.
In response to some of these macroeconomic trends, the Irish alternatives sector has continued to evolve to meet the needs of this ever-changing market. The growth in the Irish alternatives sector reflects broader global market trends, where there has been a noted increase in allocations to private markets. Strategies housed within Irish alternative funds span hedge funds, private equity, private debt, infrastructure, real estate as well as a significant number of aircraft leasing and shipping funds.

Some recent noteworthy developments from an Irish perspective include:

1. EFAMA Investment Fund Industry Factsheet December 2022
2. https://www.irishfunds.ie/facts-figures/industry-statistics/total-irish-domiciled-funds/
3. https://static1.squarespace.com/static/61c73890f0872428c1077ab6/t/658254d01ff7056d2df94076/1703040210097/Irish+SPV+Report+-+Q3+2023.pdf
4. https://cdn.irishfunds.ie/x/4b95011afa/2023-05-6709-irish-funds-why-ireland-2023-euro-web.pdf?_gl=1*jdvvqu*_ga*MTkwMzg5MTEyMi4xNzA1MzQ2MzM4*_ga_M4G8XK9Q1L*MTcwNTM0N-jMzOC4xLjEuMTcwNTM0NjM1Mi40Ni4wLjA.

Product Update

Investment Limited Partnership Reform

Amendments to the legal and regulatory framework governing the Irish regulated partnership offering has significantly enhanced Ireland's offering for asset managers seeking to set up an onshore private fund.

As an AIFMD-compliant and EU domiciled common law partnership, the Investment Limited Partnership (ILP) has become Ireland's flagship partnership vehicle for use as an investment fund, typically selected by managers availing of closed-ended strategies in real estate, private equity, credit, infrastructure, sustainable finance and related asset classes. It is clear that investor demand for exposure to these asset classes continues to grow, particularly in the institutional space, where the illiquidity premium and long-term nature of the investment strategy are in many instances aligned to the investment objectives of institutional investors such as pension funds, sovereign wealth funds and insurance companies. Transparent structures can lend themselves well to these initiatives in that they facilitate direct exposure to the underlying asset class for an investor.

Furthermore, the ESG agenda more broadly is requiring a departure from the status quo in terms of structuring new products. Increasingly, investors expect asset managers to incorporate ESG principles into their investment strategies and this is having an impact on the product and domicile which is chosen to house these strategies. The updates to the ILP regime significantly enhance Ireland's product suite for private fund managers at a time when an onshore regulated jurisdiction is of increased importance.

The increasing allocations towards private assets, coupled with the ESG agenda, has fuelled growth in Irish partnership structures, in both regulated (the ILP) and unregulated form (commonly referred to as a 1907 Limited partnership).

Reform to the Irish Holding Company

Confirmation from the Department of Finance that a territorial tax regime will be introduced for Ireland from 2025 is a very welcome development for the Irish asset management industry. The introduction of a territorial tax system will reform the Irish holding company structure which will further enhance the Irish product suite.

European Long-Term Investment Funds (ELTIF)

Last year, in response to limited growth in the ELTIF market, the European Union adopted a revised regulatory framework for ELTIFs (commonly referred to as "ELTIF 2.0").

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> The introduction of a territorial tax system will reform the Irish holding company structure which will further enhance the Irish product suite.

ELTIF 2.0 is proving to be an attractive product to fund promoters and aligns with the EU's policy priorities of channelling capital towards European long-term investments in the real economy. Furthermore, in the context of the ESG agenda, the long term nature of ELTIFs compliments the return profile of large scale infrastructure products which will be required for the transition to a greener economy. With global climate action plans such as the EU climate action plan, spanning over a number of years, so must investments, making the ELTIF a suitable investment vehicle.

Additionally, the ELTIF will allow for a new way for retail investors to invest in private and long-term investments, which was not feasible for them under existing fund structures in Ireland. This is timely, in the context of the broader "Retailisation" trend within the alternatives sector, the structure is designed to facilitate retail investment into private assets.

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> Ireland has positioned itself as a world leader in sustainable finance.

The Central Bank of Ireland (CBI) is in the process of updating its rules and authorisation process for establishing an ELTIF in Ireland. The new framework will enable Ireland to compete with other EU jurisdictions such as Luxembourg, France and Italy, in becoming a popular location to establish an ELTIF further enhancing the product suite. Under the current proposal, the CBI has indicated that ELTIF will be authorised under the existing Irish investment fund legislative framework.[5] Accordingly, it is expected that the appropriate tax regime will align with that which currently applies to the existing suite of regulated products, ensuring an Irish ELTIF can be established as a tax efficient asset pooling structure.

Ireland as a hub for Sustainable Finance

The area of sustainable finance continues to evolve to meet the needs and expectations of a broad stakeholder group, including investors, policy makers, regulators, society more generally in addition to asset managers. Private markets exist to mobilise private finance for long-term infrastructure projects linked to climate and are expected to be a funding mechanism for such investments.

Ireland has positioned itself as a world leader in sustainable finance developing the talent, knowledge and product suite needed to harness this market opportunity. Furthermore, its reputation as an onshore EU domicile with a robust regulatory and tax framework has ensured the sector is well positioned to capitalise on the broader ESG opportunity.

Funds Sector 2030: Sectoral Review

Recognising the important role that asset management and fund servicing have played in the success of the international financial services industry in Ireland over many years, the Irish Minister for Finance, Michael McGrath T.D. announced a review of the funds sector on 6 April 2023.[6] The stated aim of the review is to ensure the sector remains resilient, future-proofed and a continued example of international best-practice. Key objectives include developing a framework within which Ireland can maintain its leading position in fund management and fund servicing and ensuring that the sector continues to support economic activity both at the regional and national level in Ireland.

This is a positive development and demonstrates the commitment to the sector from a government policy perspective. The review is seeking to ensure that Ireland will continue to be at the forefront of international asset management and fund servicing into the future.

Technology and Innovation

Technology is also disrupting the asset management industry including the way investments are traded, securities are held and contracts are settled. This change challenges traditional infrastructure and forces industry players to adapt to technology to facilitate alternative processes, while regulators must simultaneously navigate innovation and protection. As an industry, appropriate response is needed.

5. CP155 - Consultation paper on ELTIF chapter in the AIF Rulebook
6. Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

The Irish asset management industry has recognised that technology is key to responding effectively to increasing regulatory, reporting and efficiency demands of the sector. A vibrant and expanding indigenous sector of FinTech and RegTech services continues to develop supporting the Irish asset management ecosystem, harnessing Ireland's position as a leading domicile in fund services as well as a key location of choice for the largest global technology companies.

