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GOING GLOBAL: DUBAI

OPENING OR OPERATING AN INVESTMENT MANAGEMENT OFFICE

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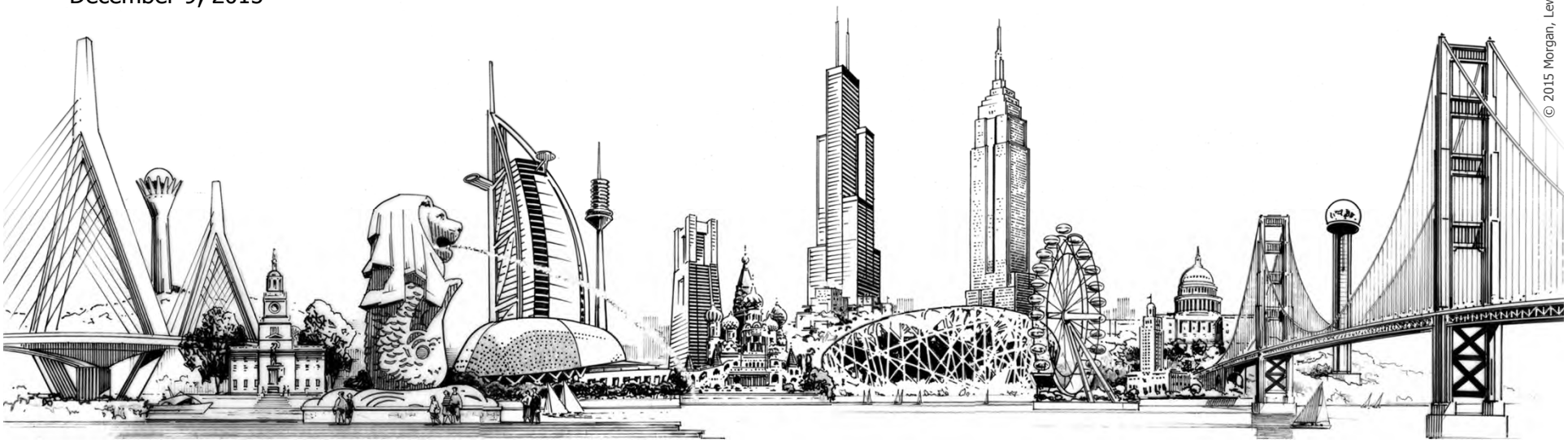


Agenda

- Corporate landscape – free zones, DIFC (Dubai International Financial Centre), and onshore overview
- Setting up an investment management office in the UAE (onshore)
- Marketing foreign investment funds in the UAE
- DFSA (Dubai Financial Services Authority) regulation
- Setting up an investment management office in the DIFC (offshore)
- UAE/DIFC employment law
- AML/Data protection matters
- Corruption/FCPA guidance
- US regulation
- UK regulation

CORPORATE LANDSCAPE – FREE ZONES, DIFC (DUBAI INTERNATIONAL FINANCIAL CENTRE) AND ONSHORE OVERVIEW

UAE Jurisdictions

- The three types of jurisdictions within the UAE are:
  - Onshore (the Emirates)
  - Free Zone (other than DIFC and ADGM)
  - Free Zone (DIFC and ADGM)

UAE Jurisdictions

- The Emirates
  - Abu Dhabi
  - Dubai
  - Sharjah
  - Umm Al Quwain
  - Ajman
  - Ras Al Khaimah
  - Fujairah
- Self-Regulating Free Zones
  - Dubai International Financial Centre (DIFC)
  - Abu Dhabi Global Market (ADGM)
- UAE Regulated Free Zones
  - Jebel Ali Free Zone
  - Creative Clusters (Media City, Knowledge Village, Healthcare City, etc.)
  - Dubai Multi Commodities Centre (DMCC)

Pros and Cons of Free Zones

- Advantages
  - 100% foreign ownership
  - 0% corporate tax
  - 0% personal income tax
  - 100% capital repatriation
  - Operational language within the Free Zone is English (not Arabic)
  - DIFC/ADGM only – Stand-alone common law legal system and sophisticated regulator
- Disadvantages
  - Greater initial minimum capitalization
  - Operations are limited to the Free Zone of incorporation (no outside activities permitted)
  - Higher real estate costs
  - Viewed with skepticism in Abu Dhabi within the UAE and in jurisdictions like Qatar and Saudi Arabia (look-through for foreign shareholding applied)

Laws and Regulations in Free Zones

- Laws and Regulations in Free Zones (other than DIFC and ADGM)
  - Regulations relating to the Free Zone imposed and created by the relevant Free Zone Authority (i.e. company regulations)
  - UAE Federal Law applies in its entirety within the Free Zone, i.e.
    - Companies Law
    - Civil Code
    - Criminal Law
    - Employment Law

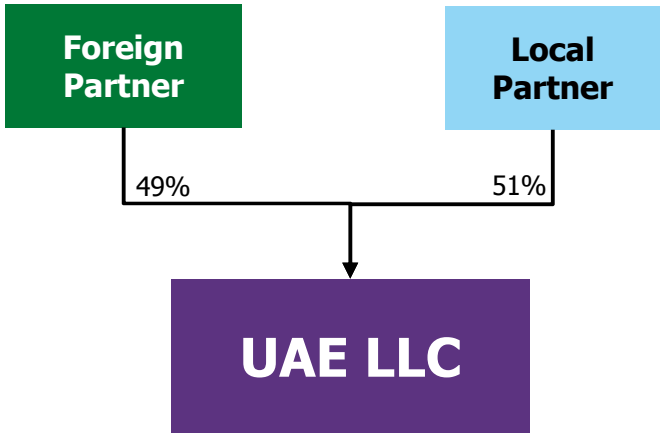
Laws and Regulations in Free Zones

- Laws and Regulations in DIFC and ADGM
  - Standalone legal system and regulatory regime (save for UAE Federal Criminal Law)
  - DIFC
    - Body of legislation that is codified and simplified English law (Companies Law, trusts, contracts, etc.)
    - Looks to English law for case law and precedent
  - ADGM
    - Body of laws based firmly on English legislation
    - Imports English law wholesale into the Free Zone

Pros and Cons of UAE Onshore

- Advantages
  - 0% corporate tax
  - 0% personal income tax
  - 100% capital repatriation
  - Wider and cheaper real estate options
  - Can operate through the Emirate in which incorporated
  - Lower initial capitalization
- Disadvantages
  - Foreign ownership limited to 49%
  - Subject to UAE laws and regulations (and UAE courts)
  - Operational language of the UAE is Arabic

Laws and Regulations in Free Zones



- Nominee documentation
  - Memorandum of Association (with 80% economic rights in favour of the foreign owner)
  - Nominee Agreement
  - General Manager appointed by the foreign owner
  - Powers of Attorney in favour of the foreign owner
  - Voting proxies
  - Technical Services Agreement/License Agreement
  - Assignment of Proceeds Agreement

SETTING UP AN INVESTMENT MANAGEMENT OFFICE IN THE UAE (ONSHORE)

Setting up an Investment Management Office in the UAE

- An entity must be licensed by the Securities and Commodities Authority (SCA)
- Entities eligible to apply for the license:
  a) a local joint stock company whose corporate purpose/activity is investment management
  b) a local joint stock company whose corporate purpose includes the activity of investment management and is licensed to work in securities
  c) local joint stock companies are incorporated under the Commercial Companies Law No. 2 of 2015
  d) a local bank, a branch of a foreign bank, or an investment company licensed by the Central Bank of the UAE (Central Bank) (must have a non-objection confirmation (NOC) from the Central Bank)

Setting up an Investment Management Office in the UAE

e) a branch of a company established in a financial Free Zone. Financial Free Zones in the UAE include:
   i. Dubai International Financial Centre (DIFC) established in 2002; and
   ii. Abu Dhabi Global Market (ADGM) which is operating as of 2015.

f) a branch of a foreign company provided:
   i. it is licensed to undertake this activity in the financial Free Zone or in its original country; and
   ii. it is under the supervision of a similar authority.

