

Marketing Foreign Funds into the UAE: Update

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Since our September 2016 update on the new UAE fund regulations (*Chairman Resolution No. (9) R.M. of 2016 Concerning the Regulation on Mutual Funds*) (“2016 Fund Regulations”), the UAE Securities and Commodities Authority (“SCA”) has released further promotion regulations which cover the promotion of foreign funds in the UAE (*Chairman Resolution Decision No. (3/R.M) of 2017 Concerning Regulation of Promotion and Introduction*) (“2017 Promotion Regulations”).

The 2017 Promotion Regulations have been in place for six months now and, despite some initial uncertainties, by and large the status quo has remained unchanged with regards to the offering foreign funds into the UAE with limited UAE regulatory impact. However, we note ***there is now an increasing focus by UAE regulators on cross-border activities and we anticipate there will be some developments in this area in the near future.***

Can foreign funds be privately placed without any form of registration? Are there any specific exemptions?

Traditionally, where a foreign fund was promoted in the UAE on a cross-border basis in line with a fairly standard set of ‘dos and dont’s’ (such as targeting only institutional and sophisticated investors) and as long as such activities did not constitute ‘conducting business’ in the UAE, neither promoter nor the fund were likely to be caught by any UAE laws or regulations.

Similarly, there has been no requirement to be registered or licensed or use a locally licensed intermediary to market into the UAE where such marketing activities have been conducted pursuant to specific private placement exceptions contained in the relevant regulations.

A 2013 amendment to the old 2012 Fund Regulations introduced specific private placement exceptions. These private placement exceptions were narrowed in scope under the replacement 2016 Fund Regulations restricting the exception to promotion of foreign funds to:

- federal or local government authorities; or
- in instances of reverse solicitation

The 2017 Promotion Regulations also contain exceptions to their application, being:

- promotion of products to ‘Qualified Investors’ excluding natural persons (ie, investors capable of self-asset management such as government authorities and SCA licensed entities along with investors represented by an SCA licensed manager); or
- in instances of reverse solicitation.

Due to the wide definition of ‘Qualified Investors’, the narrowing of the exemptions under the 2016 Fund Regulations was effectively reversed under the 2017 Promotion Regulations as regards promotion of foreign funds. At a practical level, how wide or narrow the private placement exceptions are may now play a more important role given the SCA’s increasing focus on cross-border activities.

It should be noted, however, that whether marketing pursuant to one of the exceptions or on a cross-border basis, activities while physically in the UAE should still be limited so as to avoid being deemed to be 'conducting business' in the UAE, which would itself require licensing.

Conclusion

The 2017 Promotion Regulations have been in force for six months now and appear to focus on activities conducted actually in the UAE, with the regulations not clearly dealing with cross-border activities. Given this, together with an increasing focus by the SCA on cross-border activities, the current position is unclear. We anticipate that further regulations or confirmation of the SCA's position will be forthcoming in the near future and continue to monitor developments and engage with the SCA.

The content of this article is for general guidance only and not intended to be a substitute for specific legal advice on individual matters. As such, the information contained herein should not be relied upon or used as a substitute for consultation with professional advisors.

Al Tamimi & Company's Banking team regularly advises on fund marketing. For further information please contact Edward Brown (e.brown@tamimi.com).