Looking to the future

Ireland has long been renowned as a centre of excellence for a range of investment fund types and the location of choice for a variety of international asset management firms in which to establish operations and to domicile funds. Shifting investor demands, increased onshoring, regulation, the ESG agenda and the outcome of the Funds Sector 2030 Review, will all continue to shape the Irish alternative funds industry. The enhancements to the ILP product, reform of the holding company as well as the proposed amendments to the Irish ELTIF framework, significantly enhance Ireland's product suite for private fund managers at a time when tailored investment structuring is of paramount importance. A "one size fits all" approach to structuring investment in private assets will be unsustainable into the future and consequently, the availability of a full product suite to adopt a tailored approach is crucial.

From an ESG perspective, Ireland is viewed as a global centre of excellence for sustainable finance and continues to be a key enabler in mobilising private finance (including blended finance solutions) to fund the transition to net zero and sustainability more broadly. The broader asset management infrastructure and ecosystem will need to have the flexibility to service these tailored solutions in an efficient and "tech-enabled" manner and Ireland's flourishing Fintech sector will prove important in this regard.

Continual evolution is needed to meet the needs of an ever-changing market and the developments above support Ireland's commitment to doing so.

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> The Irish asset management industry has recognised that technology is key to responding effectively to increasing regulatory, reporting and efficiency demands of the sector.

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BIO

Keita Nakano is a partner at Mori Hamada & Matsumoto, which is one of the leading Japanese law firms in the asset management area. He undertakes a broad range of work for non-Japanese investment fund managers.

Keita has been involved in a number of public offerings and private placements of units/shares of investment trusts/ corporations established in a variety of jurisdictions, such as the Cayman Islands, Luxembourg, and Ireland, in relation to regulatory and disclosure compliance in Japan.

Also, Keita has advised on the formation and fund-raising of domestic and overseas partnership-type funds, such as private equity and venture capital funds and real estate funds. He has substantial experience in advising general partners and similar entities on contract drafting and regulatory compliance, including filing notifications and discussing with the Japanese authorities in connection with the admission of Japanese investors.

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BIO

Ryosuke Onobori is a senior associate at Mori Hamada & Matsumoto who primarily works in the practice areas of financial regulations, asset management, Japanese real estate investment trusts and capital markets. He specialises in banking, security and payment regulations, and he has extensive experience in advising financial institutions such as banks, asset managers and fintech companies. From 2021 to 2023, he was seconded to the Financial Services Agency of Japan as a deputy director of the Digital and Decentralised Finance Planning Office in the Policy and Markets Bureau. During his secondment, he was actively involved in planning the Japanese regulatory framework for stablecoins, including the development of AML/CFT regulations such as the travel rule, which came into effect on 1 June 2023.

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1. Overview of Japanese Asset Management Regulation

Non-Japanese fund managers seeking to conduct fund management business in Japan must comply with Japanese securities-related regulations. In particular, the Financial Instruments and Exchange Act of Japan (the "**FIEA**") regulates investment management business and investment advisory business. Market entrants are required to be registered by the regulatory authority and are subject to financial regulations such as customer disclosure requirements and a duty of care, although some exemptions are available to foreign fund managers providing asset management services to Japanese investment managers or other qualified customers. In addition, the FIEA imposes a lighter regulatory regime, including allowing notification to the regulatory authority rather than registration, on managers providing asset management services such as special business activities for qualified institutional investors and specially permitted services for foreign investors.

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The Japanese government and the Financial Services Agency of Japan (the "**FSA**") have recently launched an initiative to promote Japan as an international financial centre in an effort to attract non-Japanese asset managers. For example, in 2021, the FSA established a "Financial Market Entry Office" to support foreign asset managers seeking to enter the Japanese asset management market. In addition, in 2023, the FSA established a "Task Force on Asset Management" (the "**Asset Management Task Force**"), which reviewed the barriers to the efficient conduct of asset management business in Japan.

2. Regulations on Financial Instruments Business Operators under the FIEA

The FIEA requires an entity to register as a financial instruments business operator if it intends to engage in certain regulated businesses that are considered to be financial instruments businesses under the FIEA. Financial instruments businesses are divided into four types: (i) Type I Financial Instruments Business, which is a collection of sales and trading, broker-dealer-type business, underwriting and other businesses relating to traditional securities, such as shares, bonds, units and derivatives; (ii) Type II Financial Instruments Business, which is similar business to Type I Financial Instruments Business except that it deals with interests in partnership-type funds and other less liquid financial instruments; (iii) Investment Management Business, which includes discretionary investment management contracts ; and (iv) Investment Advisory and Agency Business, which includes non-discretionary investment advice. Among these types of financial instruments businesses, Investment Management Business and Investment Advisory and Agency Business are particularly related to asset management business. More specifically, Investment Management Business covers the management of customer assets on behalf of the customer (discretionary investment management business), the management of investment trusts (investment trust management business) and management of certain collective investment schemes such as partnership-type funds. The main difference between Investment Management Business and Investment Advisory and Agency Business is whether the authority to make investment decisions is fully delegated from a customer to a financial instruments business operator. If authority is fully delegated, the business falls under the category of Investment Management Business.

In principle, persons wishing to engage in Investment Management Business and/or Investment Advisory and Agency Business in Japan are required to be registered as a financial instruments business operator by the regulatory authority. Registration requires, among other things, that an applicant have in place the necessary governance arrangement to conduct financial instruments business in an appropriate manner. Governance arrangements must include a compliance officer with sufficient knowledge and experience to conduct financial instruments business. In addition, an applicant for Investment Management Business is subject to the organisational requirements that it be a Japanese joint stock company or an equivalent non-Japanese company with a board of directors and an office in Japan, and at least JPY 50 million in capital. On the other hand, an applicant for Investment Advisory and Agency Business is not subject to such organisational requirements and capital requirements, however it is required to deposit JPY 5 million with a legal affairs bureau before starting business.

Upon registration, registered investment managers and investment advisors are required to comply with broad conduct regulations such as marketing regulations, conflict of interest prevention obligations and customer reporting obligations; however, exemptions from certain regulations including the provision of information are available if their services are provided to professional investors. In addition to such general regulations, registered investment managers are subject to business restrictions that limit the scope of other types of business in which they may engage. If they fail to comply with the applicable regulations, they may be subject to administrative sanctions such as remedial orders, the suspension of business or the revocation of registration, depending on the extent of the violation.

3. Exemptions from registration requirements under the FIEA

Given the document-intensive and time-consuming nature of the registration procedures described above, many overseas firms rely on exemptions from registration requirements under the FIEA to conduct their business in Japan.

Non-Japanese Asset Managers Exemption

Under the FIEA, there is an exemption from registration requirements for non-Japanese asset managers. For example, non-Japanese investment management firms conducting discretionary investment business in foreign jurisdictions may provide their services, without registration under the FIEA, to registered financial institutions conducting investment management business under the FIEA. This exemption allows Japanese investment managers to delegate their investment management functions to non-Japanese investment managers. In this case, the non-Japanese investment managers owe fiduciary duties directly to end-Japanese investors under the FIEA. Non-Japanese investment advisors are also able to provide their services, without registration under the FIEA, to registered financial institutions conducting investment management business under the FIEA.