Setting up an Investment Management Office in the UAE

Requirements:

- Paid-up capital not below (AED5 million) (US$1 = AED3.67)
- Provide an unconditional bank guarantee worth (AED1 million) in favour of the SCA issued by a UAE bank
- Pay the licensing fees (AED50,000)
- Appoint technical and administrative staff – which should be in line with the SCA's rules for exercising the activity
- Prepare and provide an internal code of conduct
- Provide details of the head office, software, and technical systems required for exercising the activity

Setting up an Investment Management Office in the UAE

Incorporating a local joint stock company in the UAE

- Obtain the approval of the SCA
- Obtain the initial approval of the Department of Economic Development (DED)
- Provide Articles and Memorandum of Association
- Provide a feasibility study

Setting up an Investment Management Office in the UAE

Incorporating a local joint stock company in the UAE

a) Obtain the DED's initial approval

- Registration and licensing form
- Passport copy of the shareholder or incorporation documents if the shareholder was a company
- Identification card of the UAE partner holding 51% of the shares
- Copy of the visa or residency for non-Gulf Cooperation Council (GCC) nationals
- NOC from the guarantor to undertake the commercial activity for non-GCC nationals
- Other government approvals where applicable (activity specific, e.g. healthcare or education)

Setting up an Investment Management Office in the UAE

b) After obtaining the initial approval

- Submit the initial approval receipt
- Provide a copy of the certificate registering the lease agreement (provided by the Real Estate Regulatory Agency (RERA)
- Provide notarized Articles of Association and Memorandum of Association

Setting up an Investment Management Office in the UAE

Procedure with the SCA

- Obtain the SCA's NOC to incorporate the company *(prior to incorporation steps mentioned in the previous slides)*
- Incorporate the company with the DED
- Submit the full application to the SCA with all the requirements

MARKETING FOREIGN INVESTMENT FUNDS IN THE UAE

Marketing Foreign Investment Funds in the UAE

- SCA Board Resolution No. 13 of 2013, issued under Resolution No. 37 of 2012 (the "Fund Regulations"), introduced an exemption for foreign funds that are privately placed with the following categories of investors:
  a) financial portfolios owned by authorities and governments (UAE federal and emirate-level) such as sovereign wealth funds;
  b) institutions whose main purpose includes "investment in securities" provided that the institution or entity (which we understand to include family offices but exclude individuals) invests only for its own account and not on behalf of clients); and
  c) locally regulated investment managers who have the authority to make investment decisions on behalf of their clients.
- It should be noted that sophisticated and high net-worth individuals are protected under the Funds Regulations, and that such regulations introduce the requirement for appointing a 'local placement agent' in relation to foreign funds
- We understand (based on reported comments made by SCA officials in a public meeting in November 2012 and having consulted with a number of individuals and entities in the legal and investment community) that reverse solicitation is not prohibited and therefore remains a "tolerated practice"

Marketing Foreign Investment Funds in the UAE

- Any marketing of interest in foreign domiciled funds to investors in the UAE requires:
  a) SCA approval
  b) SCA-approved prospectus
- However, in the past such marketing was conducted under informal tolerated practices

Marketing Foreign Investment Funds in the UAE

Tolerated practices:

- A tolerated practices regime is applied in the case of reverse solicitation
- The UAE authorities would not seek to restrict or regulate low-level discreet marketing of interests in funds, as long as it is performed:
  a) offshore
  b) on a reverse-solicitation basis
  c) in relation to a small number of sophisticated investors in the UAE (term "sophisticated investors" is not defined; however, it includes in practice institutional investors, family offices, and high-net-worth investors)
- We strongly advise that a paper trail be kept to show that the investment enquiry originated from the investor

Marketing Foreign Investment Funds in the UAE

Process to procure a placement agency license:

- Obtain the SCA's NOC
- Incorporate a limited liability company at the DED (paid-up capital not less than AED1 million)
- Submit application to the SCA

Marketing Foreign Investment Funds in the UAE

SCA requirements:

- Paid-up capital not below AED1 million
- Provide an unconditional bank guarantee worth AED1 million in favour of the SCA issued by a UAE bank
- Appoint technical and administrative staff – which should be in line with the SCA's rules for exercising the activity
- Prepare and provide an internal code of conduct
- Provide details of the head office, software, and technical systems required for exercising the activity

Marketing Foreign Investment Funds in the UAE

a) To obtain the DED's initial approval submit:
   - A registration and licensing form
   - A passport copy of the shareholders/incorporation documents if the shareholder is a company
   - An identification card
   - A copy of the visa or residency for non-GCC nationals
   - An NOC from the guarantor to undertake the commercial activity for non-GCC nationals
   - Other government approvals where applicable (activity specific, e.g. healthcare and education)

Marketing Foreign Investment Funds in the UAE

b) After obtaining the initial approval and reserving the commercial name:

- Submit the initial approval's receipt
- Provide a copy of the certificate registering the lease agreement (provided by RERA)
- Provide notarized Articles of Association

DFSA REGULATION (DUBAI FINANCIAL SERVICES AUTHORITY)

The DFSA

- The DFSA is the financial regulator of the DIFC (distinct from the Emirates Securities and Commodities Authority)
- The DFSA was established in 2004 and based upon the UK's Financial Services Authority

Scope of the DFSA's Authority

- The DFSA Regime is governed by:
  - DFSA Administered Laws, including:
    - Regulatory Law
    - Markets Law
    - Collective Investments Law
  - DFSA Rulebook, including:
    - Conduct of Business Rules
    - Collective Investment Rules
    - Islamic Finance Rules
    - Takeover Rules
  - DFSA Sourcebook
    - Forms, notices, policies, etc.

Scope of the DFSA's Authority

- In order to conduct financial services "in or from" the DIFC, individuals or entities need authorization from the DFSA
- Authorization is given in the form of a license specifying the type of financial service that can be conducted
- An Authorized Firm must meet the DFSA's "Fit and Proper Test"

