Intertrust

CORPORATE SERVICES
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EDITION FOUR

Regulatory Spotlight

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

DAC6: EU states – and intermediaries – race to meet cross-border tax transparency deadlines

ANTONELLO ARGENZIANO, GLOBAL REGULATORY PRODUCT MANAGER, LUXEMBOURG

There are just weeks until 1 July 2020 entry into application of the European Union's sixth Directive on Administrative Co-operation in the field of taxation (more succinctly referred to as DAC6). Antonello Argenziano provides an update on the implementation of the directive and the challenges that the market's facing.

While EU member states have been rushing to get domestic legislation implementing DAC6 onto their statute books, there's an even bigger rush to comply for the targets of the legislation: intermediaries, which can be individuals or companies and includes lawyers, accountants, corporate service providers, banks, holding companies and group treasury entities.

As of 1 July 2020, they'll have just two months left to complete preparation of two years' worth of retrospective reporting on transactions, in accordance with legislation in place for barely months, and in some cases weeks, and this timeline varies, sometimes in significant ways, from country to country.

The directive will require compulsory reporting by EU intermediaries to their domestic tax authority of cross-border transactions or arrangements involving one or more EU member states that exhibit so-called hallmarks of aggressive tax avoidance strategies. Where no EU intermediary is involved, or if they assert a legal duty of confidentiality, which applies notably but not exclusively to lawyers, the burden of reporting falls to any or all EU taxpayers involved in the arrangement.

The last-minute haste to get DAC6 enshrined in law isn't an unusual situation for EU legislation – the European Commission is almost constantly engaged in harrying recalcitrant member states over their inability to meet deadlines – but it's concerning, in the light of the retrospective reporting obligation, that the directive imposes on intermediaries.

The deadline for transposition of the directive into national law, 1 January 2020, was missed by seven of the then 28-member states, and as of early March, Greece had still not even published draft legislation. Luxembourg was also one of the laggards, even though the government placed a draft bill before the Chamber of Deputies on 8 August 2019. After amendments to meet concern about professional confidentiality requirements, it was finally approved by parliament on 21 March 2020 and received royal assent four days later.

The legislation is part of a growing trend at European and National level to clamp down on transactions that aren't in themselves illegal, unlike outright tax evasion, but that may have been designed artificially to reduce the tax liability of one or more parties to the transaction or arrangement.

The fact that an arrangement is reportable doesn't mean that tax avoidance has been proven, simply that national tax authorities have grounds for examining whether it exceeds legal thresholds for permissible tax efficiency.

"As of 1 July 2020, there will be just two months left to complete preparation of two years' worth of retrospective reporting on transactions"

The directive sets out a total of 15 hallmarks in five categories that make an arrangement reportable:

- generic hallmarks linked to the main benefit test (whether one of the principal purposes of the arrangement is to obtain a tax benefit),
- specific hallmarks linked to the main benefit test,
- specific hallmarks related to cross-border transactions,
- specific hallmarks concerning automatic exchange of information, and
- beneficial ownership and specific hallmarks concerning transfer pricing.

These hallmarks or characteristics include confidentiality agreements regarding tax advantages, intermediary fees contingent on tax benefits, or standardised documentation or structures that aren't tailored to a participant's individual circumstances.

Other hallmarks that may indicate aggressive tax avoidance include: buying of loss-making entities to reduce tax liability, the conversion of income to capital, gifts or other types of revenue taxable at a lower rate, round-trip transactions and deductible cross-border payments involving no- or low-tax jurisdictions or that benefit from other preferential regimes.

The legislation also highlights double tax deductions or relief, transactions that sidestep exchange of information and beneficial ownership reporting obligations, and transfer pricing involving hard-to-value intangible assets or transactions that have the effect of lowering taxable profit in the future.

Five categories of hallmarks define reportable arrangements under DAC6

Hallmark 1 linked to the main benefit test

Hallmark 2 includes tax planning features

Hallmark 3 relates to crossborder transactions

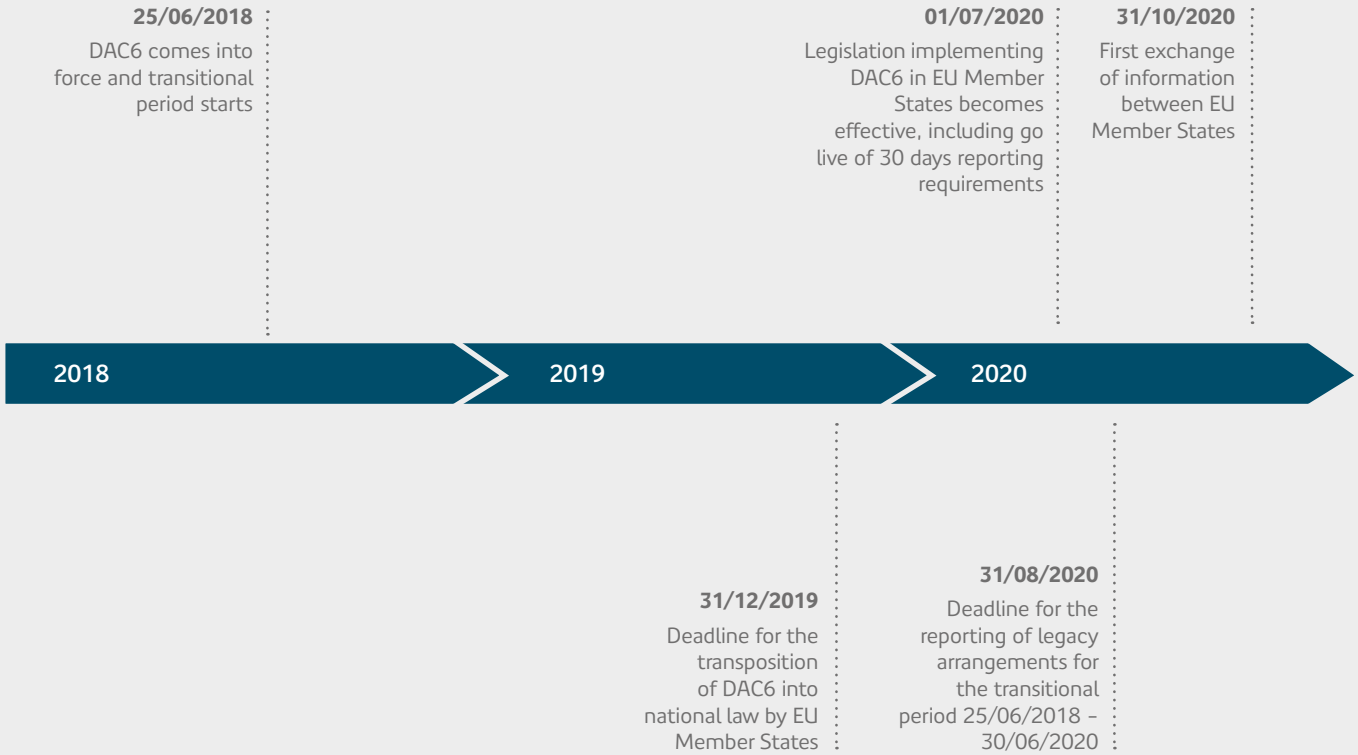
Hallmark 4 includes the automatic exchange of information

