Intertrust

CORPORATE SERVICES

FUNDS

CAPITAL MARKETS

PRIVATE WEALTH

EDITION THREE

Regulatory Spotlight

Welcome to Intertrust's quarterly regulatory spotlight, highlighting and dissecting recent regulatory updates and developments affecting the financial services industry globally

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Guernsey funds are going green

KEES JAGER, HEAD OF FUND SERVICES, GUERNSEY

GUERNSEY GREEN FUND

With green finance increasingly becoming a topic of interest for fund managers and their investors, Kees Jager, Head of Funds in Guernsey, shares more on the Guernsey Green Fund.

Guernsey as a jurisdiction made a strategic commitment to green finance within the Financial Services Policy Framework in 2018. The newly formed Guernsey Green Finance, a member of the United Nations' Financial Centres for Sustainability network, alongside many of the world's leading financial centres, showed that Guernsey is now putting a real focus on supporting sustainability initiatives.

Subsequently, The Guernsey Financial Services Commission (the GFSC) launched The Guernsey Green Fund (the Green Fund), a global first in providing green accreditation to a regulated fund. The Green Fund enhances investor access to the green investment space by providing a trusted and transparent product that contributes to the internationally agreed objectives of mitigating environmental damage and climate change.

> "Guernsey is now putting a real focus on supporting sustainability initiatives."

Under the Green Fund Rules, Green Funds must spread risk, seek a return to investors as well as invest 75% of their portfolio in investments meeting at least one of the following green criteria:

- Renewable energy
- Waste and wastewater
- Lower-carbon and efficient energy generation
- Transport
- Energy efficiency
- Low-carbon technologies
- Agriculture, forestry and land-use
- Cross-cutting issues
- Non-energy greenhouse gas reductions

The remaining 25% of the portfolio can be invested in other asset classes, provided they don't lessen or reduce the Green Fund's overall objective of mitigating environmental damage. The Green Fund can voluntarily apply ESG Principles to the investment analysis and decision-making processes.

HOW DOES IT WORK?

- Establish the fund, choosing from any of the island's existing regulated fund regimes
- Demonstrate compliance with the Green Fund Rules
- Once a certification route is decided, provide assurance that the fund is run in accordance with green criteria (as above)

The two certification routes...

- A certificate from a suitable independent third party that the prospectus meets the notified green criteria
- A declaration from either a Guernsey-licensed fund manager or administrator, such as Intertrust.

Once accredited, Green Funds are listed on the GFSC website and the use of the Guernsey Green Fund logo can be used on its various marketing and information materials (in accordance with the GFSC's guidelines on logo use).

The GFSC is currently in the process of registering the Guernsey Green Fund logo as a trade mark with Guernsey's Intellectual Property Office website.

> “Green Funds must invest 75% of their portfolio in investments meeting at least one of the green criteria”

If you're interested in discussing the Guernsey Green Fund, please get in touch.

Reflection and inflection: the past and present of regulatory change

CIARA SMITH, HEAD OF REGULATORY AND COMPLIANCE SERVICES

Ciara Smith, Head of Regulatory and Compliance Services, looks back over some of the key initiatives in the regulation space from the past 10 years and looks forward to what 2020, and beyond, has in store for the regulatory landscape.

As is customary at the end of any significant period of time, we're spurred into reflecting on events past, achievements, challenges, successes and failures. It also generates a renewed sense of potential, a year ending in a nice round zero brings thoughts of clean slate, a fresh start and general optimism.

For the financial industry and for regulation, the past 10 years have been similar to changing the tyres on a moving car. From the repercussions of the financial crash, to crypto assets becoming a mainstream, added to the exposures of the panama papers, and the value shift towards green and ethical investing driven by a rapidly changing demographic of investors; it has been a hell of a ride.

REFLECTION

So in this hyper charged world of regulatory change – what were the responses from our legislators which were expected to change the game? Here are some observations on those which have been the most thought provoking and had the biggest impact (both positive and negative).

FATCA/CRS (Automatic Exchange of Information – AEOI)

Looking back from 2020 where AEOI is now a fundamental pillar of the global tax and regulatory reporting environment, most people will admit that this was one of the big successes. Historical remediation requirements certainly posed a real challenge and the slow reaction of the regtech industry in creating viable solutions contributed to the pain felt probably disproportionately by non-banks.

The Alternative Investment Fund Managers Directive (AIFMD)

The alternatives directive aimed to address some of the perceived drivers of the financial crash, lack of insights and/or understanding by regulators and central banks into the systemic risk exposures of the alternatives world. Based on the core concepts of the UCITS regulations, the legislation was a valiant attempt to standardise the complex. Almost six years on, the general consensus from both hedge and private equity industry participants has generally been neutral to positive. However, the extent to which the historical reporting requirements have been of value continues to be unknown.