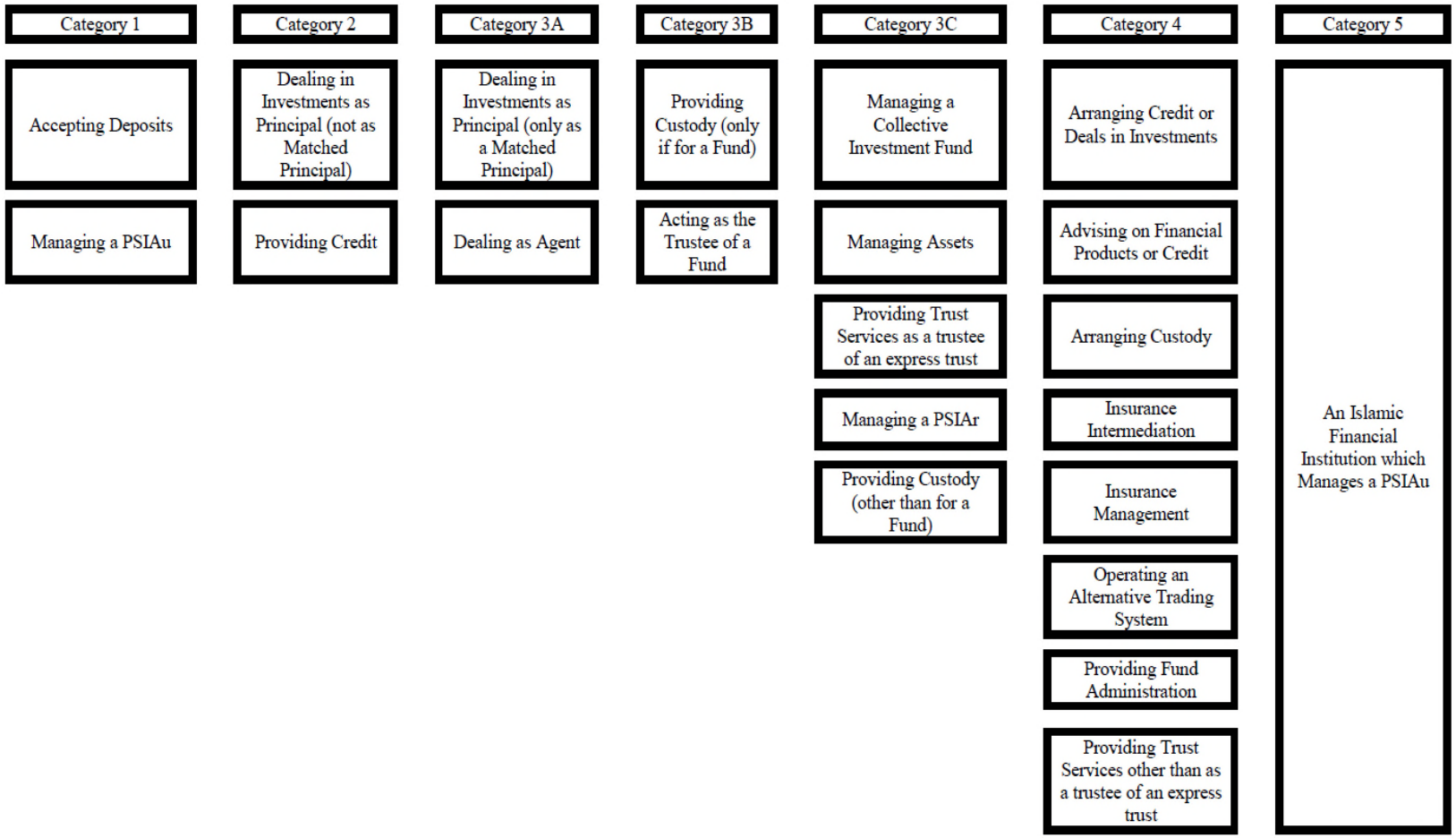
DFSA "Fit and Proper" Test

1. Legal Status: A firm must be a body corporate or a partnership. It can be formed in the DIFC, or it can establish a branch of a legal entity based in another jurisdiction that has internationally compliant regulatory and legal standards
2. Location: A firm must carry on its activities from a place of business in the DIFC
3. Ownership and Group Structure: DFSA seeks to establish that it will be able to effectively supervise the firm. Therefore, disclosure of any close links (parent, subsidiary, sister company) is required
4. Executive Management: A firm must appoint a senior executive officer (SEO), a compliance officer (CO), an anti-money laundering reporting officer (MLRO) (all of which are UAE residents), and a finance officer

Financial Services Activities

- Accepting Deposits
- Providing Credit
- Dealing in Investments as Principal
- Dealing in Investments as Agent
- Arranging Credit or Deals in Investments
- Managing Assets
- Advising on Financial Products or Credit
- Managing a collective Investment Fund
- Providing Custody
- Arranging Custody

DFSA Licensing Categories



Licensing Capital Requirements

- Authorized Firms with DFSA are required to maintain capital adequacy to support risks associated with its activities and to absorb potential unexpected losses to its capital
- Base Capital Requirement for each of the licensing categories:
  - Category 1: US$10,000,000
  - Category 2: US$2,000,000
  - Category 3A: US$500,000
  - Category 3B: US$4,000,000
  - Category 3C: US$500,000
  - Category 4: US$10,000
  - Category 5: US$10,000,000
- DFSA Rules set forth the various means for calculating capital requirements for an Authorized Firm and is the higher of the Base Capital Requirement, Risk Capital Requirement, or in certain cases (based on license category) Risk Capital Requirement

SETTING UP AN INVESTMENT MANAGEMENT OFFICE IN THE DIFC (OFFSHORE)

Investment Management Licensing Categories

- Dealing in Investments as Agent
- Arranging Credit or Deals in Investments
- Managing Assets
- Managing a Collective Investment Fund

Investment Management Licensing Categories

- Managing Assets
  - "Managing on a discretionary basis assets belonging to another person..."
- Dealing in Investments as Agent
  - "…[B]uying, selling, subscribing for or underwriting any Investment as agent"
- Arranging Credits or Deals in Investments
  - "[M]aking arrangements with a view to another Person, whether as principal or agent, buying, selling, subscribing for or underwriting…"
- Managing a Collective Investment Fund
  - "[B]eing legally accountable to the Unitholders in the Fund for the management of the property held for or within a Fund under the Fund's Constitution…"

Fund Manager vs. Investment Manager in the DFSA

- A "Fund Manager" is the firm who will be undertaking the Financial Service of "Managing a Collective Investment Fund"
- An "Investment/Asset Manager" is the person (if any) carrying out the more limited role of managing the portfolio of assets within a fund vehicle, i.e. making decisions to buy, hold, or sell
- An Investment/Asset Manager needs to be licensed to "Manage Assets," and a Fund Manager needs to be licensed to "Manage a Collective Investment Fund" (and also has the license to "Manage Assets")

Types of DIFC Funds

- Domestic Fund
  - A fund established or domiciled in the DIFC or managed from the DIFC by a DFSA-licensed Fund Manager or an External Fund Manager
- External Fund
  - A fund established or domiciled outside the DIFC but managed by a DFSA-licensed Fund Manager
  - The Fund Manager of an External Fund must have systems and controls which are adequate to ensure compliance with the requirements that apply to the External Fund in the jurisdiction in which it is established or domiciled
- Foreign Fund
  - A fund established or domiciled outside the DIFC (which may be marketed within the DIFC)

Types of Domestic Funds

Type of Fund	Public Funds	Exempt Funds	Qualified Investor Funds
Level of regulation	Detailed regulation in line with IOSCO standards	Somewhat less stringent than for Public Funds	Significantly less stringent than for Exempt Funds
Investors and Offer	• Unitholders include Retail Clients; or • Has, or intends to have, more than 100 unitholders; or • Some or all of its units are offered to investors by way of public offer.	• Only Professional Clients; • 100 or fewer unitholders; and • Units are offered to persons only by way of a Private Placement.	• Only Professional Clients; • 50 or fewer unitholders; and • Units are offered to persons only by way of a Private Placement.
Minimum subscription	N/A	US $50,000	US $500,000
Application process time	N/A	5 business days	2 business days

Types of Domestic Funds

- Public Fund regime
  - The most regulated type of fund in the DIFC
  - A Public Fund regime provides greater protection to larger numbers of investors (and may include retail investors) through requirements such as the independent oversight of a fund and detailed disclosure in a Prospectus
- Exempt Fund regime
  - Exempt Funds are subject to lesser regulatory requirements than Public Funds
  - An Exempt Fund enjoys a fast-track notification process where the DFSA aims to complete the process within a period of five days
- QIF regime
  - The Qualified Investor Fund (QIF) regime provides proportionate regulation, allowing flexibility for QIF Managers and QIFs, by relying on select key requirements in the Collective Investment Law and the DFSA Rulebook. The regime requires self-certification regarding the adequacy of systems and controls
  - QIFs enjoy a fast-track notification process where the DFSA aims to complete the process within a period of two days