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> Many overseas firms rely on exemptions from registration requirements under the FIEA to conduct their business in Japan.

QII-Targeted Fund Exemption

The most popular exemption for non-Japanese asset managers is the QII-Targeted Fund Exemption, which is available to the general partner of a partnership-type fund for the solicitation of interests in the partnership-type fund itself (i.e., a "self-offering") and its investment management. If the general partner relies on this exemption, it is able to conduct those activities by filing a notification with the authority without registration as a financial instruments business operator. However, there is a limitation on the category of Japanese investors. At least one of the investors must be a "Qualified Institutional Investor" ("**QII**") as defined in the FIEA and regulations thereunder and the number of Japanese non-QIIs is limited to 49. In addition, each Japanese non-QII must be an "Eligible Non-QII", i.e., an investor who meets certain requirements. In addition, a general partner filing a notification to rely on this exemption will be subject to certain conduct regulations under the FIEA.

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> The introduction of the Financial Market Entry Office was a major step toward realising the goal of transforming Japan into a "Leading Asset Management Centre,".

Simplified Measures for Foreign Investment Managers

As a part of the FSA's initiative to promote Japan as an international financial centre, simplified measures for non-Japanese investment managers were introduced in 2021 with a view to easing the operational burden on foreign investment managers by introducing notification procedures instead of registration procedures. Such simplified measures consist of two types: (i) an entry scheme for investment managers of funds with overseas qualified clients (non-Japanese corporations and individuals located abroad with a certain amount of assets) and (ii) a pre-registration entry scheme for managers who manage only offshore funds pursuant to an authorisation granted by a foreign regulatory authority and that have a proven track record in specified foreign jurisdictions (a temporary measure for 5 years).

4. Financial Market Entry Office

One of the biggest barriers for non-Japanese asset managers to enter the Japanese asset management industry is the need for Japanese language during the application process and in daily communications with financial regulators.

In order to address this challenge, on January 12, 2021, the FSA and the Local Finance Bureaus established a one-stop regulatory office, the "Financial Market Entry Office" to handle the entire regulatory process from pre-application consultation, registration, to post-licensing supervision, with all communication available in English.

Initially, the Financial Market Entry Office offered its services to foreign asset management companies seeking to obtain registration for (i) Investment Management Business; (ii) Investment Advisory and Agency Business; and (iii) Type-II Financial Instruments Business relevant to certain types of asset management business. The coverage of the Financial Market Entry Office was subsequently extended to Type-I Financial Instruments Businesses dealing with units of foreign investment trusts or shares of foreign investment corporations and providing services to certain categories of professional investors.

The introduction of the Financial Market Entry Office was a major step toward realising the goal of transforming Japan into a "Leading Asset Management Centre," given the costs of translation and the need for Japanese-speaking personnel.

5. Asset Management Task Force

On June 16, 2023, the Japanese government expressed its intention to promote Japan as a "Leading Asset Management Centre" through its "Basic Policy on Economic and Fiscal Management and Reform 2023". In addition, in its "Grand Design and Action Plan for a New Form of Capitalism 2023" (Revised Version) released on the same day, the government also presented a policy to fundamentally reform the asset management industry through measures that include the improvement and strengthening of the regulatory environment for governance, asset ownership and stewardship activities (i.e., dialogue with companies), and for enhancing the competitiveness of the asset management industry by supporting new entrants, promoting competition among domestic and overseas asset management companies, improving asset management capabilities and diversifying investment targets.

In line with this governmental policy, the FSA indicated in its "Financial Administrative Policy for Fiscal Year 2023" released on August 29, 2023, that it would "promote initiatives to realise a Leading Asset Management Centre," and established the Asset Management Task Force in October of the same year. The Asset Management Task Force convened four times between October and November and on December 12, 2023, published its report (the "**Report**") outlining specific proposals for regulatory amendments in line with the conclusions of the Asset Management Task Force.

The Report proposes the promotion of "New Entry into Asset Management Business" through relaxing the entry requirements based on the outsourcing of middle and back office operations including compliance and accounting functions. Specifically, it concluded that it is appropriate to relax the entry requirements for the investment management business by allowing the outsourcing of middle and back office operations to firms that ensure appropriate quality.

6. Conclusion

Non-Japanese asset managers wishing to enter the Japanese asset management industry must comply with Japanese securities regulations. While they are, in principle, required to be registered as a financial instruments business operator (investment manager and/or investment advisor) and comply with comprehensive conduct rules, various exemptions are available, the scope of which has been expanded to attract non-Japanese asset managers.

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> The Asset Management Task Force Report proposes the promotion of "New Entry into Asset Management Business" through relaxing the entry requirements.

The regulatory environment for non-Japanese asset managers has been improved by the establishment of the Financial Market Entry Office, which allows communication in English, and the relaxation of entry requirements based on the outsourcing of middle and back office operations was also discussed by the Asset Management Task Force. As initiatives to create a better environment for non-Japanese asset managers are expected to continue in line with the Japanese government's intention to promote Japan as a leading asset management centre, it is worth paying close attention to future regulatory developments in the Japanese asset management industry.

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BIO

Max von Frantzius has more than 20 years' experience in investment fund, M&A and corporate finance law. He mainly advises private equity, real estate and venture capital as well as general partners in structuring, setting-up (incl. Supervisory Authority (CSSF) approval process) and managing their alternative investment funds in Luxembourg. Overall, Max specialises in legal and regulatory aspects of Luxembourg investment fund work and cross-border issues.

Before joining CM Law in 2019, Max worked 5 years in the Luxembourg branch of Big 4 Company and its network law firm. Prior to that, he spent 10 years as Head of Legal and Member of the Executive Board of a German private bank in Luxembourg and 7 years as a Lawyer in Luxembourg and French law firms. Max is a Lawyer admitted to the Bars of Luxembourg (list IV), Cologne and Paris.

Luxembourg, the place to be for investment funds in Europe

1. Introduction

The Grand-Duchy of Luxembourg is the place to be in Europe for the setting-up of investment funds of all types, despite a decrease in assets under management (AuM) due to the economic crisis since early 2022 and the rising interest rates. The global economic insecurity was followed by the postponement of the launching of many new investment products, or a significant abandon of investment projects. But the small country in the heart of Europe is still the most important hub for investment funds[1] on the continent – ranking just behind New York as number two worldwide.

> "ESG" and sustainability became more and more important over the last two years for the design of new investment products.