Markets in Financial Instruments Directive II (MIFID II)

MIFID II has arguably been the giant of the regulatory landscape during the last decade and has come into very public and significant criticism from investors and industry participants since its introduction in January 2018. Commentary tends to focus on its complexity and scale, with the transaction costs and reporting requirements coming in for the most negative feedback generating substantial frustration. In response, the EU commission has indicated that it'll conduct a review and potentially make some changes to cost and distribution of market data and investor protection rules.

The Packaged Retail and Insurance-based Investment Products (PRIIP) Key Information Document (KID)

The PRIIP KID has been a piece of legislation that was quite publicly put through the ringer, having been rejected and delayed on multiple occasions by the Commission. Aiming to standardise all documentation and simplify the complex for retail investors through comparability and more disclosure, this regulation always had a very high bar. The challenges of the requirements were extreme in terms of scope, timing and historical data. Widely touted as the most difficult piece of legislation to implement (outstripping MIFID II which is quite the achievement), the extent to which the cost of compliance outweighed the potential gain was a serious question asked by those impacted.

INFLECTION

As we look to the present and launch into 2020 and beyond, we're faced with the implementation of regulations which will challenge some of the fundamentals of the global financial industry. The market has reached a point of inflection where some of the fundamentals to how the global financial world has operated may no longer ring through. There are numerous legislations either going live in 2020 and beyond or are currently in draft as proposals; far too many to list here. Of those with known details, the following are of key significance, with a key focus on transparency:

Base Erosion and Profit Shifting (BEPS) Multi Lateral Instrument (MLI)

The implementation of the MLI has a potential to impact over 2,000 existing bilateral tax treaties. Refer to the article 'What you need to know about the MLI' in this edition of the regulatory spotlight to read more insights into this complex topic.

Mandatory Disclosure (DAC6)

The EU response to addressing tax aggressive structuring, this regulation is extremely complex, wide ranging and has tight reporting deadlines. The intention of the reporting is to give the tax authorities insights into the structures and arrangements which, until now, have only had much delayed insights into.

In conclusion, there's little doubt that the financial world at the end of this decade will look very different than the world of 2019, and the ability to react to regulatory change quickly will be the key to success for almost all members of the financial industry. As our regulators seek to continue to protect and prevent, our industry will still adapt and evolve and regardless of own opinions, we can all agree its certainly not going to be boring.

> "In 2020, we're faced with the implementation of regulations which will challenge some of the fundamentals of the global financial industry"

People are key to digital transformation

LEE GODFREY, MANAGING DIRECTOR, WESTERN EUROPE

Lee Godfrey joined Intertrust in 2019 and brings with him a wealth of knowledge including highly specialised data management and reporting solutions for the financial industry having spent the last eleven years at KNEIP in strategic positions, including CEO. Prior to that, Lee was Group COO and Member of the Board of the publicly listed company, PrecisionIR Group, an online investor relations services provider.

Lee is an ambassador of Fintech investment, specifically in the area of regulatory technology. "Our industry has a responsibility to drive transparency for investors", he says, "clients want to invest and their focus should be on investment, so it's the duty of regulators and service providers' alike to work hard to meet the growing expectations of their increasingly digital savvy clients who now expect, if not demand, friction free, transparency in all their interactions".

Intertrust has introduced transformational processes that are designed to help the firm's clients do the same. Amongst the technology, the human touch is a central feature.

So many funds firms are now attempting to transform themselves digitally. By definition, technology is a crucial factor in this – but the ability to personally engage and empower employees shouldn't be underestimated as firms seek to generate value-add opportunities.

"Our clients are in sectors that are rapidly changing due to regulations and politics, meaning that they need products and technology that are fit for purpose," says Lee. "We needed to better understand and structure the organisation in order to meet their needs, so it was necessary to make people across an organisation feel they could voice their ideas in order to enhance the end-user experience."

Transformation could change corporate models and it entails a more agile framework. Although a digital transformation will have software at its centre, a transformation strategy really prioritises innovation for the future and learning from the past. This requires a more open environment and an outcome-led approach based on flexibility and teamwork.

> "It's the duty of regulators and service providers' alike to work hard to meet growing expectations of their increasingly digital savvy clients"

Intertrust, which has a presence across over 30 jurisdictions, has developed a client engagement model that ensures resources are targeted at the right locations and creating centres of excellence in local offices.

The company is able to leverage in-house talent, which now include skills gained via the acquisition of Viteos, a top-ten US tech-enabled fund administration provider.