Types of Fund Managers

- Domestic Fund Manager
  - A Domestic Fund Manager is a Fund Manager incorporated in the DIFC, licensed and regulated by the DFSA for the Financial Service of Managing a Collective Investment Fund. This allows the firm to act as the Fund Manager of a particular type, or specialist class, of Fund
- External Fund Manager
  - An External Fund Manager is a foreign Fund Manager permitted to establish and manage a Domestic Fund in the DIFC without having to establish a place of business in the DIFC
  - Such Fund Manager must be subject to regulation by a Financial Services Regulator in a Recognized Jurisdiction or a jurisdiction otherwise acceptable to the DFSA with respect to its activity of managing funds. It is also a requirement for the firm to subject itself to the DIFC laws and the jurisdiction of the DIFC courts, so far as these apply to the firm's activities relating to the Domestic Fund
  - Additionally, the firm must appoint a Fund Administrator or Trustee in the DIFC to act as its agent
  - The DFSA will issue a No-Objection Letter confirming that the firm may act in this capacity

Fees for Registering a Fund Manager

Fees for a DFSA Licensed Fund Manager	Fees (in USD)
Fund Manager licensing application fee (except as an Umbrella Fund)	10,000
Fund Manager annual licence fee (except as an Umbrella Fund)	10,000
Fund Manager of an Umbrella Fund - licensing application fee for the Umbrella Fund	8,000
Fund Manager of an Umbrella Fund - licensing application fee for Each Sub-Fund	1,000
Fund Manager of an Umbrella Fund – annual licensing fee for the Umbrella Fund	8,000
Fund Manager of an Umbrella Fund – annual licensing fee for Each Sub-Fund	1,000
External Fund Manager – application fee	0 [1]
External Fund Manager – annual fee	0

[1] Although no application fees are payable, fund-related fees are payable.

Fees for Registering a Fund

Fees for a Fund	Public Funds	Exempt Funds	Qualified Investor Funds	External Fund
Application Fee	1,000	0	0	0
Annual fee per fund	4,000	4,000	4,000	0
Annual ongoing fee per fund	4,000	4,000	4,000	0

Marketing Foreign Funds

- Any Foreign Fund can be marketed if it is domiciled in a "Recognized Jurisdiction". If it does not meet this requirement, there are various other Foreign Fund qualifying criteria which are relevant including, but not limited to, if the Foreign Fund meets the Exempt Fund parameters applying to the Offer of a Unit in such a Fund, or if the firm makes a personal recommendation that the investment in the Foreign Fund is suitable for the client in light of that particular client's investment needs, objectives, and circumstances

"Recognized Jurisdictions"

- The DFSA's "Recognized Jurisdiction" List is updated periodically
- It is relevant, importantly, for:
  - Marketing of foreign funds (straightforward if a fund is on the list)
  - Registering as an External Fund Manager (to manage a DIFC Fund)
- Jurisdictions include:
  - Australia
  - EU Member States
  - Hong Kong
  - Isle of Man
  - Jersey/Guernsey
  - Singapore
  - United Kingdom
  - United States of America

UAE/DIFC EMPLOYMENT LAW

Comparative Information
UAE Labor Law and DIFC Labor Laws

Legal Principle	UAE Labor Law	DIFC Labor Law
Jurisdiction	The UAE, save for those Free Zones that have a separate labor law in force. Applies to all. UAE Labor Law (Federal Law (8) of 1980, as amended)	DIFC registered businesses with their employees based within the DIFC. DIFC Employment Law (4) of 2005, as amended
Dispute resolution	Civil courts – onshore Dubai Arabic language	DIFC courts (small claims court) English language

Comparative Information
UAE Labor Law and DIFC Labor Law

Legal Principle	UAE Labor Law	DIFC Labor Law
Probation	Article 37 – Probation must not exceed six months and an employee may be engaged on probation only once. During probation the employer or employee can terminate without notice.	Article 57 – An employee can be terminated with one week's notice if the period of employment is less than three months. However, a longer or shorter period can be agreed upon.
Limited and unlimited contracts of employment	Article 38 – Limited period contracts must not exceed four years.	There is no distinction between limited and unlimited contracts.
Working hours	Article 65 – 48 hours per week reduced by two hours per day during Ramadan. There are cases where the hours can be increased to nine hours per day (hotels, guards, etc.).	Article 19 – 48 hours per week unless the employer has first obtained the employee's consent in writing. Ramadan working hours are reduced to six hours per day but only for employees who are fasting.
Overtime	Article 68 – Where an employee is required to work overtime between 9:00 p.m. and 4:00 a.m. he is entitled to at least 150% remuneration.	Overtime is not defined under DIFC law.

Comparative Information
UAE Labor Law and DIFC Labor Law

Legal Principle	UAE Labor Law	DIFC Labor Law
Weekly rest day	Article 70 – Friday is the rest day for all employees (except daily-paid workers). Where a worker is required to work on this day, he must be given another day or receive 150% remuneration.	Article 23 – Employees are entitled to an uninterrupted rest period of not less than 24 hours in each seven-day work period (the day of the week is not specified).
Public holidays	Articles 74 and 81 – Employees are entitled to all UAE national holidays. Where it is necessary to work on a public holiday or rest day, if the employee is not compensated with a day's leave then 150% remuneration must be paid.	Article 30 – Employees are entitled to UAE national holidays, but such a holiday can be replaced with a day in lieu or payment in lieu where it is agreed upon in writing.
Annual leave	Article 75 – 30 days where employee's service is more than a year. Where the employee's period of service is less than a year but more than six months, two days for every month.	Article 25 – 20 days where the employee has been employed for at least three months (applied pro rata). The employer must ensure that the employee takes annual vacation within 12 months of completing the year of employment entitling the employee to the vacation. The employee is entitled to take annual vacation in periods of one or more weeks. Annual leave is calculated exclusive of national holidays.

Comparative Information
UAE Labor Law and DIFC Labor Laws

Legal Principle	UAE Labor Law	DIFC Labor Law
Sick leave	Article 38 – Employees are not entitled to sick leave during the probation period. If an employee has completed more than three months employment after the probation period, then entitlement to sick leave is up to 90 days. Full pay for first 15 days; next 30 days on half-pay and subsquent period without pay.	Article 34 – Sick leave entitlement 90 days in a 12 month period (on full pay).
Termination notice	Article 117 – An employee or the employer may terminate an unlimited contract for a valid reason by giving 30 days' written notice. The contract of employment can also terminate at the end of the period set out in the contract.	Article 57 – An employee or the employer may terminate with notice of not less than: a) One week if the period of employment is less than three months b) One month if employment is more than three months but less than five years c) Three months if the period of employment is five years or more. However, different notice periods can be agreed upon in writing or payment in lieu is also acceptable

Comparative Information
UAE Labor Law and DIFC Labor Laws

Legal Principle	UAE Labor Law	DIFC Labor Law
Dismissal for misconduct	Article 120 – An employer may dismiss an employee without notice in specific circumstances for misconduct which are listed.	Article 60 – An employer may dismiss an employee without notice where cause exists in circumstances where the employee's conduct warrants termination and where a reasonable employer would have terminated the employee.
Non-compete	Article 127 – The employer may require an employee not to compete after the termination of the employment contract to the extent necessary to safeguard the employer's lawful interests (employee must be more than 21 years old).	There is no provision in the DIFC law; but it does not prevent an employer from including a non-compete clause in the employment contract.