The country's overall tremendous success as a fund domicile started in 1988, when the first European Directive 85/611/EEC of 20 December 1985 for harmonised investment funds[2] had rapidly been transposed into national Luxembourg law as a "first mover". Luxembourg quickly understood the opportunities that offer a Europe-wide harmonised fund-legislation for cross-border distribution inside the European Union (**EU**). In the following years, important distribution activities related to Luxembourg domiciled UCITS with the "EU Passport" throughout the EU has been developed, while nearly all UCI's actual portfolio management in terms of asset allocation was – and still is - located outside Luxembourg. Since 1988, the relevant fund industry, composed by all necessary service providers (Custodian banks, Management companies, Central administrators, Domiciliation companies, Statutory Auditors etc.), grew rapidly. During two decades, Luxembourg tremendously developed as a UCI domiciliation location. The next milestone for Luxembourg's success as a hub for UCIs was the entry of the AIFMD in 2013.[3] This Directive, once again after the UCITS success story, was rapidly transposed into national law in 2013 and since, a continuously growing number of regulated alternative investment funds (**AIFs**) can be observed. Since 2016, the newly introduced regime of the semi-regulated "Reserved Alternative Investment Fund" (**RAIF**) with "**EU Passport**" came on top and encounters a never seen success.

All relevant players in the world of UCIs are present in Luxembourg. More than 330 fund management companies, 260 authorised AIFMs and 600 registered AIFMs are present in Luxembourg. Most of them come from Germany, Switzerland, USA, France and the UK. Luxembourg domiciled investment funds are distributed to over 76 countries in Europe, Asia, the Middle East and the Americas.

"ESG"[4] and sustainability became more and more important over the last two years for the design of new investment products. According to the Global Green Financial Index 6 Luxembourg ranks among the Top 5.

A key factor for this tremendous success story is certainly closely linked to an unmatched political stability and a stable and rewarding tax environment in the Grand-Duchy for decades. Luxembourg's Financial Supervisory Authority, the *Commission de Surveillance du Secteur Financier* (**CSSF**) applies the highest control standards and is worldwide recognised.

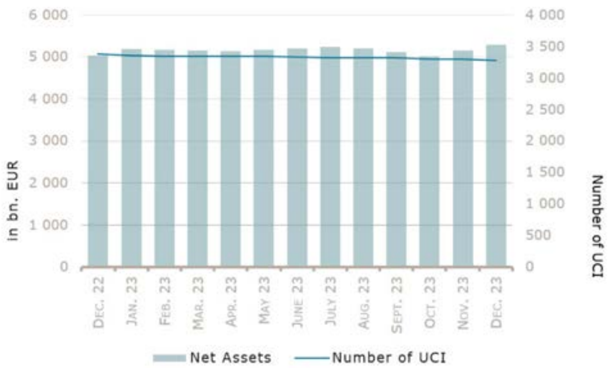
2. Global Situation of Investment Funds in Luxembourg (31 December 2023)

Today, the AuMs of UCIs domiciled in Luxembourg amount to EUR 5,285.010 billion as at 31 December 2023.[5]

But, the negative trend from 2022 inversed: Over the year 2023, the volume of net assets increased by 5.10%.

A snapshot of the development in 2023 of Luxembourg domiciled UCIs is as follows[6]:

1 Investment funds are generally known as "Undertakings for collective investment" – **UCIs**
2 Undertakings for collective investment in transferable securities - **UCITS**
3 European Directive 2011/61/EU of 8 June 2011 (**AIFMD**) for Alternative Investment Fund Managers (**AIFMs**).
4 Environmental, Social & Governance
5 Source: ALFI (Association of the Luxembourg Fund Industry), November 2023
6. Source: CSSF Communication 31 December 2023



3. Regulatory framework for Luxembourg domiciled investment funds

a. Fund vehicles

Luxembourg UCIs can be set-up in the contractual form (*Fonds commun de placement* – **FCP**) or in the corporate form (*Société d'investissement à capital variable* – **SICAV** or *Société d'investissement en capital fixe* – **SICAF**).

(1) *Fonds commun de placement* – FCP

The FCP is comparable to a simple "pool of assets", without legal personality, as a fund vehicle. Therefore, there is need for a Management Company (**ManCo**) that acts for the FCP on behalf of the investors who are joint owners ("**Unitholders**") of the FCPs' assets. The constitutional document of a FCP are the Management Regulations, which contain all rules relating to the investment policy, the procedures and all contractual relationships. This document is a "contract" entered into between the ManCo/AIFM and the Custodian Bank. Unitholders buy units in the FCP issued by the ManCo/AIFM, and which represent a portion of the "pool of assets" in the FCP. The unitholders become party to the "contract" and their relationship with the ManCo/AIFM is determined by the sales prospectus (also denominated "Issuing Document" or "Private Placement Memorandum – PPM" for AIFs). The unitholders rights are limited to the amount of their contribution and, since a FCP has no corporate structure, they have no voting rights.

(2) Société d'investissement à capital variable – SICAV or Société d'investissement en capital fixe – SICAF

UCIs in the corporate form are the investment companies with variable capital (SICAV) or with fixed capital (SICAF). Both can be used for any types of Luxembourg domiciled UCIs. SICAVs are much more used than SICAFs in practice. The advantage of a SICAV is that, despite the corporate form, each capital contribution or redemption does not need a notarial deed, nor another official formality. The amount of capital is at all times equal to the net asset value (**NAV**), calculated with the ManCo/AIFM on a regular basis. After each subscription or redemption, the SICAV's NAV increases or decreases automatically. SICAFs do not play an important role in practice.

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The FCP is comparable to a simple "pool of assets", without legal personality, as a fund vehicle.

Each Luxembourg domiciled UCI can be structured as a stand-alone fund or as an umbrella structure with multiple "sub-funds" (or "compartments"). Between each sub-fund, there is a strict segregation of assets. This means that one sub-fund is not liable for the other sub-fund's assets and liabilities. The umbrella is the "virtual" corporate or contractual fund structure. Each sub-fund is, technically spoken, a bank account under the umbrella structure and can be provided with different share-classes with varying features (i.e. fees, dividends etc.).

b. Fund Products

The Luxembourg world of UCIs is divided into UCITS and AIFs.

6 Source: CSSF Communication 30 December 2022

(1) UCITS [7]

UCITS go back to 1988 (see I. above) and target the widest range of investors possible, in particular retail investors. The sole object is the collective investment in transferable securities and/or in other liquid financial assets of capital raised from the public and which operates on the principle of risk-spreading. The units of UCITS products are, at the unitholders' request, re-purchased or redeemed, directly or indirectly, out of the UCITS' assets.

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Luxembourg based UCITS can easily be distributed in the European Union on a cross-border basis with the so called "European (Marketing) Passport"

UCITS provide the highest investor protection and therefore, the investment restrictions and eligible investments are more severe than in other fund products and provide higher transparency. UCITS regulations are unique and strong and enhanced risk controls are applied.