A ROLE FOR ELLA

Continuous education and development are important, so Intertrust launched a company-wide online digital upskilling programme called e-Learning logically arranged (ELLA). ELLA, with content organised into four pillars of competencies – Emotional Agility, Grit, Growth Mindset, Mental Agility – aims to educate individuals at every level of the company about the benefits of agile practice and also equip them with the latest digital tools. Employees are taught how to work more effectively with colleagues and clients in order to keep pace with their requirements.

"The ability to personally engage and empower employees shouldn't be underestimated as firms seek to generate value-add opportunities"

There are over 3,000 courses on offer within ELLA that are both tailored to people with specific roles, but also available to any individual keen to learn new skills, technologies and methods.

"The programme isn't just about training in artificial intelligence, for example, but teaching people about the importance of organisational change, collaboration and culture," says Lee. This translates into a strong emphasis on soft skills, such as communications and leadership, he adds.

While future trends will inform the programme, Lee also believes that taking the time to look back is critical to the learning process and to identify missed opportunities.

Intertrust is introducing an "Agile" mindset and using the "retrospective", often known as "lessons learned", sessions to focus on continuous improvement. In these meetings teams assess, openly and honestly, how successful or unsuccessful a certain initiative has been, in order to identify desired alterations for the next iteration, driving continuous improvement.

Since joining Intertrust, Lee says there's a real creative buzz in the air. Client advisory boards have been set up and, more internally, there's an emphasis on collaboration, with regular open sessions where new ideas and potentially new products can be discussed rather than over email, ensuring the face-to-face interaction remains central.

"When people talk about business transformation, they normally think about it in terms of technology and reallocating costs to find greater efficiencies – but really it's about capturing the hearts and minds of people," says Lee.

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"A transformation strategy really prioritises innovation for the future and learning from the past"

Singapore launches the VCC

SAMUEL CHANG, COMMERCIAL DIRECTOR, AND NECO DUSSELDORP,
SENIOR MANAGER FUND SERVICES, SINGAPORE

On 15 January 2020, Singapore launched the Variable Capital Companies (VCC) Act. Samuel Chang, Commercial Director, and Neco Dusseldorp, Senior Manager Fund Services, discuss the main characteristics and what this new fund structure means for Singapore.

The VCC Act was passed by parliament on 1 October 2018. The Act provides for the incorporation of a VCC, which is a legal entity specifically designed for Alternative Investment Funds (AIFs).

SINGAPORE DOMICILED FUNDS PRIOR TO THE VCC ACT

In Singapore, fund managers are regulated by the Monetary Authority of Singapore (MAS). Licensing ranges from exempted fund managers to the heaviest regulated – Capital Markets Services License. Singapore didn't have a fund vehicle that's tax transparent. In this respect, Singapore had a backlog compared to other countries as a fund jurisdiction and saw fund managers based in Singapore use other jurisdictions to set up their fund - mainly the Cayman Islands. To counter this, and to make Singapore more attractive as a fund jurisdiction, MAS introduced a number of tax exemptions, such as S13R and S13X. Funds that are setting up in Singapore can apply these exemptions should they meet pre-determined requirements. Although these exemptions make Singapore more attractive as a fund jurisdiction, there are still disadvantages compared to the well-established fund location, such as the Cayman Islands and Luxembourg.

Singapore identified that these disadvantages stem from a combination of inflexible capital rules for Singapore companies and the fact that only Singapore companies qualify for tax exemption application. To be more competitive as fund jurisdiction, and to facilitate Singapore based fund managers, Singapore designed the VCC Act.

THE MAIN CHARACTERISTICS OF THE VCC

It's a fund vehicle that:

- is regulated or exempted under the SFA
- can be set up as open or closed-ended
- is used for mutual fund strategies for retail investors and as alternative investment strategies for sophisticated investors
- Tax transparent
- Repurchase of issued shares
- Segregated cells

"There are additional incentives in place for Singapore fund managers to use the VCC structure locally"

WHAT INTRODUCING VCC MEANS FOR SINGAPORE

At this point, in the early stages of the launch, there are additional incentives in place for Singapore fund managers to use the VCC structure locally instead of the ones domiciled in foreign jurisdictions. Therefore, many fund managers are starting to move towards these structures. There may be a trend of re-domiciliation of foreign corporate funds in this timeframe as well.

WHAT IT MEANS FOR INTERTRUST

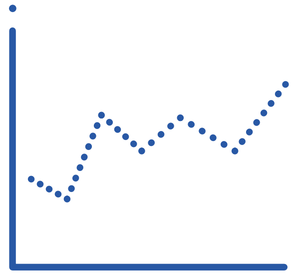
In Singapore, we have a dedicated fund services team with expertise to administer both open and close-ended funds. We are also partnering PwC to provide extensive training on the VCC in the coming months to equip the team with the necessary knowledge to administer this new structure.