Comparative Information
UAE Labor Law and DIFC Labor Laws

Legal Principle	UAE Labor Law	DIFC Labor Law
Severance / Gratuity pay	Articles 132, 137, and 138 – After one year of employment, employees are entitled to severance pay of 21 days' remuneration for each year of the first five years of service and 30 days for each additional year provided that the total gratuity does not exceed the wages of two years' service. If the employment contract is for a limited period, then severance payment is only made after five years of service. If the employee resigns voluntarily under an unlimited contract then the severance payment is reduced to one third.	Article 60 – The severance payment under DIFC law is the same as under the UAE law. However, there is no distinction between limited and unlimited contracts and no reduction for voluntary resignation of an employee.

AML/DATA PROTECTION MATTERS

DIFC Anti-Money Laundering Legislation

- Anti-Money Laundering Law DIFC Law No. 1 of 2004 (as amended) and applicable Regulations and Rule Book – DFSA is responsible to enforce
- UAE Criminal Law applies within DIFC (Federal Law No. 4 of 2002 for money laundering and Federal Law No. 1 of 2004 on combating terrorism together with the Penal Code)
- Federal Law No. 4 2002 Article 3: Relevant Persons are reminded that the following may each constitute a criminal offence that is punishable under the UAE law:
  a) the failure to report suspicions of money laundering;
  b) "tipping off"; and
  c) assisting in the commission of money laundering.

DIFC Data Protection

- Data Protection Law DIFC Law No. 1 of 2007 (as amended) and Data Protection Regulations
- "European style" data protection laws – broadly consistent with the 1995 EU Data Protection Directive
- The DIFC Commissioner of Data Protection is responsible for administering Data Protection and Regulation
- Transfer of personal data outside the DIFC – "adequate level of protection" (there is a list of jurisdictions which are considered adequate)
- DIFC entities must not rely on US Safe Harbor rules for personal data transfers to the United States (in line with ECJ Decision)
- Sanctions for breach of data protection law – fines from US$5,000 to US$25,000 and a "Data Subject" can seek damages from the DIFC courts for compensation

CORRUPTION/FCPA GUIDANCE

Anti-Bribery – FCPA Application in the UAE

- The Foreign Corrupt Practices Act 1977 (FCPA) enacted to prohibit bribery and corruption of foreign officials and to promote fair business practices
- The FCPA created criminal and civil penalties for payments (or even the promise of anything of value) by US corporations or US nationals to foreign officials that could be interpreted as bribes
- Contains two main components:
  a) anti-bribery; and
  b) accounting controls/provisions to prevent and detect violations.
- The FCPA has extra territorial reach and applies to US persons (domestic concerns) and any "issuer" that files reports with the SEC or trades equity or debt on a US exchange (therefore can include foreign companies)

UK Bribery Act 2010 Application in the UAE

- UK Bribery Act criminalizes:
  a) public official bribery;
  b) commercial bribery; and
  c) failing to prevent bribery on your organization's behalf.
- Extremely broad jurisdiction – UK companies (wherever they do business); non-UK companies that "carry on" business in UK; liability for "associated persons"; and no exception for facilitation payments
- Strict liability offence for a company of failing to prevent bribes that are made by associated persons (even outside the UK)
- Full defense if the organization had "adequate procedures" designed to prevent an associated person from engaging in bribery
- Penalties – Unlimited fines for corporate entities and up to 10 years' imprisonment for individuals in addition to confiscation of the proceeds of crime and a public procurement ban

The UAE Anti-Fraud Legislation

- Penal Code (Federal Law No. (3) of 1987, as amended)
- Public- and private-sector government department
- Public procurement rules
- Criminal sanctions
- Civil liability
- Administrative penalties for entity

US REGULATION

US Law Governing "Dual-Hatting"

- Section 203(a) of the Investment Advisers Act of 1940 (Advisers Act) prohibits an investment adviser from operating an investment advisory business unless the adviser is registered with the US Securities and Exchange Commission (SEC) or qualifies for an exemption from registration
  - Historically, the SEC applied the regulations of the Advisers Act expansively
  - The most widely used exemption from registration was the "Private Adviser Exemption"
    - The Private Adviser Exemption was repealed by Dodd-Frank as part of a program to regulate advisers of private funds to register
    - The Private Adviser Exemption was replaced with a much more limited series of exemptions, applicable only to advisers with AUM in the United States of less than $150M who only advise private funds or certain very small foreign private advisers (fewer than 15 clients and investors in the United States and less than $25M AUM attributable to those clients and investors)
- Alternatively, a non-registered adviser's activity may be exempt under certain SEC guidance pertaining to "Dual-Hatting"
  - "Dual-Hatting" refers to a situation where a person is employed by one adviser entity but may participate in the provision of advisory services to the client of another related advisory entity
    - Arrangements generally do not contemplate dual employment
    - Typically pursuant to a contractual agreement between the affiliated entities (delegation agreement)

US Law Governing "Dual-Hatting"

- Historically, the SEC took the position that, once registered, domestic and foreign advisers are subject to all the substantive provisions of the Advisers Act *with respect to both their US and non-US clients*
- In 1992 the SEC acknowledged its shift away from extraterritorial application of the Advisers Act in favor of an approach that emphasized "conduct and effects" *
- Under the SEC's "conduct and effects" approach, activity that took place outside of the US would be regulated if the activity:
    1. Produced substantial and foreseeable effects in the US or
    2. Involved conduct occurring in the US, regardless of whether the conduct has an effect on US persons or markets
- A series of no-action letters from 1992 to 1998 (collectively, the **Unibanco Letters**) provide relief to US-registered advisers and their affiliated holding companies to allow them to **make use of personnel and other resources** of affiliated but nonregistered advisers in the course of providing discretionary advisory services to US clients through a US-registered adviser

  The determination of whether an adviser's involvement in the provision of investment advice requires registration is highly fact-sensitive

  "Unibanco Analysis" is not a determination of whether an isolated business activity triggers a registration requirement – it is determining where on the "Unibanco spectrum" the adviser's delivery of investment services, taking into consideration any dual-hatting arrangements, falls

* SEC Division of Investment Management, *Protecting Investors: A Half Century of Investment Company Regulation* (May 1992) at 228-29.

US Law Governing "Dual-Hatting" The First Unibanco Letter (1992)

ISSUE #1

- In the first Unibanco Letter,* a Brazilian banking organization (Unibanco) requested assurance that the SEC would not seek enforcement action if the Brazilian banking organization did not register under the Advisers Act, notwithstanding that its Brazilian subsidiary, an SEC-registered investment adviser, provided investment advice to US clients
  - The registered subsidiary sought to use research from Unibanco and share certain key personnel, some of whom would be involved in providing investment advice to the registered subsidiary's US clients

CONDITIONS OF RELIEF

- The SEC said that it would recognize separateness and not require Unibanco to register if:
  1. The affiliated companies were separately organized
  2. **The registered entity were staffed with personnel (whether physically located in the US or abroad) who are capable of providing investment advice**
  3. All persons involved in the US advisory activities are deemed "associated persons" of the registrant
  4. The SEC had adequate access to trading and other records of each affiliate involved in US advisory activities, and to its personnel, as necessary

Prior to the first Unibanco Letter, the SEC only permitted a foreign adviser to avoid subjecting all of its operations to the Advisers Act if it formed a **separate and independent** subsidiary to provide advice to United States clients. A "buffer" between the unregistered subsidiary's personnel and the parent and no overlap in duties between persons providing investment advisory services were key elements of the earlier approach – requirements that have become impractical as the business of investment management has become global.