UCITS must appoint a Luxembourg based Custodian Bank, a Central Administrator, a "Chapter 15 Management Company"[8] (unless it is a "self-managed SICAV/SICAF") and an External Auditor.

UCITS must invest in "eligible assets". In this context, the CSSF clarified that a UCITS should clearly disclose in its investment policy the categories of eligible assets in which it is authorised to invest (i) in order to achieve its investment goals, (ii) for treasury purposes and (iii) in case of unfavorable market conditions. There are two types of eligible assets, so called "core" and "non-core" investments, which terms are market practice use and not defined in the applicable regulations.
"Core"-assets for UCITS are directly mentioned in Art. 41 (1) of the Law of 10 December 2010 on UCIs, as amended, and are:

- Transferable securities admitted to or dealt on a regulated market, including (i) structured financial instruments (SFIs), (ii) transferable securities or money market instruments embedding derivatives or (iii) recently issued transferable securities or money market instruments;
- Money market instruments (MMIs);
- Deposits;
- Closed-ended investment funds (special conditions apply);
- Open-ended investment funds (special conditions apply);
- Financial derivative instruments (FDIs), including FDIs on financial indices; and
- Ancillary assets.

"Non-core" assets are those that are eligible under Art. 41 (2) a) of the Law of 10 December 2010 on UCIs, as amended, which is commonly called the "trash ratio". This means that not more than 10% of a UCITS' net assets can be invested in non-eligible transferable securities (e.g. private equity investments) and MMIs, whereby precious metals and certificates representing them are specifically prohibited.

Luxembourg based UCITS can easily be distributed in the European Union on a cross-border basis with the so called "European (Marketing) Passport", which is linked to the product itself. Once established in Luxembourg, the EU-Passport can be obtained within 10 days via a regulator-to-regulator procedure, which is a pure formality.

From a tax perspective, UCITS are levied with an annual subscription tax (*Taxe d'abonnement*) of 0.05% on the fund's assets (reduced to 0.01% in some specific cases). There is no further taxation on fund-level in Luxembourg.

(2) Alternative Investment Funds (AIFs)[9]

AIFs are fund products that are not UCITS and that fall under the AIFMD. In principle, all asset classes are permitted (except for SICARs, see below). The most important assets in which AIFs invest are real estate, private equity, and infrastructure. The regulated and semi-regulated AIFs that fall directly or indirectly under the CSSF's supervision are:

9 Law of 12 July 2013 on AIFMs, as amended

(a) Specialised Investment Funds (SIFs)[10]

SIFs are required to comply with general diversification and risk management requirements but are not subject to detailed investment or borrowing rules. CSSF Circular 07/309 on risk-spreading rules provides that a SIF must ensure an "adequate" risk diversification. A SIF cannot, in principle, invest more than 30% of its assets or its commitments to subscribe to securities of the same nature issued by the same issuer. There are exceptions for investments e.g. in securities issued or guaranteed by an OECD Member State or by its local authorities or by supranational bodies or organisations of an EU, regional or worldwide nature. Target funds with comparable risk diversification principles are also eligible. In this context, each compartment of a target umbrella investment-fund may be considered as single issuer. Short-selling cannot, in principle, result in the SIF holding uncovered securities of the same nature issued by the same issuer representing more than 30% of its assets. When using FDIs, the SIF must ensure comparable risk-diversification of the underlying assets. Furthermore, the counterparty risk of OTC transactions must be limited according to the quality and qualification of the counterparty. The risk diversification rules apply on each compartment-level separately, should the SIF be established with an umbrella-structure. However, the CSSF may grant exceptions on a case-by-case basis (i.e. granting "ramp-up periods" to comply with the diversification rules later than after the legally imposed first year).

SIFs are subject to the CSSF's direct supervision and must initiate a prior approval procedure on product level with the regulator.

(b) "UCI Part II-Funds"[11]

Part II of the Law of 10 December 2010 on UCIs, as amended, does not contain provisions regarding investment or borrowing rules for such UCIs Part II, but several CSSF Circulars and a "case-by-case" practice applied by the CSSF determine such rules. Eligible investments are therefore (i) transferable securities, (ii) alternative investments (i.e. hedge funds, real estate and private equity) and (iii) futures contracts and options. The risk diversification rules are quite flexible and can be discussed with the CSSF on a case-by-case basis. In practice, UCI Part II-Funds lost their importance over the years.

UCI Part II-Funds are subject to the CSSF's direct supervision and must initiate with the regulator a prior approval procedure on product level.

(c) Investment Companies for Risk Capital (SICARs)[12]

A SICAR is an investment product without investment restriction rules (i.e. only one investment is eligible), which was designed for investments in "risk capital". Eligible investments are quite restricted and the concept of "risk capital" is provided by CSSF Circular 06/241. In general, SICARs invest in private equity and venture capital, real estate investments are only permitted when there is a "development" factor (e.g. transforming warehouses into luxury lofts). A SICAR does not benefit from the numerous tax advantages of Luxembourg investment funds (i.e. only the subscription tax is levied), but various exceptions apply.

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> A SICAR is an investment product without investment restriction rules (i.e. only one investment is eligible), which was designed for investments in "risk capital".

SICARs are subject to the CSSF's direct supervision, and an application file must be transmitted which must include both "risk" and "development" aspects of the SICAR project.

(d) Reserved alternative investment funds (RAIFs)[13]

The RAIF is still the "rising star" in Luxembourg since its introduction in national law in 2016, since when it encounters a tremendous success.

10 Law of 13 February 2007 on SIFs, as amended
11 Part II of the Law of 10 December 2010 on UCIs, as amended
12 Law of 15 June 2004 on SICARs, as amended
13 Law of 23 July 2016 on RAIFs, as amended

The RAIF also qualifies as AIF, but is not directly supervised by the CSSF. Nevertheless, there is an indirect supervision since all RAIFs must appoint a fully licensed and supervised AIFM. The Luxembourg legislator considered that the strong supervision of AIFMs under the AIFMD must not necessarily be replicated on product level. Therefore, a RAIF is not subject to a prior approval procedure with the CSSF and can rapidly be launched. Another aspect of the RAIF's success is that the EU-Passport for cross-border marketing in the EU is also available. It is unique that an AIF without direct supervision on product-level can be distributed with the EU-Passport in all EU Member States after a simple regulator-to-regulator procedure, without material approval by the regulator of the target state.

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> Common to all AIFs is that they raise capital from a number of investors with a view of investing it in accordance with a predefined investment policy.

In a nutshell, the RAIF replicates the SIF- or the SICAR-regime, but without direct supervision by the CSSF. RAIFs have full flexibility with the assets it may invest in. There are no specific investment rules or restrictions, but a RAIF must adhere to the principle of risk-spreading (except when it opted for the SICAR-regime). It is in the responsibility of the RAIF's governing body to ensure that the minimum diversification rules are complied with.