We foresee that international fund managers who are contemplating on expanding to the South East Asia region will consider Singapore as a jurisdiction to set up their fund. In light of this, Singapore expects that certain fund managers will re-domicile their existing funds to Singapore with the VCC structure in place.

If you'd like to learn more about the VCC or Singapore as a fund jurisdiction, please contact us.

"Singapore designed the VCC Act to enhance it's competitive position as a fund jurisdiction"

China's foreign investment law



BILL GUO, MANAGING DIRECTOR, CHINA

The Foreign Investment Law in China came into effect on 1 January 2020 to replace other existing laws and Bill Guo, Managing Director, China, highlights why this is good news for the region.

China's new Foreign Investment Law: will your investment concern in China be minimised?

The Foreign Investment Law (FIL) will replace the PRC Law on Sino-foreign Equity Joint Ventures, the PRC Law on Wholly Foreign-owned Enterprise, the PRC Law on Sino-foreign Cooperative Joint Ventures, and is effective as of 1 January 2020.

WHAT GOOD NEWS DID YOU GET FROM THE FIL?

1. **National Treatment on the market entrance, except those in the Negative List**

   The FIL emphasises that foreign investment in China will get pre-national treatment, which means national treatment will be given equally to the foreign investment, unless the investment would fall into the Negative List issued by the State Council of China.

2. **Simplified registration process**

   Registration rather than approvals. The FIL formally does away with the prior systems that required approval by the Ministry of Commerce and registration with the Administration of Industry and Commerce before a foreign investment could be permitted into China.

3. **Well protected Intellectual Property rights**

   One main concern of foreign investors, before they make decision, is whether their IP could be protected in China. The FIL gives a good answer, and especially specified that the government cannot force the IP transfer by administrative method.

"Foreign investment in China will get pre-national treatment"

LIFT OF THE QUOTA LIMITATION ON QFII AND RQFII OF CHINA GIVES MORE OPPORTUNITIES TO FOREIGN INVESTORS

According to the latest regulations of THE PEOPLE'S BANK OF CHINA (PBOC) and the State Administration of Foreign Exchange (SAFE), the investment Quota limitations of QFII and RQFII had been removed. Previously, China's government always had strict rules on how foreign investors work in China's capital market.

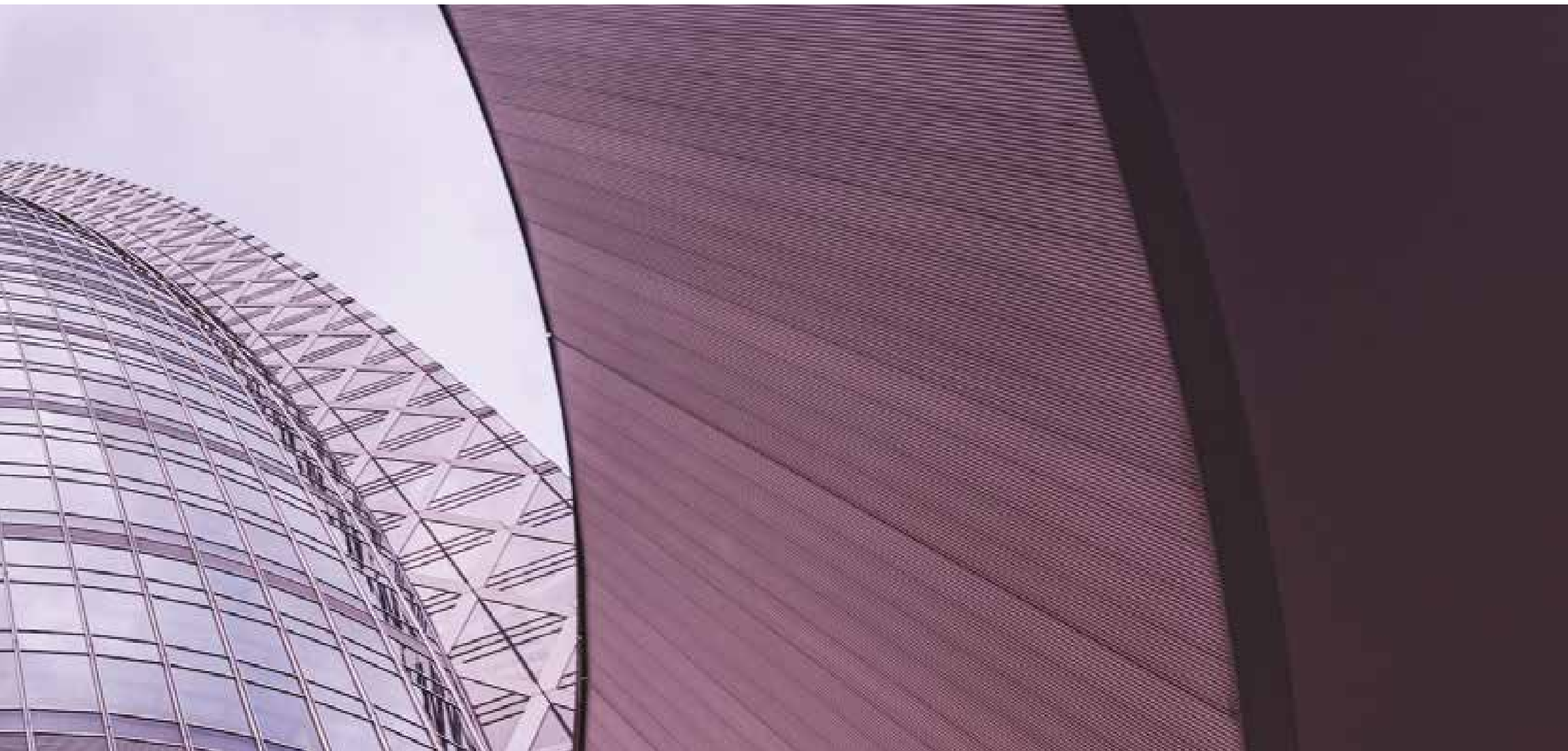
QFII and RQFII were established in 2002 and 2011, meaning that the qualified foreign investors could open the capital and stock account. Within the quota limitation, both could invest in China's capital market.