The SEC's reasoning was that these conditions ensured that the parent company was not indirectly engaged in activities that would require it to register under the Advisers Act.

*Uniao de Bancos de Brasileiros, Securities and Exchange Commission (July 28, 1992).

US Law Governing "Dual-Hatting" The First Unibanco Letter (1992)

ISSUE #2

- In the first Unibanco Letter, Unibanco also requested assurance that the SEC would not recommend enforcement action if Unibanco's US-registered subsidiary provided investment advisory services to non-US clients solely in accordance with non-US laws*

CONDITIONS OF RELIEF

- The SEC conditioned its relief with respect to a SEC-registered foreign adviser providing investment advice to non-US clients other than in accordance with the rules of the Advisers Act on:
    1. The registered foreign adviser keeping certain records
    2. The registered foreign adviser designating an agent for service of process
    3. The foreign registered adviser providing the SEC with access to foreign personnel

A fundamental principle of the SEC's decision to move away from its extraterritorial approach to the application of the Advisers Act was that "**non-United States clients would not expect the Advisers Act to govern their relationship with a non-United States adviser**"

Therefore, when determining where on the "Unibanco Spectrum" an advisory business falls, a key consideration is whether the client being provided investment advice would expect to receive the protections of the Advisers Act

*Uniao de Bancos de Brasileiros, Securities and Exchange Commission (July 28, 1992).

US Law Governing "Dual-Hatting" The Second Unibanco Letter (1993)

In 1993, the SEC expanded the Dual-Hatting relief it would provide to non-US entities

ISSUE #1:

- In the second Unibanco Letter,* Mercury Asset Management (MAM), a UK corporation, requested that the SEC not recommend enforcement action if MAM registered under the Advisers Act but complied with the Advisers Act only with respect to clients who are US persons

CONDITIONS OF RELIEF:

- With respect to MAM's first request, the SEC conditioned its relief in the second Unibanco Letter on:
    1. MAM complying with all requirements of the Advisers Act with respect to US clients
    2. MAM complying with all recordkeeping requirements of the Advisers Act with respect to all of its clients
    3. MAM promptly providing the SEC, upon request, all books and records that Rule 204-2 requires it to keep
    4. MAM making available all personnel to the SEC
    5. MAM making certain disclosures in Forms ADV
    6. MAM not holding itself out to non-US clients as being registered under the Advisers Act

*Mercury Asset Management, plc, Securities and Exchange Commission (Apr. 16, 1993).

US Law Governing "Dual-Hatting" The Second Unibanco Letter (1993)

ISSUE #2:

- Whether the SEC staff would recommend enforcement action if certain affiliated entities of MAM and of MAM's subsidiary (Warburg, itself a registered investment adviser) did not register under the Advisers Act but provided investment advice to US persons through MAM or Warburg

MAM's proposal, therefore, sought to use unregistered **participating affiliates** to ***deliver investment advice*** to US clients.

Absent relief, by providing investment advice to US clients through MAM or Warburg, the Participating Affiliates would have had to register under the Advisers Act.

CONDITIONS OF RELIEF:

- With respect to MAM's second request, the SEC conditioned its relief in the second Unibanco Letter on:
    1. The Participating Affiliates being disclosed in MAM's and Warburg's ADV Forms
    2. The Participating Affiliates being deemed "associated persons"
    3. Each Participating Affiliate submitting to the jurisdiction of US courts in connection with investment advisory activities for US clients of MAM and Warburg

US Law Governing "Dual-Hatting" The Final Unibanco Letter (1998)

- In the last Unibanco Letter,* Royal Bank of Canada (RBC) requested relief for a separate subsidiary formed to advise US clients that utilized personnel and resources of the non-US parent. RBC requested that:
    1. The SEC-registered adviser's affiliates be permitted to participate in the US investment management business of the registered adviser without the affiliates themselves registering as investment advisers;
    2. The SEC-registered and nonregistered affiliates be able to communicate with one another in the process of rendering investment advice to US clients of the registered adviser;
    3. The entities be permitted to share personnel; and
    4. The SEC-registered adviser be permitted to act as an investment adviser to non-US clients solely in accordance with applicable non-US law, effectively permitting the registered adviser to turn on and off its registered status.

*Royal Bank of Canada, Securities and Exchange Commission (June 3, 1998).

US Law Governing "Dual-Hatting" The Final Unibanco Letter (1998)

CONDITIONS OF RELIEF

- The SEC granted the relief on the condition that, among other things:
    1. The SEC-registered adviser would comply in all respects with all the requirements of the Advisers Act with respect to the *United States clients.*
    2. The SEC-registered adviser would maintain all books and records in accordance with Rule 204-2 under the Advisers Act with respect to *foreign clients*.
    3. Upon request, the SEC-registered adviser would promptly provide any and all books and records undertaken to be kept herein and those required by foreign law to be kept.
    4. The SEC-registered adviser would not hold itself out to *foreign clients* as being registered under the Advisers Act. When communications are sent to both *United States clients* and *foreign clients*, (i) separate communications will be sent, (ii) references to the registered adviser's registration under the Advisers Act will be deleted in communications with *foreign clients*, or (iii) the communication with *foreign clients* will make clear that the registered adviser will be complying with the Advisers Act only with respect to *United States clients*
    5. **The SEC-registered adviser will deem as an "associated person" each Participating Affiliate and each employee of the Participating Affiliate, including research analysts, whose functions or duties relate to the determination and recommendations that the registered adviser makes to its *United States clients*, or who has access to any information concerning which securities are being recommended to *United States clients* prior to the effective dissemination of the recommendations (including dealing room personnel, if trades for *United States clients* are placed for execution with any affiliate of the registered adviser)**
    6. (i) The SEC-registered adviser will make clear in any communications between the Dual Employees and its *United States clients* that the communications are from the registered adviser, not any Participating Affiliate; (ii) when dealing with *United States clients* or potential *United States clients* of the registered adviser, the Dual Employees will make clear that they are acting in their capacity as personnel of the registered adviser, not a Participating Affiliate; and (iii) the registered adviser will disclose to its *United States clients* in its Form ADV and any brochure provided to *United States clients* pursuant to Rule 204-3 under the Advisers Act that Participating Affiliates may recommend to their clients, or invest on behalf of their clients in, securities that are the subject of recommendations to, or discretionary trading on behalf of, the registered adviser's *United States clients*

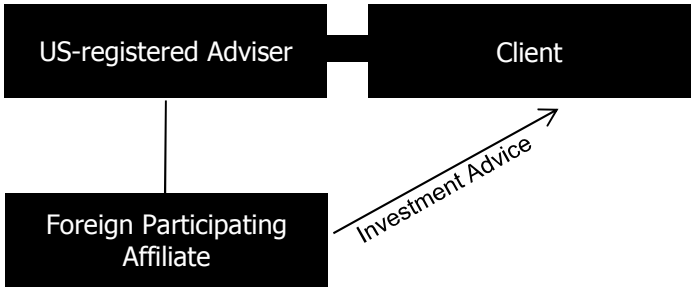
*Mercury Asset Management, plc, Securities and Exchange Commission (Apr. 16, 1993).

Summary of "Unibanco Arrangements"

"Classic" Unibanco Arrangement:

- Adviser is organized in the US
- Adviser is registered under the Advisers Act
- Adviser is the "contracting" entity with clients
- Foreign Participating Affiliate assists in providing investment advice to the registered adviser's clients

Question: Must the foreign Participating Affiliate be registered under the Advisers Act?

