

REGULATORY UPDATE OCTOBER 2009

NEWS FROM IRELAND



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The one-year anniversary of Lehman Brothers' collapse passed last month and the financial landscape has shifted radically since that fateful day. At the time, many (myself included) had moments of panic where it was felt that a career change was inevitable but just one year on, and the financial market paralysis appears to have eased off to a degree. There are so many ongoing changes, discussions and consultation papers in the regulatory sphere that I propose to deal with them in a separate paper which I will post to the **library section of our website** for those who want to stay on top of the technical aspects of the regulatory changes.

Instead, I propose to touch on a couple of key issues that have arisen recently that I am sure are mirrored across our sector. In particular, increased activity in the fund structuring and re-domiciling of fund entities has undoubtedly picked up, as confidence and investor appetite for more regulated and transparent fund structures continues in particular. Much of this activity is a direct response to the AIFM Directive. Many "prospects" are thankfully drawn to an Irish domicile due in the main to the favourable corporate tax rate, flexible regulatory regime, favourable capital adequacy requirements that prevail and in particular the quality of the service providers within the jurisdiction.

Some Recent Observations

Auditor Letters of Representation

October is quite obviously a hectic month in terms of fund submissions of financial accounts to the stock exchanges and Financial Regulator. Fund financial statements are more in focus than ever before and investors are keen to read about the future strategic plans of fund structures and as such accounts will be more closely scrutinised than ever before in the investment due diligence process.

Proper disclosures and the issue of board letters of representation to auditors remain very much in focus. Accounting disclosures particularly on funds with high levels of derivatives can be extensive and in such a climate all parties require to gain levels of comfort prior to finalisation. One change that in my view would be

beneficial is the introduction of a consistent approach to letters of representations requested by the audit firms from the fund boards. The current situation results in a lack of consistency from firm to firm. It is clear that between the auditor community generally there should be a concerted effort to standardise such letters to everyone's benefit.

Performance Fee Calculations

Another evident trend of enquiries received in recent times is with regard to analysis and appraisal of performance fee methodologies. Investors require an understanding and appraisal of how the investment manager is to be remunerated.

It is important that all parties to the fund structures have a common understanding on the investment manager's fee calculation and that the language and operational methodology match up. It is also important that such agreement is reached prior to the launch of the fund, or at least prior to crystallisation of the fee.

FMConsult have recently been involved in a number of independent reviews on such matters and regularly mediate in similar discussions where agreement cannot be reached or where perhaps discussions have become frayed between the involved parties.

FMConsult host DIFC in Dublin

Our "Conducting Business in the DIFC" event held on October 13th was a great success. Kevin Birkett, Executive Director of the DIFC, travelled from Dubai to speak and his message was well received by all attendees. Slides of Kevin Birkett's presentation as well as our previous Middle East regulatory seminar can be found at: <http://www.fmconsult.co.uk/library.html>

NEWS FROM DUBAI



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Funds Regime in the Dubai International Financial Centre (DIFC)

In our July Newsletter, we reported that the DFSA had established a Market Practitioners Panel (Panel) to review the Collective Investment Funds regime in the DIFC. The Panel have since issued a report setting out its recommendations as to how the DFSA may support the growth of the funds industry in the DIFC.

Key recommendations of the Panel include the following:

- Allowing DIFC-based fund managers to establish funds in other reputable jurisdictions, and also allowing fund managers established in other reputable jurisdictions to establish funds in the DIFC.
- Expanding the grounds on which Authorised Firms in the DIFC can distribute units of Foreign Funds.
- Reduce licensing and other associated costs of Fund Managers.
- Allowing Protected Cell Company structures to be used for Umbrella Funds.
- Creating an Exempt Funds Regime, in addition to the current Public and Private Funds, to provide the right level of protection to HNW investors.
- Reducing aspects of the current Independent Oversight.
- Tailoring Shariah compliance requirements to suit the nature of the Islamic Finance activities of the Fund Manager and the nature of the Fund
- Making the DIFC Fund Regime more visible to the international fund community.

The full report is available at:

<http://www.dfsa.ae/Documents/DFSA%20MPP%20Brochure%20Final.pdf>

CHANGES TO THE DIFC INSIDER DEALING REGIME

The DFSA has proposed certain changes to the Markets Law 2004 to bring the DIFC Insider Trading Regime in line with international best practice, which will involve broadening the scope of 'Insiders' and adding a number of defences to the Insider Dealing prohibition of the DIFC.

The proposals are based in the EU's Market Abuse Directive and drafting is broadly in line with the UK's implementation of that directive in its Code of Market Conduct.

The Consultation Paper can be accessed at:

http://www.complinet.com/net_file_store/new_rulebooks/d/f/DFSA_CP63.pdf

Changes to the Fees Module Proposal

- **Late Payment of Fees** – the DFSA is no longer willing to tolerate the late payment of fees and is looking to introduce a late payment fee of USD1,000 or 3% of the annual fee due (whichever is greater).
- **Electronic Payment of Fees** – with the exception of applicants who cannot open a bank account until they are in possession of a commercial license, the DFSA are proposing that all transfers of money must be effected by electronic transfers to the DFSA's bank account.
- **Protect Cell Companies (PCCs)** – the DFSA's insurance regime contains provisions for Captive Insurers, and for PCCs. The DFSA is proposing to reduce costs to levels comparable to similar jurisdictions. This would reduce the application fees at the outset and the ongoing annual fees.
- **Representative Offices** – in light of the limited nature of the Financial Service of operating a Representative Office, the DFSA proposes to set the fee level for Representative Offices below that for other Authorised Firms. It is proposed to introduce an application fee of USD2,000 and an annual fee of USD4,000 which the DFSA considers appropriate for Representative Offices.
- **Adding Clarity** – it is proposed to make several minor amendments to two FER Rules, namely FER Rule 1.2.2 and FER Rule 3.10.1

For full information, visit:

http://www.complinet.com/net_file_store/new_rulebooks/d/f/DFSA_CP64.pdf

REPRESENTATIVE OFFICE REGIME FOR THE DIFC

The DFSA issued Consultation Paper No. 65, setting out proposals to introduce a Representative Office Regime within the DIFC.