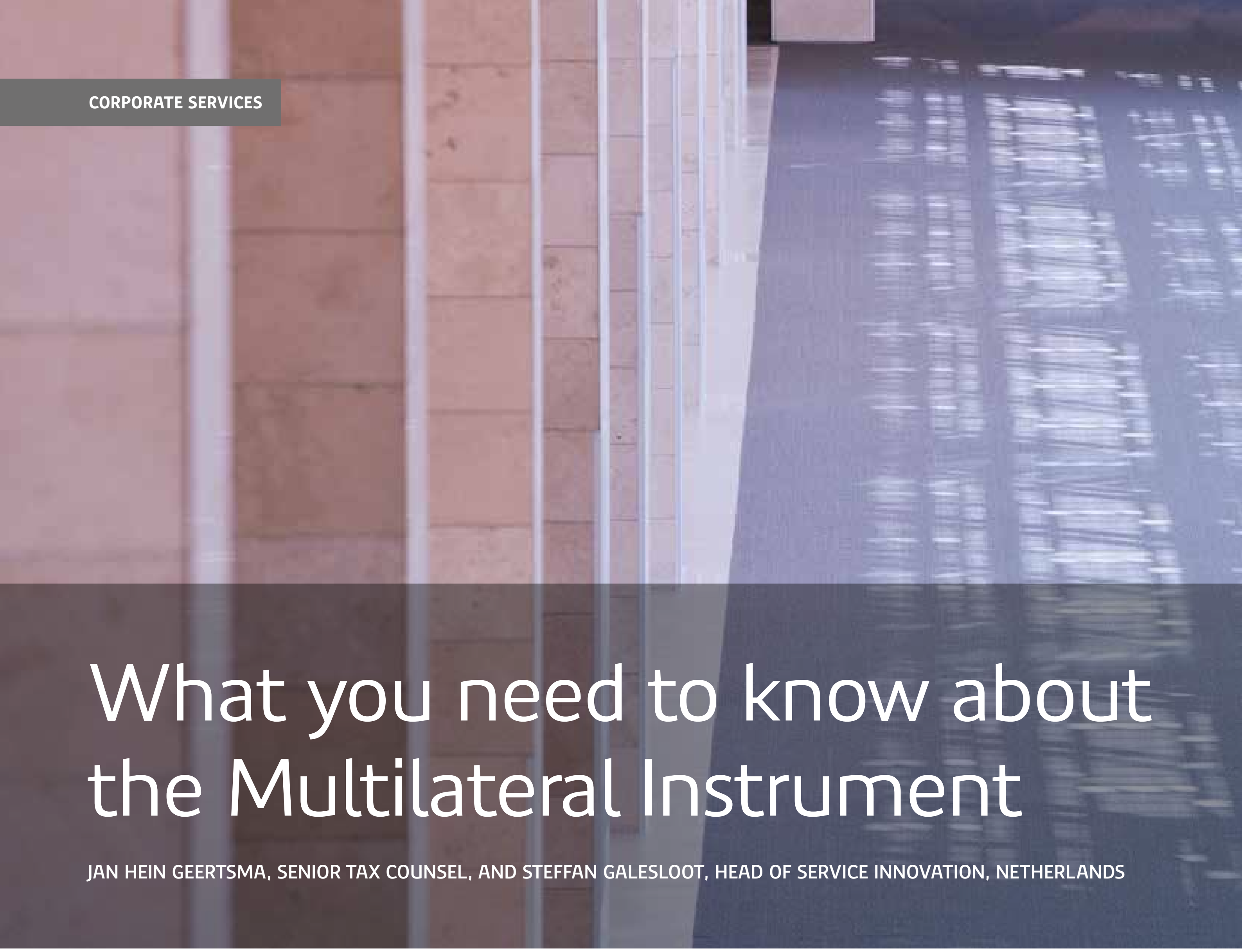
However, with the rapid development of China's capital market, the quota limitation of QFII and RQFII is no longer suitable for China's opening environment of capital market. Furthermore, it also has no benefit for those investors manage their assets like bonds and stocks through different channels. With the limitation, it's hard for both the investors and China's capital market achieve more progress. Till the end of August 2019, the QFII and RQFII only hold 1.5% market values of A-share stock market.