Hallmark 5 relates to transfer pricing

Because the legislation is retroactive, all relevant cross-border arrangements established since the directive became law, between 25 June 2018 and 30 June 2020, must be reported by 31 August 2020 (arrangements implemented during July must be reported at the end of that month). Information reported to national tax authorities will begin to be exchanged with other EU member states on 31 October 2020.

In addition to this tight deadline, the complications for intermediaries include the fact that legislation in the form of directives offers EU member states some leeway in how they're transposed into national law. For instance, the EU text doesn't define what constitutes an "arrangement" or a "tax advantage", but member states are free to do so, as Ireland has done, as long as the result doesn't limit the scope of the directive.

Timeline



"Concerns facing intermediaries include the need for specialist expertise to track variations in the law from country to country"

Other variations include, for example, a provision in the Dutch legislation specifying that companies in the same group as a taxpayer may be considered an intermediary if it performs tax functions for the group.

French intermediaries are exempt from reporting on arrangements involving their permanent establishments abroad.

Luxembourg's legislation considers the country's statutory professional privilege, providing an exemption from reporting not only to lawyers but chartered accountants and auditors.

Unlike the directive, Germany's legislation doesn't distinguish between promoters and service providers giving aid, assistance or advice regarding a cross-border arrangement. This will place a reporting obligation on intermediaries with a German nexus – such as a head office or centre of management, or the German permanent establishment of a non-EU intermediary – no matter where the taxpayer is resident, or the tax advantage is derived.

Poland, which exceptionally brought its domestic legislation into force on 1 January this year, has significantly enlarged its scope to include domestic arrangements and all taxes, and it also defines hallmarks more expansively than the EU directive.

Portugal has added value-added tax to the scope, and legislation there and in Sweden also covers domestic arrangements.

So the concerns facing intermediaries include the need for specialist expertise to track variations in the law from country to country, as well as the potentially large number of retrospective transactions or arrangements that must be reviewed in a short time – knowing that clients won't thank them for over-reporting that could prompt tax authorities to pick over the details of blameless transactions.

Facing a short time to adapt to new legislation (which may yet need further regulatory clarification or guidance), intermediaries face a heavy administrative burden to fulfil the requirements on time and without error. The penalties for non-compliance are heavy, running as high as €5 million in Poland, and even inadvertent mistakes in reporting are liable to be costly.

Many firms are likely to seek external help in meeting the challenge. this will involve, at a minimum, multi-jurisdictional support that brings understanding of local requirements, provided by firms with well-established processes and operational functions to help intermediaries avoid the risk of penalties. Additionally, it'll involve the use of proven technology to shoulder what may be a substantial administrative burden.

The COVID-19 pandemic has added another layer of uncertainty to the DAC6 implementation process. With stock markets crashing, economies slumping and a wide range of business sectors struggling to keep their heads above water, national authorities, regulators and intermediaries may be distracted by more urgent priorities. Some financial regulatory measures, such as Basel III implementation, have already been delayed because of the pandemic, it's not inconceivable that authorities might offer some flexibility on DAC6 deadlines.

It now looks as though all EU members (except Greece, but including the UK) will have their domestic legislation in place by 1 July 2020. But the legislators' efforts are almost done, while for everyone else the hard work is moving up to a new level.

To find out more about DAC6 and how we can help, please get in touch.

“Many firms are likely to seek external help in meeting the challenge including the use of their proven technology solutions to shoulder what may be a substantial administrative burden”

COVID-19: introduction of practical regulation and considerations in Luxembourg

VERONIQUE BASTIN, HEAD OF RISK AND COMPLIANCE, LUXEMBOURG

In the wake of COVID-19, many regulators and national authorities have taken dramatic steps to maintain the stability of their financial industry and ensure companies' business continuity. Veronique Bastin shares some of the practical considerations introduced in Luxembourg including a new regulation to facilitate the holding of virtual board and shareholder meetings.

This new regulation reaffirms the importance of providing regulatory reporting in a timely manner, extending the filing of annual financial statements and insisting on the importance for supervised entities to provide virtual or remote access to their employees.

