



World Compass Alerts

November 29, 2017

Europe

Switzerland – Investment Funds

The entry into force of the new Swiss legislation on financial services (FFSA) and the supervision of financial institutions (FAFI) will be delayed until at least July 1, 2019 (and most probably until 2020).

The new legislation concerns financial service duties arising from civil law and regulatory law. In particular, the latest round of amendments by the Swiss Commission on Financial Affairs would mean that regulatory guidance from the Swiss Financial Market Supervisory Authority (FINMA) would not be binding in civil courts. Other changes include:

- the exclusion of liability when offering financial products where the requisite due diligence was carried out;
- introducing an exemption to the obligation to publish a prospectus for public offerings under CHF 8m (broadly mirroring the new EUR 8m prospectus exemption under the new EU Prospectus Regulation); and
- confirming that procedures before the mediation body would remain free.

The new drafts containing the above proposals are due to be discussed at the Council of States in the Spring and Summer 2018 sessions. As a result of these additional discussions, the proposed entry date of January 1, 2019 appears impossible, and the earliest date for the FFSA and FAFI to enter into force is July 1, 2019. However, local counsel indicate that a more probable timeframe for entry is January 1, 2020.

Spain – Investment Funds

As of January 1, 2018, all Alternative Investment Fund Managers (AIFMs) will need to appoint an entity to provide a quarterly report to the Spanish Comisión Nacional del Mercado de Valores (CNMV) for each Alternative Investment Fund (AIF) it manages which is registered for distribution in Spain.

The new requirement follows CNMV Circular 02/2017. The report is to be submitted electronically to the CNMV and requires data on:

- the number of shareholders or investors;
- the amount distributed in Spain; and
- the number of distributors.

The reporting obligation begins in the first quarter of 2018, with a deadline of two months from the last calendar day of the quarter. The AIFM is able to appoint itself or a separate entity to provide the information and submit the report to the CNMV.

Middle East

Saudi Arabia – Investment Funds

Following the Capital Markets Authority of Saudi Arabia (CMA) Decision No. 3-85-2017, changes have been made to the definitions of Sophisticated Investors and Financial Institutions in Saudi Arabia, expanding the scope of individuals and entities who can be approached as part of a private placement through a local distributor.

Previously, individual investors had to meet two of three criteria in order to be deemed a Sophisticated Investor (and therefore be eligible for private placement offerings). The new criteria dictate that the investor meet only one of the following requirements:

- has carried out at least 10 transactions per quarter over the last 12 months of a minimum total amount of 40 million Saudi Riyals on securities markets;
- net assets is not less than 5 million Saudi Riyals;
- works or has worked for at least three years in the financial sector in a professional position which requires knowledge of securities investment;
- holds a professional certificate that is related to securities business and accredited by an internationally recognized entity; or
- holds the General Securities Qualification Certificate that is recognised by the Authority, and has an annual income that is not less than 600,000 Saudi Riyals in the two most recent years.

In addition to individuals, the financial requirement to be classified as an Investment Institution has been reduced from 50m to 10m Saudi Riyals. Investment Institutions are now defined as follows:

- any company which owns, or which is a member of a group which owns, net assets of not less than 10 million Saudi Riyals;
- any unincorporated body, partnership or other organization which has net assets of not less than 10 million Saudi Riyals; and
- any person (“A”) whilst acting in the capacity of director, officer or employee of a person (“B”) falling within sub-paragraphs (1) or (2) where A is responsible for B undertaking any securities activity.

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