"In the past, China's government has always had strict rules on how foreign investors work in China's capital market"

This reform of removal of quota limitation, is a big step to fulfil the requests from foreign investors, and shows that the Chinese government is building a better investment environment. It also highlights that they're continuing to deepen the reform of foreign exchange administration, expanding opening-up, supporting foreign investors to invest in domestic capital markets and facilitating cross-border investment and financing.

For more information on China's foreign investment law and our offering in China, please get in touch.





CORPORATE SERVICES

What you need to know about the Multilateral Instrument

JAN HEIN GEERTSMA, SENIOR TAX COUNSEL, AND STEFFAN GALESLOOT, HEAD OF SERVICE INNOVATION, NETHERLANDS

On 24 November 2016, a group of over 100 jurisdictions decided on a Multilateral Instrument (MLI) that will modify the application of existing bilateral tax treaties to implement the tax treaty measures developed through the OECD/G20 BEPS project. Depending on the ratification process, the potential impact on over 2,000 existing bilateral tax treaties will be substantial. Jan Hein Geertsma, Senior Tax Counsel, and Steffan Galesloot, Head of Services Innovation, share all you need to know about the MLI.

KEY MEASURES

The MLI will modify existing bilateral tax treaties through the following provisions:

1. **Hybrid mismatches**

   The MLI introduces optional treaty provisions to address hybrid mismatches arising from differences in the tax classification of an entity or an arrangement under the laws of two or more countries. According to these provisions, no tax treaty benefits shall be granted in case income isn't considered to be income of a resident of one of the countries.

2. **Preventing treaty abuse**

   To counter treaty shopping, the MLI introduces a principal purpose test (PPT), optionally supplemented with a simplified limitation on benefits (LOB) provision. Countries can opt out of this rule, as long as they agree on an alternative provision that meets the minimum Base Erosion and Profit Shifting (BEPS) standards on anti-treaty abuse, such as a detailed LOB provision together with other measures. In addition, the MLI implements several specific anti-abuse provisions to target forms of treaty abuse, such as the exclusion of treaty benefits for income attributable to low taxed private equities in third states.

3. **Preventing the artificial avoidance of private equity status**

   The MLI provides optional provisions to lower the private equity threshold in tax treaties and the bar for establishing taxable presence of non-resident enterprises in the source country.

4. **Improving dispute resolution**

   The MLI intends to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP) in accordance with a minimum standard. In addition, the MLI provides an optional provision on mandatory binding MAP arbitration as a way of guaranteeing that treaty-related disputes will be resolved within a specified time frame.

LEGAL EFFECT OF THE MLI

The MLI provisions won't be included in specific bilateral treaties through an amendment of the texts of those treaties. Instead, the MLI provisions need to be read and applied with these treaties. It's noted that the individual countries should decide for themselves whether they want to prepare for internal purposes consolidated versions of their treaties that are subject to the changes and additions based on the MLI.

POSITIONS OF THE NETHERLANDS AND LUXEMBOURG

Netherlands

The MLI came into force for the Netherlands and certain treaty partners on 1 July 2019, where the Netherlands' treaty partner has already deposited their instrument of ratification and both countries agreed for the MLI to apply to their tax treaty. In this case, the MLI will then apply for withholding tax purposes (e.g. interest, dividends) beginning 1 January 2020. The Netherlands has opted for the PPT.