FACILITATING VIRTUAL BOARD AND SHAREHOLDERS' MEETINGS

On 20 March 2020, a Grand Ducal regulation came into force offering several measures to facilitate the holding of board and shareholder meetings. This new regulation allows Luxembourg-based companies to organise shareholders' meetings without a physical meeting.

> "The CSSF hasn't applied a strict enforcement policy with regards to reporting if delays are duly justified"

- **Shareholders' meetings**

  The new regulation states that, notwithstanding any contrary requirements in the articles, that general meetings of shareholders may be held without a physical meeting with voting conducted remotely (written or electronically), through a proxy-holder designated by the company or by video conference (or similar means of communication allowing shareholders' identification).

- **Board meetings**

  Similarly, board meetings may also be held, notwithstanding any contrary requirements in the articles, without a physical meeting, through circular written resolutions or video conference (or similar means of communication allowing the identification of the board members). Board members participating by such means are deemed present for the purpose of quorum and majority.

In case convening notices have already been received by the participants, companies who wish to proceed as above are required to publish their decision and inform their shareholders no later than three business days before the meeting.

CSSF PROMPTS SUPERVISED ENTITIES TO PERFORM ON-TIME REGULATORY REPORTING

In the context of COVID-19, Luxembourg regulator Commission de Surveillance du Secteur Financier (CSSF), has insisted on the importance of 'reliable supervisory information' and requests supervised entities to perform their regulatory reporting on time and to proactively contact the CSSF ahead of reporting deadline in case of complications. The CSSF hasn't applied a strict enforcement policy with regards to reporting if delays are duly justified and ensures close coordination with national authorities, the European supervisory authorities and the European Central Bank.

Extension to file annual financial accounts

The Luxembourg Business Register (LBR) announced on 18 March 2020 that the period for filling 2019 annual accounts is extended by four months. Shareholders have until 30 June 2020 to approve annual accounts.

CSSF urges supervised entities to foster remote and virtual work access

On 22 March 2020, the Luxembourg regulator announced that only vital functions – essential to maintain the critical mission of the supervised entities and which can't be performed remotely – should staff need to work at usual workplace or backup site. Supervised entities are required to provide virtual desktop or remote access solutions for employees who aren't equipped with laptops and mobile devices.

"In the wake of the COVID-19 situation, many regulators and national authorities have established new regulations and measures"

UAE Free Zone Authorities announce measures to assist foreign investors

PATRICIA T'HART VAN ROOIJEN, MANAGING DIRECTOR UAE,
AND FRANCESCA BORGHI, BUSINESS DEVELOPMENT MANAGER UAE

To support SMEs during the current global situation, many UAE Free Zone Authorities are putting in place measures to assist foreign investors with the incorporation and administration of their local entities.

The below outlines the main measures announced by the UAE free zones during the COVID-19 pandemic.

In line with the UAE government initiatives earlier this month, the Dubai Free Zones Council advertised a stimulus package aimed to create a supportive environment for all businesses in the Emirate Dubai. The package put in place by the Dubai Free Zones Council includes five main points:

- Waive the rent payments for up to six months.
- Reimburse guarantees and security deposits.
- Facilitate financial payments through easy instalments on a monthly basis.
- Cancel current penalties.
- Offer temporary contracts that allow the free movement of employees between companies operating in the free zones.

The Free Zone entities that decided to take part of this economic stimulus package, in coordination with the Dubai Free Zones Council, are: Dubai Silicon Oasis Authority, Dubai Airport Free Zone Authority, Jebel Ali Free Zone, Dubai World Trade Centre, Dubai International Financial Centre, Dubai Development Authority, Dubai South, Meydan City Corporation, and Dubai Multi Commodities Centre.

On the top of the Free Zone Council package, some of the above free zone entities have also decided to provide additional benefits to the business owners with a series of offers, outlined as follows.

Dubai Multi Commodity Center (DMCC)

DMCC has implemented a digital process that allows shareholders to incorporate their business without the physical presence in the country. Until further notice the below changes will be applied:

- The signature on the new incorporation forms such as Board Resolution and Specimen Signature can be done through video conference or in presence of an approved DMCC International Service Provider.
- Regarding new subsidiaries and branches of foreign companies, the documents of the parent company can be forwarded by email as scanned copies of the original notarised documents or an online verification can be done through the public register, if applicable.
- The license application documents can be submitted by email as scanned copies of originals.
- A reduction of registration fees by 50% for new companies and 30% discounts for current companies' renewal and amendment fees will now apply.

Abu Dhabi Global Market (ADGM)

To guarantee business continuity, ADGM has put their efforts towards implementing the current Data Protection Regulations and online registry solutions as follows:

- As specified by the ADGM Office of Data Protection, the Data Protection Regulations don't prevent a Data Controller from processing Personal Data in cases of emergency, provided that the Personal Data is processed fairly, lawfully and securely, and it's adequate, relevant and proportionate for the purposes for which it's being processed.
- Any corporate services requests will be processed online though the ADGM portal. This means new business incorporation or licenses renewal and or amendments can be processed without the physical presence of the shareholders and authorised signatory.

And the following stimulus package will apply as of 1 April 2020:

- Waive 100% renewal fees of the commercial license (including business activity and data protection fees) to all existing operational entities until 25 March 2021. For entities that have renewed their commercial license between 25 and 31 March 2020, the ADGM Registration Authority will be in contact to arrange a refund of the associated fees.
- Waive 100% of the application, renewal and late application fees for Temporary Work Permits until 25 March 2021.
- Refund 50% of supervision fees paid by regulated entities to ADGM Financial Services Regulatory Authority (FSRA) for the year 2020 and reduce by 50% any new supervision fees to be collected until 31 December 2020.
- Waive 100% of the annual funds fees until 31 December 2020 and refund 100% of annual funds fees already paid by existing FSRA authorised entities for 2020.
- Defer rental payments and service charges for office tenants at ADGM Square for 2020.

