

UCITS DISTRIBUTION IN THE UNITED ARAB EMIRATES

General Principles As a principle, in the United Arab Emirates (“UAE”), any promotion of the shares or units of a foreign collective investment scheme (“CIS”) requires the approval on the part of the Emirates Securities and Commodities Authority (“SCA”). Such approval is needed, without any exception, both for public distribution and private placement. Moreover, no distinction is made between a CIS marketed to retail investors and a CIS targeting solely institutional investors. A foreign CIS is eligible for public distribution in the UAE if it satisfies two cumulative conditions. First, it needs to be established in a foreign country and subject to the supervision of a supervisory authority equivalent to that exercised by the SCA. Second, the foreign CIS must qualify to be offered to the public in its jurisdiction of origin. The *Commission de Surveillance du Secteur Financier* (CSSF) of Luxembourg is admitted by the SCA as a jurisdiction exercising a supervision equivalent to that exercised by the SCA. Private placement in the UAE is possible when the foreign CIS is not open to public subscription in its home jurisdiction. If such is the case, private placement must be effected through direct communication with pre-determined persons. In addition, the minimum subscription amount per subscriber is AED 500,000.

Local agent requirement The appointment of a local agent is mandatory in relation to the offering of a foreign CIS in the UAE. The following entities may act as local agents: banks licensed by the Central Bank of the UAE, investment companies licensed by the Central Bank of the UAE, and companies holding an SCA license to act as local placement agent. The local agent carries out the following tasks, if necessary, along with a local counsel: filing of the application for SCA approval, liaising with the SCA on behalf of the foreign CIS, and supervising all marketing activities of the foreign CIS in the UAE. What is more, he or she must exercise a range of different duties. These include the duty of care in the selection of the foreign CIS, as well as the duties in relation to record-keeping, making information available to investors, and KYC-type obligations with respect to subscribers. The local agent also has the duty to verify that each investor has been informed, before subscription occurs, that the SCA accepts no liability in relation to the foreign CIS and is not making any recommendations as regards the purported investment.

Documents to be filed with the SCA Filing the application for the SCA approval of the CIS requires the submission of several forms and of a number of supporting documents. Form 1 concerns the application to approve the marketing of units in foreign investment funds and UAE free zone funds. It must be submitted in Arabic or Arabic and English; however, names should not be translated to Arabic. It requires the provision of the following information:

- Type of fund (e.g. securities, direct investment, real estate, indexes)
- Type of capital (e.g. open ended or closed)
- Type of offering (e.g. public or private)
- Type of offering in the UAE (e.g. public or private)
- Restrictions on subscription, redemption, and trading units in fund (e.g. restrictions on the kind of investor, maximum subscription limits, duration of subscription according to the prospectus)
- Fund periodic activities e.g.
 - period for calculating the net asset value (NAV)
 - period for preparing and issuing financial statements
 - period for making official reports about the fund and what kind of reports, if any
 - period for distribution
 - period for redemption
 - any other periodic activities
- How the assets in the fund will be employed (e.g. stocks, bonds, mix)
- Markets for investing assets in the funds (e.g. UAE, GCC, MENA, Africa, Europe)
- Types of targeted clients in the UAE (detailed description, minimum requirements e.g. minimum subscription amount)

- Home regulator of the fund
- Other countries where the fund is offered
- Statement of main investors in the fund
- Information regarding the party applying to market the fund in the UAE
- Sharia board, if any
- Any other counterparty regulating, servicing or monitoring the fund, if applicable

Form 2-A and Form 2-B comprise an undertaking related to the marketing of foreign funds in the UAE in a public offering and in a private offering, respectively. Both of these undertakings include promises to apply the duty of care in dealing with marketing activities in order to protect investors, ensuring regular disclosures as per the offering materials, and complying with all applicable UAE regulations. Form 3 concerns the authorization to sign and deal with forms submitted to the SCA. The filing with SCA also necessitates the submission of supporting documentation, which can be in English. Supporting documentation includes an undertaking from the chairman of the board in which he or she makes covenants related to the marketing of the fund as per Form 2-A. Further, it comprises the offering documents (prospectus, PPM, etc.), the signed marketing agreement with the representative of the fund, and a copy of the approval to create the fund from the foreign regulator of the fund – all of these documents need to be stamped by the applicant's corporate stamp on every page. Moreover, the supporting documentation contains the memorandum of association/articles of incorporation, the trade license, the central bank license, audited financial statements for the last two years for the applicant, as well as the authorization form from the company to sign and deal with applications to the SCA as per Form 3. Only representative offices need to provide in addition a no objection certificate from the Central Bank of the UAE to be involved in the activity of marketing foreign funds in the UAE.

Timeline The filing of the forms and supporting documentation is usually made by way of electronic filing. The SCA usually reverts on such electronic filing within three to four business days. All documents referred to above have to be signed in original by the local agent. Final approval is normally issued 30 days from the date of electronic filing.

Ongoing compliance obligations The foreign CIS's promoter must notify the local agent, through its local counsel, of any amendments made to the CIS's documentation. The local agent will inform UAE investors of the changes by any means referred to in the CIS's documentation (e-mail, registered letter, publication in local newspapers). The promoter of the foreign CIS should provide the local agent with copies of the annual and semi-annual reports of such CIS.

Costs

Regulatory fees The one-off fee payable for the review of the foreign CIS's documentation amounts to AED 5,000 (EUR 1,000). The one-off payable fee for the approval to advertise the foreign CIS on a private placement basis and the one-off fee payable for the approval of the foreign CIS for public distribution amount to AED 15,000 (EUR 3,000) and AED 30,000 (EUR 6,000), respectively. The SCA does not levy any ongoing costs for the purposes of supervision. The aforementioned costs are therefore the only regulatory costs payable by the foreign CIS in the UAE for the entire duration of its approval in that jurisdiction.

Legal fees The fee for the initial registration of the foreign CIS amounts to AED 25,000 (EUR 5,000). Any additional work will be charged on a time-spent basis at a rate of EUR 350 per hour.

Local agent fees Local agent fees must be negotiated on a case-by-case basis.