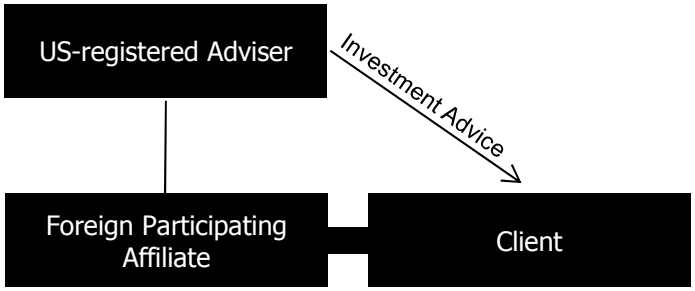


Summary of "Unibanco Arrangements"

"Reverse" Unibanco Arrangement:

- Adviser is organized in the US
- Adviser is registered under the Advisers Act
- Foreign affiliate is the "contracting" entity with non-US clients
- Foreign affiliate may or may not be registered under the Advisers Act
- US adviser assists in providing investment advice to the foreign affiliate's non-US clients

Question: Must the foreign affiliate comply with US law when managing accounts of non-US clients?



Summary of "Unibanco Arrangements"

Key Considerations under the Unibanco Letters:

- Whether the registered entity is staffed with personnel (whether physically located in the United States or abroad) who are capable of providing investment advice. *i.e.*, that the adviser making use of the Participating Affiliate's personnel is not trying to avoid registration and compliance (*e.g.*, simply by interpositioning a shell entity)
- Whether the Participating Affiliate is exercising investment discretion
- Whether the client receiving investment advice would expect the Advisers Act to govern its relationship with a non-United States adviser

Additional Considerations Pertaining to Dual-Hatting Arrangements:

- Attention should be paid to the local adviser regulation and local tax implications of dual-hatting personnel in a given country
  - The presence of dual-hatted personnel in a country may raise (1) permanent establishment tax issues for the US Registered Investment Adviser (RIA) and (2) questions about whether the US RIA has to be authorized in the foreign jurisdiction

UK REGULATION

UK Law: Licensing of Fund Management Companies

Section 19 of the Financial Services and Markets Act 2000 (the FSMA):

"No person may carry on a regulated activity [by way of business] in the UK or purport to do so unless he is an authorized person or an exempt person" (the General Prohibition)

An "authorized person" is typically an entity authorized by the Financial Conduct Authority (the FCA)

Banks, investment banks, and insurers are authorized by the Prudential Regulation Authority and regulated by it and the FCA

UK Law: Licensing of Fund Management Companies

Contravention of the General Prohibition is a criminal offence

It is a defence for a person to prove that he exercised due diligence and took all reasonable precautions to avoid committing the offence

Violators subject to:

- If convicted on indictment, imprisonment of up to two years or an unlimited fine, or both
- On summary conviction, imprisonment of up to six months or a fine of up to £5,000, or both

UK Law: Licensing of Fund Management Companies

Civil law consequences include:

- An agreement made by an unauthorized person in breach of the General Prohibition will generally be unenforceable against the customer. The customer can still recover any money paid or property transferred and obtain compensation for any loss.
- Agreements made by authorized persons may also be unenforceable if an agreement is entered into as a result of a third party's unauthorized regulated activity.

UK Law: Licensing of Fund Management Companies

List of regulated activities under FSMA include:

- Arranging deals in investments
- Advising on investments
- Dealing in investments as principal or agent
- Discretionary investment management of assets belonging to another person (both separate accounts and pooled vehicles)
- Managing an alternative investment fund (AIF) or UCITS fund
- Acting as trustee or depositary of an AIF or UCITS fund
- Operating a collective investment scheme
- Safeguarding and administering investments

UK Law: Licensing of Fund Management Companies

List of specified investments under FSMA include:

- Shares
- Debt instruments
- Options
- Futures
- Contracts for differences
- Units in a collective investment scheme

UK Law: Territorial Scope of the General Prohibition

Only regulated activities carried on in the UK fall within the territorial scope of FSMA

Outward

Section 418 of FSMA extends its territorial scope outward only, whereby persons based in the UK who carry on regulated activities overseas need to be regulated in the UK, by deeming activities that would otherwise be carried on outside the UK to be carried on in the UK. Three cases are relevant:

- Day-to-day management in the UK: all persons who have their head or registered office in the UK but who only carry on regulated activities in non-EEA countries will need to be authorized if they direct the day-to-day management of the activities from UK establishments

UK Law: Territorial Scope of the General Prohibition

- Establishment maintained in the UK: even if a person does not have a head or registered office in the UK and is not dealing with UK customers, he will still need to be authorized if the activity is carried on from an establishment maintained by it in the UK
- Managing an AIF: where the person is managing an AIF and:
  - The AIF has its registered office in EEA, or the AIF (wherever domiciled) is marketed in UK/EEA
  - The person's registered office is in the UK or its head office is in the UK
  - The activity is carried on from an establishment maintained in a non-EEA country

UK Law: Territorial Scope of the General Prohibition

Inward

The "inward" scope of FSMA is implicit in the terms of section 19 (which deploys the term "in the UK") and therefore captures non-UK-based persons doing business in the UK but can be elaborated on by secondary legislation (e.g. the UK carve-out for overseas persons)

Guidance on where certain activities are carried on

Where business has a cross-border element, e.g. where a client is based outside the UK or elements of the activity occur outside the UK, it is challenging to determine where the activity is conducted

UK Law: Territorial Scope of the General Prohibition

It is commonly considered:

- Dealing in investments will be carried on at the place where acceptance of the offer is received by the offeror, where a communication of an acceptance is instantaneous
- Where a communication of an acceptance is delayed, dealing in investments will be carried on at the place where the communication was posted
- Arranging deals is normally carried on at the place where the arranger is located when the arrangements are made
- Discretionary investment management is carried on at the place where the investment manager reviews portfolios and makes investment decisions

UK Law: Territorial Scope of the General Prohibition

- Investment advice is given at the place where it is received
- A person in the UK who is safeguarding and administering investments will be carrying on that activity in the UK even though his client is overseas

UK Law: The Overseas Persons Carve-Out

The overseas persons carve-out can be relied on by third-country firms (TCFs):

- Who do not maintain a permanent place of business in the UK
- Who carry on certain activities that would otherwise be regulated (and require them to become authorized) either:
  - With or through an authorized (or exempt) person; or
  - As a result of a "legitimate approach," which is an approach to, by, or on behalf of an overseas person which is in compliance with the UK financial promotion regime or an unsolicited approach

UK Law: The Overseas Persons Carve-Out

Interaction between section 418 of FSMA and the overseas persons carve-out

If the overseas-person exclusion applies, the activity will not be a regulated activity and the section 418 outward scope provisions will not apply. For example, an overseas investment adviser giving advice to UK clients may have concluded he is deemed to be carrying on that activity in the UK under section 418. However, if he can fall within the overseas person exclusion the activity will not be a regulated activity in the first place, and accordingly section 418 will not apply.

UK Law: The Overseas Persons Carve-Out

Current UK access regime for TCFs

TCFs can navigate the general prohibition:

- By establishing a UK subsidiary that obtains authorisation and can exercise passport rights EEA-wide.
- By establishing a permanent place of business – a UK branch – that obtains authorisation. The branch will not benefit from passporting rights EEA-wide.
- For cross-border business in the UK with UK clients and counterparties without any authorisation, by reliance on the overseas persons carve-out for particular services/activities carried on in the context of a "legitimate approach" or carried on "with or through" an authorized (or exempt) person.