"IFZA has introduced a new option allowing foreign investors to setup their free zone company remotely"

TWOFOUR 54

This free zone is regulated by the Abu Dhabi Government which waived all licensing and registration fees for two years to media companies setting up their legal entities (both branches and LLCs) in this free zone.

As other free zones, TWOFOUR54 can support investors starting a business remotely during these circumstances through the below features:

- The application forms can be accepted electronically.
- UAE residency or a Visit Visa is not a mandatory requirement to set up a new company.

RAK International Corporate Center (RAK ICC)

In the interest of the welfare of the clients, RAK ICC has decided to implement the following procedures to reduce the impact of the current situation:

- RAK ICC will no longer require signed original documents and will accept signed scanned documents to complete service requests.
- The current amnesty period for restoration of companies, that was due to end on 30 April, will be extended to 30 June.
- Effective from Sunday 22 March, companies that haven't been renewed won't be automatically removed from the RAK ICC register but will remain as inactive. Normal penalties for late renewal will apply.

The Dubai International Financial Centre (DIFC)

The DIFC decided to offer the below advantages to its clients:

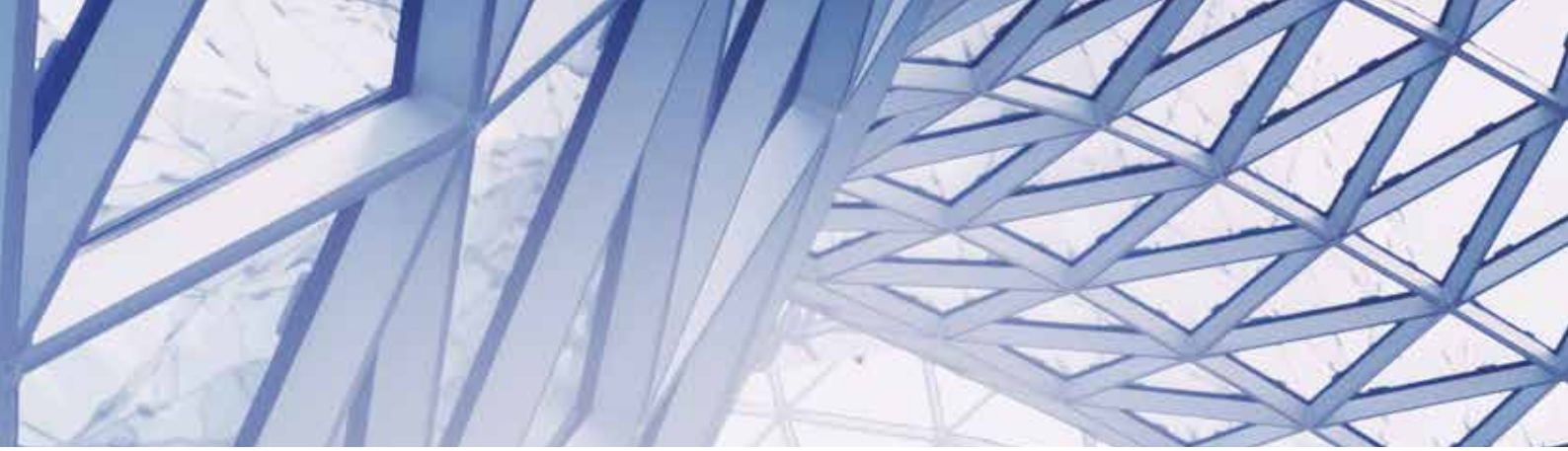
- Waive annual licensing fees on new registrations during the next three months.
- Provide 10% discount of renewal fees for existing license holders in the DIFC that are due to renew their licenses during the next three months.
- Defer payments in respect all properties owned by DIFC Investments for a period up to six months.
- Reduction on property transfer fees from 5% to 4% for any sale of property (or any part thereof) that will take place within the three-month period.

International Free Zone Authority (IFZA)

Due to the current impossibilities to travel, IFZA has recently introduced a new option allowing foreign investors to setup their free zone company remotely by following the below indications:

- Business owners aren't required to have a UAE residency or a tourist visa at the time of the incorporation (in many free zones, the above-mentioned documents are required to establish the company).
- The application forms can be accepted electronically.
- The physical presence off the shareholders isn't required at any stage of the company setup.

We can help you make the process even easier by liaising with the government bodies and keep your business projects alive. Get in touch with us for more updates on the UAE market and learn which free zones are more suitable for your business needs.



COVID-19 and upcoming annual general meetings of shareholders in the Netherlands

MARCELO DELFOS, DIRECTOR, AND MICHIEL VAN DER MAAT, SENIOR COMMERCIAL EXECUTIVE, THE NETHERLANDS

In the past few weeks measures have been announced to slow the spread of COVID-19. Further measures and/or extensions may be expected. Marcelo Delfos and Michiel van der Maat, highlight the impact that COVID-19 will have on the upcoming annual general meetings of shareholders (AGM) of many Dutch listed companies.

We foresee AGMs being postponed or cancelled until further notice influencing and potentially delaying decision-making processes.

According to the Dutch Corporate Governance Code (CGC), which applies to large and listed companies with registered offices in the Netherlands, shareholders and other voting right holders should have the opportunity to issue their voting proxies/instructions to an independent third party.

"Shareholders and other voting right holders should have the opportunity to issue their voting proxies/instructions to an independent third party"

An independent proxy holder enables your shareholders to issue voting proxies and instructions prior to an upcoming AGM, without physical attendance. The AGM can still take place with less attendees, whilst ensuring a valid and objective decision-making process, an increase of investors' participation and the reliability of the business. It also makes your company more resilient in case of unforeseen circumstances, such as COVID-19.