It can also be noted that a RAIF can be transformed into a SIF at a later stage, should direct supervision on product-level be necessary. This allows to start operating the fund quickly ("speed to market") and to initiate a SIF approval-procedure with the CSSF on a parallel basis.

(e) European long-term investment fund ("ELTIF") [14]

The European long-term investment fund ("**ELTIF**") is an AIF for long-term investments, such as social and transport infrastructure projects, real estate and small and middle-sized enterprises (SMEs). The ELTIF regulatory framework is intended to facilitate long-term investments in these types of assets by institutional and retail investors and provide an alternative, non-bank source of financing for the real economy. In practice, ELTIFs had no significant success in Luxembourg so far as well as in other countries of the EU. Therefore, Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on ELTIFs was put under review. Given the degree of overlap, the European Commission was reviewing the AIFMD and the ELTIF Regulation at the same time. The proposed amendments ("**ELTIF 2**") to the latter entered into force on 10 January 2024 and aim to increase the use of ELTIFs across the EU for the benefit of the European economy and investors. This especially entails broadening the scope of eligible assets and investments, allowing more flexible fund rules that include the facilitation of fund-of-fund strategies, and lowering unjustified barriers that prevent retail investors from accessing ELTIFs. Probably ELTIF 2 will bring the so far outstanding success of this product in Luxembourg.

Common to all AIFs is that they raise capital from a number of investors with a view of investing it in accordance with a predefined investment policy. In principle and compared to UCITS, AIFs have the broadest investment possibilities, depending on the actual product chosen. They must appoint a Depositary (Bank or licensed "Professional of the Financial Sector" – (PSF), depending on the nature of the assets under management), Central Administrator, fully licensed AIFM and an external Auditor. Eligible investors in all before mentioned AIFs are so-called "well-informed investors", which term includes professional and semi-professional investors, (ultra) high net worth individuals, family offices etc.

14 Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015

SIFs, UCI-Part II Funds, SICARs and RAIFs that have appointed a fully licensed and supervised AIFM can distribute their shares or units with the so-called "European (Marketing) Passport" in the European Union without further material approval procedure by local regulators. The appointed AIFM will obtain such EU-Passport within 20 days from the CSSF that applies the regulator-to-regulator procedure beforehand. For such AIFs too, obtaining the EU-Passport is a matter of formality.

From a tax perspective, AIFs (except SICARs, see above) are levied with an annual subscription tax (*Taxe d'abonnement*) of 0.01% on the fund's assets. There are no further taxes in Luxembourg applicable on fund level.

4. Corporate structures for investment funds

While an investment fund set-up in the contractual form (FCP, see above), which has no legal personality and is therefore no corporation, investment funds set-up in the corporate form of a SICAV or SICAF need a company form.

The constitutional document of an investment company is the articles of incorporation (also known as instruments of incorporation, articles of association or statutes) or the limited partnership agreement (LPA). SICAVs and SICAFs are also subject to the Luxembourg laws on commercial companies (in particular, the Law of 10 August 1915 on commercial companies, as amended) insofar as the laws governing the Fund Products (UCITS, UCI Part II, SIFs, SICARs or RAIFs) do not derogate from it. While a UCITS-SICAV must be set up as a public limited company (*Société anonyme* — S.A.) or a European company (S.E.), a SIF-SICAV and a RAIF-SICAV can be set up as a public limited company (S.A.), a private limited liability company (*Société à responsabilité limitée* — S.à r.l.), a partnership limited by shares (*Société en commandite par actions* — S.C.A.), a limited partnership (*Société en commandite simple* — S.C.S.), a special limited partnership (Société en commandite spéciale — S.C.Sp.), or a cooperative company organised as a public limited company (*Société coopérative organisée sous forme de société anonyme* — S.Co S.A.). A SICAV set up as a public limited company or a private limited liability company may be created for a single shareholder, enabling SICAVs to be incorporated by a single entity/person and permitting their creation for a single investor. A UCI Part II-SICAF, a SIF-SICAF or a RAIF-SICAF may take any commercial company form, such as the before mentioned legal forms or, in addition, the form of an unlimited company (*Société en nom collectif*). SICAVs and SICAFs incorporated under the form of a capital company (S.A., S.à r.l., S.C.A., S.Co S.A. or S.E.) are not tax transparent, while those investment companies formed as a partnership (S.C.S or S.C.Sp.) are generally treated as tax transparent entities. The difference between S.C.S and S.C.Sp. is that the latter is similar to the Scottish limited partnership, without legal personality, that has been introduced in Luxembourg law in 2016 in order to provide anglo-saxon investors with a well-known corporate vehicle.

5. Recent developments in 2023

In the course of 2023, new topics arose for the Luxembourg fund industry:

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> The appointed AIFM will obtain such EU-Passport within 20 days from the CSSF that applies the regulator-to-regulator procedure beforehand.

a. AIFMD 2

On 25 November 2021, the European Commission announced an amendment to Directive 2011/61/EU on alternative investment fund managers ("**AIFMD 2**"). The main amendments relate to (i) delegation arrangements, (ii) liquidity risk management, (iii) supervisory reporting, (iv) the provision of depositary and custody services, and (v) loan origination by AIFs. The European Commission recognises the value of the delegation regime, which allows for an efficient management of investment portfolios. However, amendments are proposed to ensure that AIF managers retain core functions. A new Annex V of AIFMD 2 will be introduced that contains a list of liquidity management tools (**LMT**) available to AIFMs that manage open-ended AIFs. In order to better face redemption constraints under difficult market conditions, the portfolio managers of such AIFs should be required to choose at least one LMT from this list, in addition to the possibility of suspending redemptions. The European Commission also concluded that there is a need to harmonise requirements for AIFMs of AIFs that originate loans. The publication and entry into force of AIFMD 2 is expected by the end of Q1 2024. Member States then must apply the measures from two years after the entry into force, with the exception of the measures implementing the reporting requirements, which they must apply from three years after the entry into force of AIFMD.

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Many legal and regulatory changes impacted the Luxembourg fund industry in 2023, and will continue to impact it in 2024.

b. Modification of the Law of 12 July 2013 on AIFMs

The Luxembourg legislator improved and modernised the Luxembourg toolbox for investment funds and increased the attractiveness and competitiveness of Luxembourg as a financial centre by modifying the Law of 12 July 2013 on AIFMs. The new law enter into force on 28 July 2023.
In a nutshell, the term "well-informed investor" now refers to the MIFID II-term "professional investor" and the minimum investment to fall under that definition is reduced to 100,000 Eur.

The time limit to reach the legal minimum amount is now extended to 24 months for SIFs, RAIFs and SICARs and to 12 months for UCITS.

In future, there will be less formalities to set-up a RAIF.

Many new dispositions relate to Part II-Funds.