UK Law: What's Next? – MIFID 2 – New TCF Regime

MIFID 2 – new TCF access regime

- MIFID 2 prescribes harmonised requirements regarding the ability of TCFs to access EEA markets and will change the structure of regulation re: TCFs
- MIFID 2 deals separately with (a) per se professional clients and eligible counterparties ("wholesale") and (b) retail and elective professional clients
- EEA countries have some discretion relating to access by TCFs to retail and elective professional clients

<u>Wholesale</u>

National third country regimes will continue until a positive decision by European Commission re: equivalence of the relevant third-country standards to EEA prudential and business conduct standards

Transitional period of three years following a positive equivalence decision – Existing national regime continues to run

UK Law: What's Next? – MIFID 2 – New TCF Regime

A TCF registered with ESMA from an equivalent third country may provide cross-border investment services to wholesale clients EEA-wide without being required to establish a branch anywhere in EEA

If a negative decision – existing national regime, whether liberal or restrictive, continues to run until a positive decision by Commission

- ESMA must register a TCF that has applied only where the following conditions are met:
  - The Commission has adopted an equivalence decision re: that third country (focusing on prudential and business conduct requirements) and the third country must also provide reciprocal access to its market
  - The TCF is authorized in the jurisdiction where its head office is established to offer the investment services to be provided in the EEA and it is subject to effective supervision and enforcement ensuring full compliance with the requirements applicable in that third country

UK Law: What's Next? – MIFID 2 – New TCF Regime

- Cooperation arrangements have been established between ESMA and the relevant regulator covering exchange of information and access to information regarding TCFs, notification by third-country regulators to ESMA that a TCF is in breach of licensing conditions and coordination of supervisory activities including on-site inspections

<u>Retail and elective professional clients</u>

A member state may decide between the continuation of its own national regime (which may or may not require a local branch) and the MIFID 2 branch regime under which a branch must be established in relevant EEA country, which would need local authorisation and supervision including prudential requirements

UK Law: What's Next? – MIFID 2 – New TCF Regime

For all client types, MIFID 2 does not restrict the provision of cross-border investment services to EEA clients by TCFs where this is at the clients' "own exclusive initiative" and to that extent allows reverse solicitation by a TCF without authorisation or registration

Proposed UK approach to exercising MIFID 2 discretion

The UK government is not minded to apply the branch requirement regime for retail and elective professional client business

Consequently:

- The UK overseas persons carve-out will not need to be abrogated and substituted with a narrower "own exclusive initiative" concept – good news for TCFs wishing to access the UK
- The UK retail client base will not be protected by the MIFID 2 branch regime

UK Law: What's Next? – MIFID 2 – New TCF Regime

- TCFs from equivalent jurisdictions who establish branches in the UK will not be able to passport their wholesale business across Europe. However, TCFs can instead establish a subsidiary in the UK with appropriate authorisations in order to obtain the passport.

UK Law: Delegation by UK Authorized Firms to Overseas Firms

General

When there is a delegation, a UK firm should assess whether the recipient is suitable to carry out the delegated task

The extent and limits of any delegation should be made clear to those concerned

There should be arrangements to supervise the delegation and monitor the discharge of the delegate's functions/tasks and obtain sufficient information from the delegate

UK Law: Delegation by UK Authorized Firms to Overseas Firms

Outsourcing "critical" functions

A more detailed regime requiring an outsourcing firm to take reasonable steps to avoid undue additional operational risk and also avoid any adverse effect arising on the quality of its internal control and FCA's ability to monitor the firm's compliance with its regulatory obligations

A firm must exercise due skill and care and diligence when entering into, managing, or terminating any arrangement for the outsourcing of critical or important operational functions or of any relevant services and activities to a delegate

A firm must ensure that the respective rights and obligations of the firm and of the delegate are clearly allocated and set out in a written agreement

UK Law: Delegation by UK Authorized Firms to Overseas Firms

A firm must ensure that the following conditions are satisfied:

- The delegate must have the ability, the capacity, and any authorisation required to perform the outsourced functions, services, or activities reliably and professionally
- The delegate must carry out the outsourced services effectively, so the firm must establish methods for assessing the standard of performance of the delegate
- The delegate must properly supervise the outsourced functions and adequately manage the risks associated with the outsourcing

UK Law: Delegation by UK Authorized Firms to Overseas Firms

- Appropriate action must be taken if it appears that the delegate may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements
- The firm must retain the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing, and must also supervise those functions and manage those risks
- The delegate must disclose to the firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements

UK Law: Delegation by UK Authorized Firms to Overseas Firms

- The firm must be able to terminate the arrangement for the outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients
- The delegate must cooperate with the FCA and any other relevant competent authority in connection with the outsourced activities
- The firm, its auditors, the FCA, and any other relevant competent authority must have effective access to data related to the outsourced activities, as well as to the business premises of the delegate; and the FCA and any other relevant competent authority must be able to exercise those rights of access

UK Law: Delegation by UK Authorized Firms to Overseas Firms

- The delegate must protect any confidential information relating to the firm and its clients
- The firm and the delegate must establish, implement, and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary, having regard to the outsourced function, service, or activity

UK Law: Delegation by UK Authorized Firms to Overseas Firms

If a firm and the delegate are members of the same group, the firm may take into account the extent to which it controls the delegate or may influence its actions

A firm must make available on request to the FCA and any other relevant competent authority all information necessary to enable it to supervise the compliance of the performance of the outsourced activities with the regulatory system

UK Law: Delegation by UK Authorized Firms to Overseas Firms

Delegation by a UK FCA-authorized manager of an alternative investment fund

An alternative investment management fund manager (AIFM) must not delegate its functions to the extent that it can no longer be considered to be the AIFM of the AIF and to the extent that it becomes a letter-box entity

An AIFM must ensure that the following conditions are met when a delegate carries out any function on its behalf:

- The AIFM has notified the FCA of the delegation before the delegation arrangements become effective and
- The AIFM is able to justify its entire delegation structure with objective reasons

UK Law: Delegation by UK Authorized Firms to Overseas Firms

- The delegate has sufficient resources to perform the respective activity and the persons who effectively conduct the business of the delegate are of sufficiently good repute and experience
- The delegation of AIFM investment management functions is conferred only on a delegate that is authorized or registered for the purpose of asset management and subject to supervision (exceptions possible)
- Where the delegation of AIFM investment management functions is conferred on a third-country delegate, cooperation between the FCA and the regulator of the delegate is ensured (FCA has entered into agreements with MAS and each of the US regulators)
- The delegation does not prevent the FCA from supervising the AIFM effectively and, in particular, does not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors

UK Law: Delegation by UK Authorized Firms to Overseas Firms

- The AIFM is able to demonstrate that:
  - The delegate is qualified and capable of undertaking the functions in question
  - The delegate was selected with all due care
  - The AIFM can monitor the delegated activity effectively at any time, give further instructions to the delegate at any time, and withdraw the delegation with immediate effect in the interests of investors

QUESTIONS?

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Ayman A. Khaleq, managing partner of Morgan Lewis's Dubai office, advises clients on cross-border structured finance, debt capital markets, and private placement transactions, and on the structuring and formation of private investment funds. In particular, he helps regional and international clients address the structural and documentation requirements associated with Islamic finance and investment products. Ayman also acts for a wide range of international clients on matters relating to doing business in the broader Middle East region. His clients range from energy, infrastructure, and healthcare companies, to those in the education, telecommunications, media, and technology.

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Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty
Astana
Beijing
Boston
Brussels
Chicago
Dallas
Dubai
Frankfurt
Hartford
Houston
London
Los Angeles
Miami
Moscow
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Orange County
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Princeton
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