Compliance with the CGC is based on the 'comply or explain' principle and should be covered in the annual report of the company, ensuring transparency and continuity.

> "We foresee AGMs being postponed or cancelled until further notice influencing and potentially delaying decision-making processes"

Introducing the Global Investor Programme in Singapore

NICHOLAS TAN, MANAGER PRIVATE WEALTH, SINGAPORE

The Global Investor Programme (GIP) awards Singapore Permanent Resident (PR) status to eligible global investors who intend to drive their businesses and investment growth from and within Singapore. Nicholas Tan provides an update on the requirements that are likely to impact High Net Worth Individuals (HNWIs).

What's the Global Investor Programme?

Applicants for the GIP would generally have a substantial business track record and a successful entrepreneurial background to qualify.

Applicants would also need to choose an investment option under which they'd apply for Singapore PR status for themselves and their dependants. If approved, Singapore PR status would be granted for an initial five-year period and would be subject to recently refined renewal criteria. The criteria for a three or five year renewal would generally include local business spending requirements, headcount requirements and a requirement for the applicant or their dependants to spend at least half their time in Singapore.

Singapore has earned its reputation as one of the most business-friendly jurisdictions in the world. Its pro-business environment – a combination of political stability, well-established healthcare structure, a trustworthy legal system and a well thought out tax regime – has made it a global hub for corporate and financial services activities.

The reasons applicants opt for the GIP is wide and varied. From potentially obtaining Singapore citizenship in the long run to relocating to be close to their business headquarters, the end goal for these global investors is usually the same; that's to establish and maintain significant substance and presence in Singapore over the medium to long term.

The list of approved industries that global investors may use to qualify under the GIP is as follows:

Aerospace engineering	Alternative energy or clean technology	Automotive	Chemicals	Consumer business
Electronics	Energy	Engineering services	Healthcare	Info-comm products and services
Logistics and supply chain management	Marine and offshore engineering	Media and entertainment	Medical technology	Nanotechnology
Natural resources	Safety and security	Space	Shipping	Pharmaceuticals and biotechnology
Precision engineering	Professional services (e.g. consulting, design)	Arts businesses	Sports businesses	Family office and financial services

What are the changes and updates to the GIP?

Previously, GIP only catered to one group of global investors, which was "Established Business Owners".

With effect from 1 March 2020, three additional categories of global investors have been included and are now catered for under the GIP namely "Next Generation Business Owners", "Founders of Fast Growth Companies" and "Family Office Principals"; albeit with varying criteria for application under each category.

For "Established Business Owners", the minimum average annual revenue requirement has now been increased to S$200 million, up from S$50 million previously (derived from the applicant's existing business). However, applicants may consider consolidating up to two of their businesses from the list of approved industries in order to meet the minimum average annual revenue requirement. All other requirements (such as shareholding percentages and successful track record) relevant to this category of global investors remain unchanged.

"As part of our Effortless Expansion model, we're able to provide clients with a truly seamless and efficient implementation and ongoing administration of the structures they establish under the GIP" said Nicholas Tan, Private Wealth Manager based in Singapore"

For the new category of "Next Generation Business Owners", aside from being engaged in one or more of the approved industries, the new requirements include:

(i) Applicant's immediate family should either be the largest shareholder of or hold at least 30% of the shareholdings of the company that the applicant uses to qualify

(ii) Minimum average annual revenue requirement for this company would be at least S$500 million per annum over the last three years, and at least S$500 million in the year immediately preceding application

(iii) Applicant would need to be part of the management team of the company (e.g. c-suite/board of director)

For the new category of "Founders of Fast Growth Companies", aside from being engaged in one or more of the approved industries, the new requirements include:

(i) Applicant must be the founder and one of the largest individual shareholders of the company that the applicant uses to qualify

(ii) Company has a valuation of at least S$500 million

(iii) The company must have been invested into by reputable venture capital and private equity firms

For the new category of "Family Office Principals":

(i) The applicant must possess at least five years of entrepreneurial investment or management track record

(ii) The applicant must have net investible assets of at least S$200 million which would include all financial assets, such as bank deposits, capital market products, collective investment schemes, premiums paid in respect of life insurance policies and other investment products *excluding real estate*

Prior to the latest round of updates, global investors could apply for the GIP under two options (either A or B). With effect from 1 March 2020, a new investment option "Option C", colloquially known as the Family Office option, is now available and formalises a previously unpublished option of investing into a new or existing Singapore-based Single Family Office.

The three investment options under which global investors can apply for the GIP are now as follows:

Option A: Invest S$2.5 million in a new business entity or in the expansion of an existing business operation

Option B: Invest S$2.5 million in a GIP fund that invests in Singapore-based companies

Option C: Invest S$2.5 million in a new or existing Singapore-based Single Family Office having assets under management (AUM*) of at least S$200 million *[offshore assets can qualify as part of AUM, provided at least S$50 million investible AUM has been transferred into and held in Singapore].*

"The end goal for these global investors is to establish and maintain significant substance and presence in Singapore over the medium to long term"

"Established Business Owners", "Next Generation Business Owners" and "Founders of Fast Growth Companies" will now be able to apply for the GIP under any of the options here.

"Family Office Principals" however, will only be able to apply for the GIP under Option C.

A quick summary of the latest GIP updates:

- New categories for qualifying investors seek to entice and encourage global entrepreneurs from the pool of founders of fast growth companies, and next generation business owners, to move their business headquarters to Singapore and to relocate themselves and/or their families.
- The formal inclusion of the Family Office option ties in nicely with the existing tax incentives regime for funds (Section 13X and 13R) that family offices currently apply for in addition to the licensing exemptions of Single Family Offices.
- The AUM for the Family Office option remains at S$200 million but only S$50 million needs to be transferred into and held in Singapore.
- Applicants now don't need to spend more than half of their time in Singapore, provided that their dependants do so.