The proposed new regime will permit financial institutions, based outside the DIFC, to have a presence in the DIFC for the limited purpose of marketing the financial products and services available from the institution outside of the DIFC. The Representative Office regime will be available to institutions in all financial services sectors, provided that they are regulated in an acceptable home jurisdiction.

CENTRAL BANK OF BAHRAIN'S LATEST CONSULTATION PAPER

The Capital Market Supervision Directorate (CMSD) has embarked on a comprehensive regulatory and supervisory framework governing capital markets. As part of this exercise, the Central Bank of Bahrain is proposing the development of a new framework to govern the licensing of market intermediaries and representatives. The project will facilitate the growth and development of the capital market in a sound and prudent manner. It is also hoped that this action will expand the nature of the capital market and encourage firms to use the services of the exchanges, clearing houses and depositaries within Bahrain, thus increasing trade volumes and investor liquidity.

CORPORATE SCANDAL AT A DUBAI BASED JEWELLERY RETAILER AS TRADING SUSPENDED

Damas International Limited (Damas) requested and obtained a voluntary suspension from trading on the NASDAQ Dubai on 11 October 2009. The Chief Executive Officer has resigned after he disclosed alleged 'unauthorised' transactions. Whilst the full extent of these transactions are not yet known, it is estimated that they could amount to USD165 million.

The Abdulla brothers, being founding members and current owners of more than 50% of the shares of the Damas, fully stand behind the company, and have agreed to commit the necessary assets to secure and repay in full any unauthorised transactions.

A special committee of the board has appointed an independent global accountancy firm as well as an international law firm to assist in analysing the transactions.

NEWCOMERS TO THE REGION'S FINANCIAL CENTRES

- **Hardy ARIG Insurance Management** received a license from the Central Bank of Bahrain on 18.10.2009 to develop reinsurance business primarily from the Middle East & North Africa region on behalf of the Hardy Syndicate 382 and ARIG.
- **SEIB Insurance and Reinsurance Company** have been authorised by the Qatar Financial Centre Regulatory Authority (QFCRA).
- **Chedid and Associates Qatar LLC** have been authorised by the QFCRA.
- **Guardian Wealth Management Qatar LLC** have been authorised by the QFCRA.



“The launch of these two ventures further enhances FMConsult's service offerings and demonstrates that we continually strive to be at the forefront in anticipating and developing new services that evolve with regulatory demands for our clients.”

FMConsult announce new domiciliary advisory Joint Venture with International Fund Investment

FMConsult is joining forces with International Fund Investment to launch Fund Domiciles Advisory Ltd, a joint venture company set-up to advise fund managers on their most appropriate jurisdiction. Fund Domiciles Advisory Ltd can also help managers on service provider selection decisions in each jurisdiction.

Fund Domiciles Advisory Ltd is being launched at a time when traditional fund domiciliation is being questioned by a growing number of investors and investment managers / sponsors. In addition, AIFM is bound to have a major impact upon where asset managers decide to locate their funds in the future.

Fund Domiciles Advisory Ltd is perhaps the only truly independent company offering asset managers advice of this kind. It is not connected or affiliated to any domicile or fund industry service provider.

Fund Domiciles Advisory Ltd's services include:

(From FMConsult):

- Fund establishment and development
- Company secretarial functions
- Corporate regulatory and risk management advice
- Compliance monitoring, infrastructure and independent oversight
- Due diligence on outsourced functions and risk management
- Corporate governance

(From International Fund Investment):

- Research data on investor perception of each jurisdiction
- The economic, fiscal and political stability of the fund domiciles
- Information on service providers by domicile

FMConsult's new strategic alliance in Germany

FMConsult and MLT Compliance Solutions GmbH have formed a strategic alliance. MLT Compliance Solutions is an independent regulatory consulting firm located in Frankfurt and Munich, Germany.

Both companies share the same passion for being independent in order to avoid any conflicts of interest and both are owned almost entirely by their founding directors. The strategic alliance enhances FMConsult's European presence and provides MLT Compliance

Solutions access to international non-German companies undertaking regulated business in Germany.

MLT Compliance Solutions GmbH ("MLT") provides regulatory and business management services to Asset Managers, Fund Managers, Banks, Insurance Companies and Broker Dealers in the German and Luxembourg market.

Compliance Solutions was created by Dr. Reinhard Preusche and Dr. Jan – Gerrit Iken to put their culture, experiences, competences and business knowledge at the disposal of the German asset management industry.

Dr. Reinhard Preusche is the former Head of Group Compliance at Allianz SE with more than 30 years of experience in German and global regulatory and compliance issues. Before Allianz SE, Dr. Preusche worked with Dresdner Bank in the areas of product development, investment banking and as Head of Compliance & Corporate Security. Dr. Jan – Gerrit Iken was Senior Compliance Counsel at Allianz Global Investors. Prior to that, Dr. Iken worked with State Street Global Advisors in London and Cominvest Asset Management in Luxembourg as Head of Legal, Compliance & Business Development

The added value offered through MLT is the ability to propose innovative ideas and produce pragmatic solutions. MLT has established a new compliance model in Germany as it offers clients the option to fully delegate the compliance function. MTL Compliance Solutions also cooperates with b-next engineering GmbH – one of the leading providers in Germany for compliance software applications in the financial market.

For any questions on this or general information about the firm, please contact:

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