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Middle-East Global Distribution Update: Navigating Promotion, Distribution and Registration Issues

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ONSHORE UAE - MUTUAL FUNDS REGULATIONS 2016

- Article 35: Foreign Funds promoted inside the UAE must be registered with and approved by SCA and promoted by an SCA licensed intermediary registered under the new Regulations (grace period available)
- No promotion or distribution is permitted until SCA issues its approval and an agreement is in place with SCA licensed intermediary
- Foreign Funds are Mutual Funds established outside the UAE or in a free zone inside the UAE (ADGM and DIFC)
- Mutual Funds are financial vehicles engaged in the activity of receiving investors' money for the purpose of investment against the issue of fund units of equal value; can be public/private; open ended and close ended
- Exemptions:
 - Mutual Funds of federal or local government entities or by companies wholly owned by such entities or Foreign Funds promoted to any such entities
 - Mutual Funds of entities which are licensed by the SCA (under the PIR 2017)
 - Reverse solicitation evidenced in writing
 - Accumulation of money for the purposes of investment in a joint bank account, group insurance agreements, participation in social security, employee incentive programs or investment schemes linked with insurance contracts unless such investments or the funds raised from such schemes are directed to Mutual Fund
- Registration fees have increased significantly: Foreign Fund registration application fee: AED 35,000 (non-refundable) (GBP 7,245); Annual registration renewal application fee of a Foreign Fund: AED 7,500 (GBP 1,550).
- No distinction between a standalone fund and a sub-fund of an umbrella fund. Fees payable for each sub-fund



PROMOTION AND INTRODUCTION REGULATIONS (PIRS)

- Relate to the promotion of and introductions relating to “Foreign Securities” i.e. shares, stocks, bonds, sukuk, units of investment funds, commodities contracts, derivatives and any other securities or financial instruments issued by a foreign issuer
- Apply to promotions and introductions by firms outside UAE, including DIFC and ADGM firms
- Promoting - marketing, distributing, advertising, disclosing the detail or information by any means, in relation to financial products. This definition does not extend to include the promotion of financial services.
- Introducing – introducing a person who wishes to receive a “financial service” including the provision of trading services, to an SCA licensed entity, or to any other entity which is regulated by a regulatory authority similar to the SCA.
- Financial Services – excludes any banking and insurance activities which fall under the jurisdiction of the UAE Central Bank and UAE Insurance Authority.
- Foreign firm’s responsibility to ensure the exempt status of potential investors or the existence of reverse solicited business if it intends to promote Foreign Securities or effect introductions in the UAE.



PROMOTION AND INTRODUCTION REGULATIONS (PIRS)

- Exemptions:

- Institutional “Qualified Investors”

- Applies to “private placements” to institutional investors. A foreign firm is exempt from the PIRs when promoting to the following institutional “Qualified Investors”:

- federal and local governments, government establishments and bodies, and any companies wholly owned by them
 - international bodies and organisations
 - entities licensed to carry out commercial activities by SCA

- Exemptions do not apply to natural persons, including high net worth individuals. Exemptions are available for an individual’s person’s investment vehicle and family offices provided that they are SCA licensed

- Reverse solicitation

- Financial products listed in the UAE

- This exemption applies only if a foreign firm is promoting financial products which are listed on a SCA-licensed UAE exchange

- Introductions by financial advisors or analysts, and legal advisors

- Promoting or introducing group and “related” entities

- A person is exempt under the PIRs when it makes promotions or introductions to members of a same group or to related parties.

- Notification and approval of promotions:

- If not exemption is available, firm is required to give notice to the SCA at the time of making the promotion

REGISTRATION PROCESS WITH THE SCA (FOREIGN FUND)

- Set up an account with the SCA's eService portal
- Complete application and prepare supporting documents for submission (i.e. form 10004 and delegation letter, notarisation, Arabic translation)
- Pay registration fees (online payment using a credit card or wire transfer)
- Submit application and supporting documents through eServices account
- Ensure the local promoter has submitted undertaking form through its eService portal account
- SCA generally takes between 10 – 15 business days for review and approval



ADGM

- (Abu Dhabi Law No (4) of 2013) created second legally independent free zone in the UAE, the Abu Dhabi Global Market (ADGM); regulated by ADGM Financial Services Regulatory Authority (FSRA)
- Sophisticated regime of financial services licensing/regulation principally based on the UK model and similar to the existing regime in the DIFC (Financial Services and Markets Regulations 2015 (FSMR))
- ADGM office is permitted as an authorised firm to promote/offer funds to investors in and from the ADGM; offer of units in a Foreign Fund to a Retail Client are permitted if the same is permitted under the home jurisdiction regulation applying to the Fund
- Funds module provides for three types of Domestic Fund: public funds (require registration), exempt funds (private placement to Professional Clients with a minimum subscription of USD 50,000; qualified investor funds (same as for exempt funds with a minimum subscription of USD 500,000) (both require notification)
- FSRA may recognise any country or territory and designate any Fund constituted and domiciled in such a country or territory as a Foreign Fund
- Funds module covers the management and/or marketing of funds "in or from" the ADGM for both Foreign Funds and Domestic Funds. There are specific disclosure requirements for the marketing of foreign funds into the ADGM which must be incorporated in the prospectus and notified to FSRA
- Regulations in other GCC jurisdictions are required to be respected when promoting/offering funds units from ADGM