We're well placed to assist business owners who wish to expand into and from Singapore to achieve their goals via the GIP.

> "Applicants may consider consolidating up to two of their businesses from the list of approved industries in order to meet the minimum average annual revenue requirement"

GATS seeks to digitise the aviation finance industry

ANNE FLOOD, HEAD OF CAPITAL MARKETS IRELAND, VASSILENA OUZOUNOVA, SENIOR MANAGER, CAPITAL MARKETS SINGAPORE AND PAUL GRIFFITH, HEAD OF SALES IN IRELAND

It's a turbulent time for airlines as the industry grapples to adapt to the future post COVID-19, however, there are developments in the industry which may help it get back on its feet. Anne Flood, Vassilena Ouzounova and Paul Griffith share more on what these developments are.

In June 2020, the Aviation Working Group (AWG) will launch the Global Aircraft Trading System (GATS), a fully electronic platform for the buying and selling of aircraft engines on lease. The system intends to streamline the trading and financing of leased aircraft equipment, reducing the burden on lessees, lessors and financiers by using advanced technology, a sophisticated e-platform and digitally executed standardised form documents.

The principal purpose of the GATS platform is to facilitate aircraft trading by bypassing the currently inefficient novation process through beneficial owner trusts. The trust structure enables a corporate services provider, such as Intertrust, to hold in trust the legal title to the aircraft for the benefit of a nominated beneficiary, which could be a lessor or a special purpose company.

When that aircraft is sold, the trustee remains but the beneficial interest in the trust property is transferred to new owner. This streamlines the novation process utilising a live and searchable electronically distributed ledger system, which has the additional benefit of enhancing ownership transparency. The scheme's integrity is furthermore protected by appointing a regulated trustee in the jurisdictions where the scheme is operating.

"The principal purpose of the GATS platform is to facilitate aircraft trading"

It's a natural progression of our investment in our aviation business that we should be the first trustee service provider to be authorised by the AWG as the only GATS trustee to be approved in Ireland and Singapore and also the first company outside the US to be authorised to do so.

The process to be appointed as a GATS trustee is challenging, again solidifying the system's integrity, as the AWG has been very thorough in who they accept to offer these types of services. The GATS initiative is voluntary so to ensure that there's broad acceptance within the market, AWG is seeking to control the quality of the service providers appointed to the GATS trustee initiative. As a result, we've gone through an extensive audit by a third party, which has looked through our entire due diligence and Know Your Customer (KYC) processes to ensure that we meet the AWG's high standards. That approval was received in late January this year and subsequently we applied to be recognised as a GATS trustee provider in Ireland and Singapore.

Wells Fargo exits the Trustee Business

Just as the GATS details were being fine-tuned, the market was shaken by Wells Fargo's announcement to withdraw from the UK and Irish corporate trust business. With aviation firmly on the company's future business plans, we acquired the US bank's UK trust company in December 2019 gaining the trustee roles on 49 aircraft deals, mostly comprising Japanese, Middle Eastern and South American airlines.

This deal has significantly broadened our aviation finance offering and the intention now is to gain as many more trustee roles on aircraft deals as we can. We bring experience, knowledge and capability to the trustee role and we can also leverage the overlap between Wells Fargo's deals with our existing businesses.

> "The scheme's integrity is protected by appointing a regulated trustee in the jurisdictions where the scheme is operating"

With the GATS trustee approval and the acquisition of the Wells Fargo Trust portfolio, we're in a good position to partner with the aviation finance and leasing market through the coming recovery and will be actively seeking more business for existing and new clients going into a more challenging market environment.

ESG shift being driven by what really matters

IAN RUMENS, GLOBAL HEAD OF PRIVATE WEALTH

Financial services are playing an active role in not just preserving the future of our planet, but also considering broader social factors. Many think this action is solely client-driven but Ian Rumens insists that companies need to strive to be better for their own sakes as well as their clients' and wider society.

There are some leaders in global finance who everyone sits up and takes notice of. The former governor of the Bank of England, Mark Carney, is one such figure. Christine Lagarde, president of the European Central Bank, is another. Larry Fink, the CEO of the world's largest asset manager BlackRock, is also a voice worth listening to.

All three have something in common beyond being held in universal high regard in the world of international finance; they're all concerned by climate change as an existential threat to life as we know and enjoy it today.

In a letter to CEOs at the start of this year, Mr Fink wrote:

"The evidence on climate risk is compelling investors to reassess core assumptions about modern finance."[1] Mr Carney and Ms Lagarde both spoke of the need to speed up climate risk assessment and disclosure when they fronted the launch event for the 2020 UN Climate Summit, due to take place in Glasgow in December.

If financial services firms were able to bury their heads in the sand on environmental issues before, they certainly can't now.

Clients demanding changes

For institutions, of course, it's important to adapt to meet shifting client demand. We're having increasingly regular conversations with our international client base about environmental, social and governance (ESG) factors.

This is also called socially responsible investing, sustainable investing, green finance, impact investing and much more besides. But the phraseology we use is immaterial; what it boils down to is what *matters* to the client.

A generational perception shift is already underway and that's certainly contributing to the increased popularity of ESG. Millennials are much more concerned with the environment, being socially responsible and working for companies that prioritise their social and environmental governance and don't engage in harmful practices that detrimentally impact the planet.

The things that *matter* to them – whether it's ethical labour practices or sustainable building projects – are leading their decisions when it comes to wealth management.

Previous generations generally concentrated on making their fortune and then, upon retirement, considering and supporting philanthropic causes that resonated with them.