Luxembourg

The MLI came into force for Luxembourg and certain treaty partners on 1 August 2019, where Luxembourg's treaty partner has already deposited its instrument of ratification and both countries agreed for the MLI to apply to their tax treaty. In this case, the MLI will apply for withholding tax (e.g. interest, dividends) purposes beginning 1 January 2020. Luxembourg has also opted for the PPT.

If you'd like to know more about the Multilateral Instrument and how we can help, please get in touch.

Expanded regulatory oversight for Cayman Islands funds

LESLEY CONNOLLY, REGIONAL HEAD OF REGULATORY COMPLIANCE SERVICES AND OPERATIONS

The Cayman Islands continues to strengthen its legal and regulatory framework relating to the provision of international financial services. As anticipated, these changes include an expansion to the regulatory oversight of investment funds, in particular through the registration of private funds and the elimination of an exemption for mutual funds with fifteen or fewer investors. Lesley Connolly, Regional Head of Regulatory and Compliance Services and Operations in Cayman, provides an overview of the changes expected.

Both bills were published on 8 January 2020 and, while it remains subject to industry consultation and adjustment prior to being passed into law, it's expected that the final form of the bill will be passed by 30 January 2020. Accordingly, while the following summarises key elements of the bills and accompanying legislative guidance notes as published, Intertrust will provide a further update once the final terms of the laws are confirmed.

We understand that the pace of regulatory change can be difficult to keep up with and that management of costs is important. Read on for update on these changes and contact us to discuss how we can help you minimise the legal and regulatory burden and expense of complying with these changes.

REGISTRATION OF PRIVATE FUNDS

The Private Funds Bill, 2020 (the "**Private Funds Bill**") proposes the introduction of a requirement for close-ended funds to be registered with the Cayman Islands Monetary Authority ("**CIMA**"), sets out the operating conditions applicable to private funds, creates various offences, and gives CIMA various powers in relation to registration and supervision of private funds.

Registration requirements

A private fund is prohibited from carrying on (or attempting to carry on) business in or from the Cayman Islands unless it has submitted an application for registration to CIMA within 21 days of accepting capital commitments, has filed the prescribed details in respect the private fund with CIMA, has paid the prescribed annual registration fee, complies with any conditions imposed on its registration, and complies with provisions of the law. A private fund is prohibited from accepting capital contributions from investors in respect of investment interests until it's registered by CIMA.

Ongoing operating conditions

Once registered, a private fund is required to pay an annual fee by 15 January each year, have its annual accounts audited by an auditor approved by CIMA, submit the audited accounts to CIMA within six months of the respective financial year end, submit an annual return, in the prescribed form, in respect of each financial year end, and file with CIMA details of changes that materially affect information submitted to CIMA and changes to its registered office or principal office within 21 days. The records of a private fund must be maintained in an accessible manner and in accordance with rules, statements of principle and guidance issued by CIMA.

In addition, a private fund must:

- have appropriate and consistent procedures for the purposes of proper valuations of its assets and ensure that valuations are conducted in accordance with the law;
- appoint a custodian to (i) hold, in segregated accounts, the custodial fund assets and (ii) verify, based on information provided by the private fund and available external information, that the private fund holds title to any other fund assets and maintain a record of those other fund assets; however, where CIMA is notified of a private fund's intention not to appoint a custodian and it's neither practical nor proportionate to do so, having regard to the nature of the private fund and type of assets held, the private fund shall appoint a person to conduct the title verification described above;
- appoint a person to (i) monitor the cash flows of the private fund, (ii) ensure that all cash of the private fund has been booked in cash accounts opened in the name of, or for the account of, the private fund, and (iii) ensure that all payments made by investors to the private fund in respect of investment interests have been received, and
- where it regularly trades securities or holds them on a consistent basis, (i) maintain a record of the relevant identification codes of the securities it trades and holds and (ii) make this record available to CIMA upon request.

The Private Funds Bill allows valuation, custody and cash monitoring functions to be handled by independent third parties and, subject to conditions relating to independence and conflicts of interest, persons with a relationship with the private fund's manager or operator.

"The pace of regulatory change can be difficult to keep up with and management of costs is important"

The Private Funds Bill contemplates regulations being issued to prescribe various matters (including forms and fees) and to establish transitional provisions.

REPEAL OF EXEMPTION FOR MUTUAL FUNDS

The Mutual Funds (Amendment) Bill, 2020 (the "**Mutual Funds Bill**") proposes the repeal of the existing exemption from registration for mutual funds with fifteen or fewer investors the majority of whom have the ability to appoint or remove the operator of the fund and introduces a requirement that such funds (i) be registered with CIMA and (ii) have a licensed mutual fund administrator providing its principal office in the Cayman Islands. CIMA's powers in relation to regulated funds will be largely extended to funds required to be registered.