DUBAI INTERNATIONAL FINANCIAL CENTRE (DIFC)

- First financial free-zone in the UAE; distinct legal and regulatory regime based on UK regimes; independent courts and arbitration system modelled on English courts/LCIA systems
- Regulated by the Dubai Financial Services Authority (DFSA)
- Domestic Funds and Foreign Funds regime similar to ADGM
- Exemptions: Non-DFSA licensed FIs are permitted to promote/offer via DFSA licensed intermediaries or on a reverse solicitation basis
- In addition, there is strong reliance by non-licensed FIs on “tolerated practice principles” for promotion and offering of Foreign Funds:
 - informally accepted practice for non-DFSA licensed FIs to promote/offer financial services and products on a cross border basis across the region (i.e. DIFC, Qatar, Kuwait, Oman)
 - contacting investors by telephone or email on a targeted basis is permissible
 - targeted meetings with sophisticated investors in the DIFC is permissible, provided that there is no discussion of specific products or services and no distribution of specific marketing materials at meetings if the exemptions do not apply; discussion and distribution of the same can take place from outside the DIFC
 - no roadshows, advertisement campaigns, mass seminars
 - no execution of documentation or passing of funds in DIFC; AAM can sign outside of the DIFC
 - meetings with investors outside the DIFC (including onshore UAE and ADGM) are permitted
- No licence passporting between DIFC and UAE (including ADGM)
- Public Funds require registration in the DIFC. DFSA only requires notification of Exempt and Qualified Investor Funds



SAUDI ARABIA

- Permissible activities for foreign FIs not licensed by the Capital Market Authority (CMA) as an authorised person:
 - Any activities conducted through an authorised person – the list of authorised persons can be found at <http://www.cma.org.sa/En/Pages/AuthorisedPersons.aspx>
 - Unsolicited business to an authorised person or Exempt Entity (i.e. Government of Saudi Arabia, SAMA, Saudi Stock Exchange, Depository Centre and any supranational agency recognised by the CMA)
 - Targeted visits to Saudi Arabia to Exempt Persons, authorised persons or Institutions (defined below) to discuss generic business
 - Distribution of emails/marketing materials inside or from outside Saudi Arabia if the distribution is directed at (a) an authorised person, an Exempt Entity or an Institution (i.e. (i) any company which owns, or which is a member of a group which owns, net assets of not less than Saudi Riyals (SAR) 50 million (ii) any unincorporated body, partnership, or other organization which has net assets of not less than SAR 50 million (USD 13,333,260); or (iii) any person (A) whilst acting in the capacity of director, officer or employee of person (B) falling within categories (i) or (ii) where A is responsible for B undertaking any securities activity)
 - Business which is conducted with Saudi investors outside of Saudi Arabia
- Avoid the following:
 - Advertising campaigns and public presentations
 - Acceptance of offers or execution of contracts inside Saudi Arabia
 - Cold calls from outside or inside Saudi Arabia, unless to an authorised person, an Exempt Entity or Institution
- Unless the offeree is an authorised person or an Exempt Entity, foreign funds offered to Saudi residents must be registered with the CMA by an authorised person in Saudi Arabia, irrespective of whether the offering is made as a result of unsolicited business



KUWAIT

- Permissible activities for foreign FIs not licensed by the Capital Market Authority (CMA) :
 - Any activities conducted through a CMA licensed intermediary
 - Promotion and offering to a CMA licensed intermediary
 - Reverse solicitation
 - Promotion and offering on tolerated practice basis:
 - telephone calls and other forms of communication take place from outside Kuwait
 - provision of marketing/product specific materials/information from outside Kuwait
 - any meetings in Kuwait are low-profile, targeted and used to discuss general business and expertise. Discussions of, or information on, specific products or offerings, should be conducted on a cross-border basis once the meeting has been held and the investor requests follow up information
 - meetings held outside Kuwait
 - execution of contracts and application forms by the foreign FI outside of Kuwait
- Avoid the following:
 - Advertising campaigns, roadshows and public presentations
 - Acceptance of offers or execution of contracts inside Kuwait
 - Cold calls/meetings to discuss products inside Kuwait
- Foreign funds offered to Kuwaiti residents must be lodged by a CMA licensed intermediary in Kuwait with the CMA and approved by the CMA before offering takes place in Kuwait. This applies irrespective of the type of entity to whom the offering is being made and whether the offering is being made as a result of unsolicited business or not.
- Registration fees are as follows: Application fee: KD 1,000 (approx. GBP 2,514); Approval (and three yearly renewal) fee: KD 50,000 (GBP 438,690!)