Finally, authorised AIFMs shall have recourse to tied agents.

c. ELTIF 2

The ELTIF 2 regulation entered into force on 10 January 2024 (see above 3.b.(2).(e).). It aims to increase the use of ELTIFs across the EU for the benefit of the European economy and investors. The scope of eligible assets and investments is broadened, allowing more flexible fund rules that include the facilitation of fund-of-fund strategies, and lowering unjustified barriers that prevent retail investors from accessing ELTIFs.

Probably ELTIF 2 will bring the so far outstanding success of this product in Luxembourg.

6. Outlook

Many legal and regulatory changes impacted the Luxembourg fund industry in 2023, and will continue to impact it in 2024. Some of them are likely to further developing the fund industry, such as the "retailisation" of AIFs, the widening of eligibility of permitted assets or the introduction of new products. A strong focus will certainly further be on ESG and the sustainability of the UCIs' assets. The negative impact of the economic crisis on the UCIs' evolution in terms of AuM seems to be stopped and inversed.

It is very likely that Luxembourg will further develop its financial place and defend its position as most important fund hub in Europe.

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BIO

Michael is specialised in Investment Management Services working within Deloitte's Financial Services Practice. During this time Michael worked for two years with Deloitte in London, managing a number of multi-national companies in the Insurance and Investments Management Practice prior to returning to Deloitte Malta in 2009.

Michael services a broad client base both locally and internationally and is responsible for the statutory and non-statutory audits of a number of clients, including Collective Investment Schemes, Investment Management Companies and Fund Administrators as well as other regulated and non-regulated entities.

Michael coordinates various international engagements where he has developed numerous connections within the Deloitte Network. Michael also Chaired the FSI sub-Committee at the Malta Institute of Accountants for two years and is now Chairing the Sustainable Finance sub-Committee at the Institute. Michael is also Deloitte Malta's Sustainability Leader.

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BIO

Craig joined Deloitte Malta's tax function in 2003 after graduating with a Bachelors Degree in Accountancy (Hons) from the University of Malta.

Craig leads the firm's Tax – Mergers and Acquisitions function and is also heavily involved in advising a portfolio of local and international corporate clients operating in various industries on Maltese direct tax matters, mainly relating to corporate groups' shareholding and operational restructuring, vendor/buyer tax due diligence services, and transaction advisory/tax structuring projects.

Craig is currently the chairperson of the Malta Institute of Accountants Direct Tax Committee

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BIO

Emma joined Deloitte Malta in 2010 as a senior auditor, after graduating with a Bachelor of Accountancy (Hons.) from the University of Malta.

She has been involved in both local and international audits predominately within the financial services sector, involving mainly alternative investment funds, investment management companies and other institutions such as licensed stockbrokers. At the end of 2014, Emma took over the role as a regulatory specialist within the financial services industry, with particular focus on the asset management sector.

Emma is also a member of the Financial Services Committee set up by the Malta Institute of Accountants.

Jurisdiction highlights

Malta has established itself as one of Europe's domiciles for investment funds, asset managers and asset servicing providers generally. The jurisdiction offers a versatile range of investment structures that can be tailored to meet the various demands of fund promoters and boasts a financial services regulator which has a reputation of being approachable and receptive.

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> The SICAV is the most commonly used fund vehicle in Malta due to its unique corporate features.

All in all, its robust and efficient regulatory infrastructure, access to the EU single market, educated English-speaking workforce and promising economic outlook, make Malta an attractive jurisdiction for the funds and asset management sector.

Corporate vehicles for funds

Malta's legislation provides for the establishment of a wide variety of fund vehicles, as follows:

- Unit Trust;
- Recognised Incorporated Cell Company (RICC);
- Limited Partnership;
- Contractual Fund;
- Investment Company with Fixed Share Capital (INVCO); and
- Investment Company with Variable Share Capital (SICAV).

The SICAV is the most commonly used fund vehicle in Malta due to its unique corporate features, as well as certain additional advantageous features which facilitate the issuance and redemption of units without lengthy corporate processes; particularly its flexible share capital structure which, by definition, is equivalent to the net asset value of the scheme.

A SICAV may also be set up as an 'umbrella' or multi-fund company whereby the share capital may be divided into different classes of shares, where one class or group of classes of shares constitute a distinct sub-fund of the company. In this way, the scheme may operate a number of separate sub-funds having different investment objectives, whereby one may elect to have the assets and liabilities of each sub-fund constituting a patrimony separate from the assets and liabilities of each other sub-fund of the same multi-fund company. In addition, a SICAV may also be established as a cell company, enabling each sub-fund to be set up as a separate incorporated cell having separate legal and juridical personality from the other sub-funds.

Regulatory frameworks for non-retail funds

Frameworks for full-scope Alternative Investment Fund Managers (AIFMs)

As an EU jurisdiction having fully transposed the Alternative Investment Fund Managers Directive[1] (AIFMD) into its regulatory framework, Malta offers fund managers the ability to set-up fully compliant AIFMD fund structures, in the form of a standard Alternative Investment Fund (AIF) that is licensed by the Malta Financial Services Authority (MFSA). In addition, for AIFMD-compliant fund managers, Malta also offers a more efficient route to market in the form of its Notified Alternative Investment Fund (NAIF) Framework. NAIFs in Malta are exempted from licensing with the MFSA, being subject to a short notification process and certain limited regulatory restrictions. The introduction of the NAIF regime in 2016 was met with an encouraging take-up by fund promoters and with the statistics showing a continued and sustained increase in NAIF registrations year-on-year, the NAIF product has clearly addressed the needs of the market.

1. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

Frameworks for out-of-scope or de minimis AIFMs

In the context of fund managers operating outside the scope of the AIFMD, Malta also offers a homegrown product in the form of the Professional Investor Fund (PIF), which was introduced to tremendous success in the early 2000s. The PIF framework is designed to offer a fully regulated, non-retail fund which is subject to a lighter touch regime than that applicable to funds managed by full-scope AIFMs. PIFs require the appointment of a fund manager that is below the AIFMD de minimis threshold (those whose assets under management do not exceed Eur100 million, or Eur500 million when the assets under management are unleveraged and have no redemption rights exercisable during the first five years), that is also authorised or registered to provide fund management services in any EU or EEA Member State or approved third country equivalent.

Following the initial success of the PIF, the jurisdiction saw a general decline in PIF registrations over the past few years, a trend which was primarily attributed to the licensing process and two-tier regulated nature of the product. However, following lengthy discussions and collaboration with industry professionals, the MFSA introduced, in 2023, a new product in the form of the Notified Professional Investor Fund (NPIF), that looks to replicate the notification process applied so successfully with the NAIF to funds promoted by fund managers considered to be out-of-scope or below the de minimis thresholds set out in the AIFMD.