For the current generation, making money goes hand-in-hand with exploring the good that it can do. That dynamic is only going to become more prevalent as the current teenagers and twenty-somethings begin to take control of the wealth.

Family Offices are already addressing the client demand for ESG. According to the UBS Global Family Office Report 2019, one in three Family Offices are engaged in sustainable investing and the average allocation from those entities is 19% of their portfolio. Those figures are certain to increase in the coming years.

Organisations need to change

Of the one in three Family Offices surveyed to be engaging in sustainable investing[2], 46% have adopted the integration of ESG factors into analysis and evaluation. This highlights an important facet of the ESG movement; reporting.

ESG isn't just affecting how we manage our clients' assets; it's affecting the way we report on those assets as well.

"A generational perception shift is already underway and that's certainly contributing to the increased popularity of ESG"

This isn't easy. There are a multitude of standards and criteria for reporting on ESG and none of them are universally accepted or applicable. Reporting for a manufacturer is going to require totally different metrics to those that are useful for a real estate fund.

One wide-ranging standard that some organisations are integrating into their measurement is the UN's Sustainable Development Goals. These attempt to address everything from climate change to poverty eradication to equality of opportunity and the UN wishes to achieve them all by 2030.

But factoring ESG into our client work is just the start. What organisations need to do is start looking inward and asking themselves that same question clients are asking - what matters to us?

The company that doesn't start to prove it's working towards a better, more sustainable future isn't going to survive to be a part of it. To return to Mr Fink's letter: "Climate change has become a defining factor in companies' long-term prospects."

The next generation doesn't just consist of future clients; it's also made up of our future investors, workforce and political leaders and public figures.

They'll demand – far more vocally than any generation before them – that companies reflect their environmental focus. At Intertrust our ESG policy is to play our part as a leader in responsible business practice.

"ESG isn't just affecting how we manage our clients' assets; it's affecting the way we report on those assets as well"

In our own business we're taking a broad view, addressing everything from macro initiatives like the Universal Declaration of Human Rights and anti-bribery measures to a local focus on positively impacting the local economies where we live and work.

In the Channel Islands, we're aligning ourselves with Guernsey Green Finance to ensure that our offering reflects what the industry is aspiring to achieve and that our employees and solutions meet the best local standards. Our team is also working on a number of green transactions, from green mortgages through to investments in solar farms. Our goal is to combine long-term profitability with social responsibility and ESG factors. That ambition is good for our clients, our employees, our industry and, most importantly of all, our world.

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[1] https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter

[2] Source: https://www.un.org/sustainabledevelopment/sustainable-development-goals/

‘Steadying the ship’ for Alternative Investment Fund Managers during uncertain times

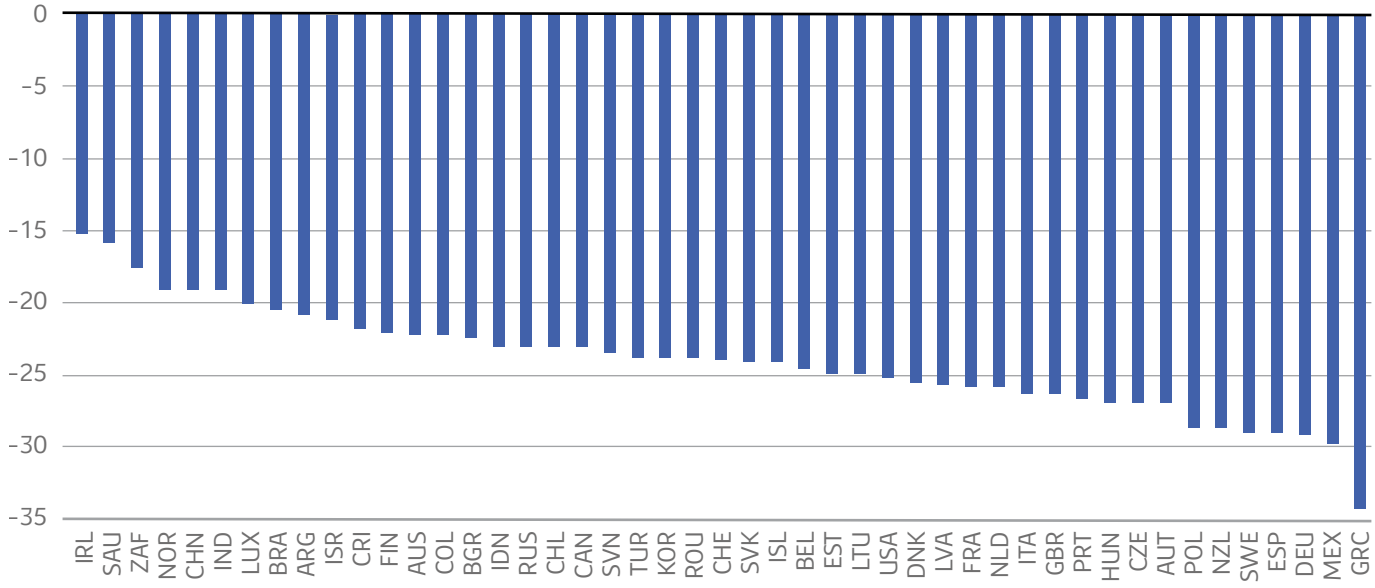
DAVID O'FLAHERTY, DIRECTOR, AIFM SERVICES, IRELAND

The COVID-19 pandemic is set to significantly impact the financial services industry globally and the size of this impact will depend on the time it takes for markets to stabilise again. David O'Flaherty highlights how this will affect Alternative Investment Fund Managers (AIFMs), like Intertrust.