REGISTRATION REQUIREMENTS

A mutual fund that was previously exempted is prohibited from carrying on (or attempting to carry on) business in or from the Cayman Islands unless it has filed with CIMA a certified copy of an extract of its constitutional document specifying that a majority of investors in number are capable of appointing or removing the operator of the mutual fund, has filed with CIMA any other information in the form prescribed, is registered with CIMA, and has paid the prescribed annual registration fee.

ONGOING OPERATING CONDITIONS

A mutual fund registered pursuant to the Mutual Funds Bill is required to pay an annual fee, have its accounts audited annually by an auditor approved by CIMA, submit the audited accounts to CIMA within six months of the respective financial year end, and submit an annual return, in the prescribed form, in respect of each financial year end.

The Mutual Funds Bill allows mutual funds that were exempted immediately prior to its coming into force six months to become compliant with the new provisions.

NEXT STEPS

Our Cayman team has assisted clients with maintaining legal and regulatory compliance in the Cayman Islands for over 35 years. As an independent service provider, with a large and experienced team, and the holder of trust, company management and mutual fund administrator licences, we're ideally placed to assist with satisfying registration requirements, custody and cash monitoring needs, and record keeping obligations in addition to ongoing governance matters.

If you'd like to discuss how we can help prepare your fund entities for these changes in regulation, please get in touch with us.

"The Private Funds Bill allows valuation, custody, and cash monitoring functions to be handled by independent third parties"

The crux of the beneficial owner register – tightening up

CLAUDIO FANGER, BUSINESS UNIT MANAGER LEGAL IN SWITZERLAND, AND JURGEN BORGT, MANAGING DIRECTOR, SWITZERLAND

With the reporting of the beneficial owner register tightening up, Claudio Fanger, Business Unit Manager Legal in Switzerland, and Jurgen Borgt, Managing Director Switzerland, take a look at the beneficial owner register and provide an update on the reporting obligations.

Since 1 July 2015, purchasers of shares have been subject to reporting requirements defined by the Swiss Code of Obligations. Notification must be made to the issuing company of anyone who acquires registered shares of a non-listed company and thereby reaches or exceeds 25% of the share capital or votes.

The notification must include the full name and address of the beneficial owner of the acquired shares and must be submitted within one month of acquisition. If this notification isn't made in time or is omitted completely, the consequences include all shareholder rights being suspended during the notification period, i.e. the shareholder cannot exercise voting rights and no dividends are paid. If the notification period expires, the dividend right is forfeited in full.

The company is obliged to maintain a register of the beneficial owners of the company. This register can be combined with the share register.

In addition to the end of bearer shares, valid as of 1 January 2020, the provisions concerning reporting obligations for beneficial owners will also be further tightened. Breach of the duty to report beneficial owners at shareholder level and breach of the responsibilities to keep share registers and register of beneficial owners at company level will now also be subject to fines. Furthermore, the company may be investigated due to lack of organisation and, in the worst case, forced deregistration by the court.

Based on the existing and amended provisions, the above-mentioned reporting obligations apply to those who:

- directly or indirectly hold the majority of the voting rights;
- directly or indirectly have the right to elect or remove the majority of the members of the board; or
- are enabled with a controlling influence over the shareholder stated in the articles of the association, the deed of incorporation and/or an agreement.

"The company is obliged to maintain a register of the beneficial owners of the company"

If no such person is in existence, the shareholder must submit a corresponding message to the company confirming that no such person controls the shareholder base.

If the shareholder is a listed joint-stock company, or if such a company has overall control, or if the shareholder owns a listed company, then this fact must be reported accordingly, along with the name and registered office of the listed company. These rules apply not only to limited companies but also to limited liability companies and have been in effect as of 1 November 2019.

"If the notification period expires, the dividend right is forfeited in full"

If you'd like to understand more about the beneficial owner register and how we can help, please get in touch.

About Intertrust

Intertrust is a global leader in providing tech-enabled corporate and fund solutions to clients operating and investing in the international business environment.

The Company has over 3,500 employees across 30 jurisdictions in Europe, the Americas, Asia Pacific and the Middle East. Intertrust had leading market positions in selected key financial markets, including the Netherlands, Luxembourg, Jersey and the Americas. Intertrust delivers high quality, tailored corporate, fund, capital market and private wealth services to its clients, with a view of building long-term relationships.

The company works with global law firms and accountancy firms, multinational corporations, financial institutions, fund managers, high net worth individuals and family offices.

Contact us

If you have any questions or want to know more about the topics highlighted in this regulatory update, please get in touch.

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65+ years' experience

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