Similar to the NAIF, the NPIF framework contemplates a manager-oriented regulatory regime involving a fund structure that is only subject to a notification requirement with the MFSA (rather than a full licensing process) and which, as a result, should allow fund managers managing such funds to benefit from a quick time-to-market, comparatively lower setup fees and lower ongoing compliance costs. The MFSA has committed to deliver an acknowledgement of the NPIF notification within ten (10) days from the receipt of a complete notification pack. As the name suggests, NPIFs must be non-retail schemes and are only available to certain qualifying or professional investors.

Some of the other key features of the NPIF include that it should:

- not be required to have its offering memorandum vetted by the MFSA;
- be subject to minimal ongoing regulation and supervision by the MFSA on an rolling basis in view of the fact that regulatory oversight is focused on the fund manager;
- not be required to appoint a custodian; and
- not be subject to restrictions around investment strategies (with the exception of carrying out lending activities).

Taxation

General tax treatment for fund managers

Fund managers incorporated in Malta are subject to Malta's general system of taxation on world-wide income, including chargeable capital gains, at the standard corporate tax rate of 35%.

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> Following the initial success of the PIF, the jurisdiction saw a general decline in PIF registrations over the past few years.

A pivotal feature of Malta's general tax framework is the full imputation regime, which entails a tax payment and refund system. This regime eliminates economic double taxation of company profits upon distribution. Shareholders, regardless of their residence, in receipt of dividends from a Maltese company, are entitled to a tax credit equal to the tax borne by the distributing company on the profits out of which dividends are paid. Given that the tax rate of 35% applicable to companies is the highest tax rate in Malta, shareholders are relieved from any additional tax upon the receipt of dividends.

Furthermore, upon a dividend distribution of taxed profits, the shareholders of a company registered in Malta (either a Maltese company or a foreign company with a branch in Malta) are eligible to claim a partial tax refund of the Malta tax charge of the distributing company, excluding tax suffered on income derived from Maltese immovable property. The applicable tax refund for shareholders of fund management companies is, in general, $6/7_{ths}$ of the 35% tax, leading to an effective rate of tax on distributed taxable profits of a maximum of 5%.

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> Distributions of fund income to non-resident unitholders are typically not liable to any additional taxation in Malta.

The processing of tax refunds is typically rather efficient, which in practice addresses taxpayer concerns around cash flow. That being said, in 2019, Malta's tax system was supplemented by the introduction of an election for a group of companies to be treated as a single tax group. Instead of the partial shareholder tax refund as explained above, upon a dividend distribution, the tax group is directly taxed at the effective tax rate. The introduction of a fiscal consolidation regime has largely been hailed as a success story as it provides a more efficient and effective route to taxation on corporate profits at the appropriate effective rate. In addition, such companies may avail of a notional interest deduction (NID), a deemed interest deduction against their chargeable income based on risk capital, which may decrease the effective tax rate by a certain percentage.

General tax treatment of funds

The income of a fund (referred to for income tax purposes in Malta as a collective investment scheme) licensed in Malta is generally exempt from tax in Malta unless such income derives from immovable property situated in Malta and unless such income qualifies as 'investment income' derived by a 'prescribed fund'.
A prescribed fund is generally defined as a Malta-based scheme that:
- holds at least 85% of the value of its total declared assets in Malta; and
- is classified as a 'prescribed fund' by the Commissioner for Tax and Customs (CfTC) by notice in writing.

All other funds not meeting the above definition should generally qualify as 'non-prescribed' funds and their income should be exempt from tax in Malta to the extent it is not derived from immovable property in Malta. In all cases, income from immovable property situated in Malta is subject to the standard corporate rate of taxation applicable in the circumstances.

Distributions of fund income to non-resident unitholders are typically not liable to any additional taxation in Malta, regardless of the characterisation of the fund. Furthermore, transfers of fund units by non-resident persons are typically exempt from income tax in Malta.

Conversions (Re-domiciliations)

Another feature of the Maltese legal system is the framework surrounding the re-domiciliation (or conversion) of companies in and out of Malta, subject to certain prerequisites being satisfied. The framework can be used effectively both for fund managers as well as for fund entities themselves and is an especially powerful tool for those non-EU incorporated entities looking to transfer their legal seat to an EU jurisdiction without having to dissolve and re-incorporate the entity, which would have resulted in losing their historical performance. Via these re-domiciliation features, the entity can maintain its historical performance.

Further to the implementation of the Mobility Directive[2] in Malta, the local procedure as regards to cross-border conversions (as well as mergers and divisions) between EU member states has been harmonised. The aim of the Directive is to facilitate cross-border conversions ensuring a seamless procedure across Member States and to strengthen the protection afforded to stakeholders such as employees, creditors and shareholders.

In this regard, the process for continuations into Malta from non-EU jurisdictions is still effective and generally (depending on the responsiveness of the outgoing company registry/authority) efficient.

Malta does not impose any taxation by reference to merely an entity's continuation in Malta, though such entity would naturally be subject to ongoing tax obligations. Although Malta does generally impose an exit tax regime on entities that migrate in line with EU legislation, the scope of such exit tax may be limited, depending largely on whether the deemed gains triggered upon exit would otherwise have been exempt from tax in Malta upon actual disposal.

In all cases, the process will involve notifications and filings with the Malta Business Registry and of course, in the context of entities subject to regulation, (funds and fund managers being no exception), regulatory licensing or registration implications should be considered. Depending on the activities of the entity in question, some form of notification or authorisation process with the MFSA would typically be required.

Looking forward

In 2023, further to initiatives from the Ministry of Finance and the formation of the so-called Malta Financial Services Advisory Council (MFSAC), a body composed of various industry professionals and Regulators, the MFSAC National Strategy for Financial Services was launched. The strategy looks to build on an already strong foundation and to enable Malta to continue to develop as a reputable and successful international financial services jurisdiction that excels in innovation and responsiveness. In addition to various initiatives in niche areas such as Fintech and Sustainable Finance, of particular note is the proposition to develop a fit-for-purpose legal platform for Family Offices.

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Although Malta does generally impose an exit tax regime on entities that migrate in line with EU legislation, the scope of such exit tax may be limited.

The regulatory platform will be supported by specific legislation governing aspects specific to Family Offices with a view to addressing any existing inefficiencies or limitations. One such area would be express legislation for the regulation of the execution, amendment and enforcement of family charters. The proposals look to recognise the particular nature of family charters as a personalised and unique contractual arrangement and establish a framework which ensures predictability and certainty of outcomes.

All in all, it can be said that Malta has a vibrant financial services industry with a robust and yet flexible regulatory regime. The presence of various service providers operating in the financial services industry, including international audit firms and fund administrators, coupled with the fact that Malta is relatively more cost competitive when compared to the traditional financial services hubs, all contribute to a making the jurisdiction a top choice.

2. Directive (EU) 2019/2121 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions

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