As an authorised Alternative Investment Fund Manager (AIFM), in both Ireland and Luxembourg, we provide regulatory compliant solutions to managers (both in the EU and Non-EU) that enable them to market their fund across Europe. The Alternative Investment Fund Management Directive (AIFMD) was introduced as the European Union response to the global financial crisis in the last decade.

In light of the coronavirus impact, the Organisation for Economic Co-operation and Development (the OECD) is currently forecasting a slow-down in economic growth, with Ireland on the low end with under 15% and Greece at the upper end of the scale with almost 35% decline.

The potential initial impact on activity of partial or complete shutdowns on activity selected in advanced and emerging market economies.



Source: Evaluating the initial impact of COVID-19 containment measures on economic activity 27/Mar/2020 OECD Annual National Accounts; OECD Trade in Value-Added database; Statistics Korea; Brazilian Institute of Geography and Statistics; and OECD calculations.

Our AIFM business is highly regulated and the regulators, (the Central Bank of Ireland – CBI in Ireland, and the Commission de Surveillance de Secteur Financier – CSSF in Luxembourg), will communicate with funds via the AIFM. We expect the CBI and CSSF to increase their correspondence in the coming months as the situation develops and continues to disrupt markets.

"In light of the coronavirus impact, the OECD is currently forecasting a slow-down in economic growth"

There's set to be an immediate focus for the CBI on liquid funds with retail investors however the funds we provide AIFM services to are largely illiquid. This means that while some of our funds may unwind in the medium-to-long term, there's no short-term risk of that occurring.

> "The immediate focus for the CBI will be on liquid funds with retail investors"

As the crisis continues to unfold, we expect our AIFM teams to be increasingly busy. Some of the funds we manage have assets that will be among the impacted and the AIFM will have to monitor closely and regularly engage with investment managers, valuation agents, regulators as well as other service providers connected to the funds. Where managers are made up of a number of strategic managers, we're hoping to see some positive activity in the short term and the addition of some new funds.

During this time, we aim to keep abreast of any regulatory changes that may be introduced. Overall, there's a sentiment of "steadying the ship" in order to provide best-in-class AIFM services to fund managers both in the EU and outside it.

Two new laws effective 7 February 2020 in the Cayman Islands

MATTHEW RUSH, COMMERCIAL DIRECTOR USA

Whilst closely monitoring the COVID-19 situation, we know the major concern for all businesses during this period is maintaining normality around day-to-day operations. The Cayman Islands continues to strengthen its legal and regulatory framework by expanding the regulatory oversight of investment funds, through new registration requirements and the elimination of certain exemptions. Matthew Rush provides an update on the two new laws published by the Cayman Islands government on 7 February 2020.

PRIVATE FUNDS LAW, 2020

Applicable to close-ended funds

The Private Funds Law introduces the requirement for closed-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.

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

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.
- complies with provisions of the Private Funds Law.

A private fund is prohibited from accepting capital contributions from investors in respect of investment interests until it is 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 its 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.
- 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.
- maintain its records in an accessible manner and in accordance with rules, statements of principle and guidance issued by CIMA.

Additional requirements

A private fund must:

- have appropriate and consistent procedures for the purposes of proper valuation 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 non–custodial fund assets and maintain a record of such assets; however, where CIMA is notified of a private fund's intention not to appoint a custodian and it is 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.
- 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 Law 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.

Exclusions and exceptions

The above requirements relating to annual audit, valuation, custody, cash monitoring and securities identification do not apply to an "alternative investment vehicle" where consolidated or combined financial reporting is permitted by the accounting standard/principles applied and a private fund elects to report consolidated or combined financial statements with such alternative investment vehicle. The Private Funds (Regulations), 2020 define an "alternative investment vehicle" as meaning "a company, unit trust, partnership or other similar vehicle that:

(a) is formed in accordance with the constitutional documents of a private fund for the purposes of making, holding and disposing of one or more investments wholly or mainly related to the business of that private fund; and

(b) only has as its members, partners or trust beneficiaries, persons that are members, partners or trust beneficiaries of the private fund."

CIMA may exempt a private fund from the requirements relating to valuations; this exemption may be absolute or subject to the conditions that CIMA deems appropriate.

Deadline for compliance

The Private Funds (Savings and Transitional Provisions) Regulations, 2020 allow private funds, both those existing as at 7 February 2020 and those starting to carry on business within six months after such date, until 7 August 2020 to comply with the Private Funds Law.

MUTUAL FUNDS (AMENDMENT) LAW, 2020

Applicable mutual funds with fifteen or fewer investors

The Mutual Funds (Amendment) Law repeals 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 be registered with CIMA. CIMA's powers in relation to regulated funds are largely extended to funds now required to be registered under the Mutual Funds (Amendment) Law.

"The PFL gives the CIMA various powers in relation to registration and supervision of private funds"

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.
- has paid the prescribed annual registration fee.
- ongoing operating conditions.
- a mutual fund registered pursuant to the Mutual Funds (Amendment) Law is required to:
- pay an annual fee.
- have its accounts audited annually by an auditor approved by CIMA.
- submit its 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.

Deadline for compliance

The Mutual Funds (Amendment) Law allows mutual funds that were exempted immediately prior to its coming into force six months (i.e. until 7 August 2020) to become compliant with the new provisions.

Please contact your relationship manager to discuss how we can help prepare your fund entities for these changes in regulation.

> “CIMA may exempt a private fund from the requirements relating to valuations”

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.

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 more than 3,500 employees in over 30 jurisdictions across Europe, the Americas, Asia Pacific and the Middle-East. Intertrust delivers high-quality, tailored fund, corporate, capital market and private wealth services to its clients, with a view to 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.

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Contact us

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

3,500+ employees

30+ jurisdictions

65+ years' experience

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