QATAR

- Permissible activities for foreign FIs not licensed by the Qatar Central Bank (QCB) or, in respect of the QFC, the Qatar Financial Centre Regulatory Authority (QFRCA):
 - Any activities conducted through a QCB/QFRCA licensed intermediary
 - Promotion and offering to a QCB/QFRCA licensed intermediary
 - Reverse solicitation
 - Promotion and offering on tolerated practice basis:
 - cold-calling to introduce general business;
 - telephone calls/emails from outside Qatar on a discreet and targeted. Specific products should only be discussed once the investor contacts the FI following initial generic discussions/contact;
 - meetings with a targeted number of institutional investors in Qatar;
 - meetings held outside Qatar
 - execution of contracts and application forms by the foreign FI outside of Qatar
- Avoid the following:
 - Advertising campaigns, roadshows and public presentations
 - Acceptance of offers or execution of contracts inside Qatar
 - Cold calls/meetings to discuss products inside Qatar
 - Contractual documents should be governed by a foreign law and submitted to the non-exclusive(or exclusive) jurisdiction of a foreign court; and execution of any contract and application forms should be actioned by the foreign firm outside of Qatar and all applications completed by clients should be delivered directly by clients to offices or locations outside of Qatar
- No registration requirements. Prospectuses and other contracts to be presented to QCB at least three weeks prior to promotion for approval.



BAHRAIN

- ONLY foreign funds which are not Collective Investment Undertakings (CIUs) (defined below) may be promoted and offered on a cross-border basis to prospects in Bahrain without Central Bank of Bahrain (CBB) oversight on a reverse solicited or tolerated practice basis
- Tolerated practice principles are the same as for Qatar
- CIUs are undertakings: (i) the sole object of which is the collective investment of capital raised from the public or through private placement, including investment seeded by the operator, in financial instruments and other assets and which operates on the basis of risk-spreading as appropriate; and (ii) the holding of which may be re-purchased or redeemed out of those undertakings' assets, as appropriate
- Foreign funds which constitute CIUs may be marketed from outside Bahrain or inside only to or via CBB licensed intermediaries
- Avoid the following in respect of CIUs:
 - Advertising campaigns, roadshows and public presentations
 - Acceptance of offers or execution of contracts inside Bahrain
 - Cold calls/meetings to discuss CIUs inside Bahrain
- CIUs must be authorised or registered by the CBB licensed intermediary before offering takes place in Bahrain. This applies irrespective of the type of entity to whom the offering is being made and whether the offering is being made as a result of unsolicited business or not. Registration fees are as follows: Application fee: BD 100 (approx. GBP 200); approval (and annual renewal) fee: BD 2,000 (approx. GBP 4,025).

OMAN

- Permissible activities for foreign FIs not licensed by the Oman Capital Market Authority (CMA):
 - Any activities conducted through a CMA licensed intermediary
 - Promotion and offering to a CMA licensed intermediary
 - Reverse solicitation
 - Promotion and offering on tolerated practice basis to non-CMA licensed investors - same as for Qatar
 - Recommended the documentation is signed last by the foreign FI outside Oman

- Avoid the following :
 - Advertising campaigns, roadshows and public presentations inside Oman
 - Acceptance of offers or execution of contracts inside Oman (by the foreign FI)
 - Cold calls/meetings to discuss specific products inside Oman

- Foreign funds offered to Omani residents must be lodged with the CMA by a CMA licensed intermediary and approved by the CMA before offering takes place. This applies irrespective of the type of entity to whom the offering is being made and whether the offering is being made as a result of unsolicited business or not.



LEBANON

- Commingled funds may not be offered to investors in Lebanon (either from inside or outside Lebanon), except on an unsolicited basis to “sophisticated investors”.
- Fund documents must not be sent to Lebanon, except in response to an unsolicited written request from the investor. Fund documents must not be brought into Lebanon. Foreign firms must save the reverse solicitation in writing.
- Funds must not be discussed whilst in Lebanon.
- Execution of fund documentation must occur outside Lebanon.
- A Central Bank of Lebanon (CBL) licensed distributor may offer commingled funds provided that have been registered in Lebanon.
- A sophisticated investor is defined as:
 - a Lebanese collective investment scheme, pension fund or any other institution whose main activity is to invest in securities and financial products,
 - a foreign investment fund or pension fund that is properly licensed in its home country
 - a government, government agency or public authority of any country,
 - a joint stock company or an individual client that the approved institution has determined, after making and documenting due enquiries (A) has net investible assets equal of a value of at least \$US 500,000 (net investible assets means the client’s holdings of cash and securities, net of any amounts owing on loans made for investment purposes) and (B) has a minimum of 5 years of continuous experience investing in securities markets and investments.

BROADER GCC CONSIDERATIONS

- Disclaimers advisable for promotional and offering documentation
- Public sector/sovereign immunity issues
- Enforcement issues: the significance of governing law and dispute resolution clauses
- Mitigating regional regulatory issues - Take legal/regulatory advice with regard to each jurisdiction/client and product type before promoting any products
- Sharia compliance requirements for certain types of clients



QUESTIONS?

