



JONES DAY  
**COMMENTARY**

## FUND RAISING IN THE UNITED ARAB EMIRATES TO BE REGULATED

The Securities and Commodities Authority of the United Arab Emirates (“ESCA”) has recently published draft regulations that, if enacted as proposed, will significantly increase the regulation of both foreign and local investment funds active in the United Arab Emirates (the “UAE”).

### SHIFT IN REGULATORY APPROACH IN THE UAE

The operation and marketing of investment funds in the UAE (outside of the Dubai International Financial Centre<sup>1</sup>) has historically been regulated by the UAE Central Bank (the “Central Bank”).

This regulatory responsibility has now passed to ESCA, which has recently released draft proposals (the “Proposals”) to alter, among other items, the regime relating to the promotion of foreign funds in the UAE.

The Proposals are contained in:

- 1) A Draft Decision on Investment Funds (the “Investment Funds Regulation”), which would apply to the promotion of foreign funds in the UAE and to the operation of local UAE investment funds; and
- 2) A Draft Decision on Regulating Investment Management Activity (the “Investment Management Activity Regulation”), which deals with undertaking investment management activity in the UAE and required regulatory approval from ESCA.

The Proposals are currently in a consultation phase but, if enacted in their current form, will establish a new investment fund and investment management regulatory regime for both foreign and local funds active in the UAE.

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<sup>1</sup> The Dubai International Financial Centre is an economic free zone located in Dubai, established in 2005 as an international financial hub with its own laws and regulations.

The Proposals are indicative of a material shift in regulatory approach to the operation of funds and fund raising in the UAE.

## PROPOSED REGULATION OF FOREIGN INVESTMENT FUNDS

The draft Investment Funds Regulation contains a number of specific provisions aimed at regulating the cross-border promotion of foreign funds in the UAE.<sup>2</sup>

Key aspects of the draft Investment Funds Regulation relevant to foreign funds include requirements that:

- Preapproval must be obtained from both the UAE Central Bank and ESCA before any foreign fund may promote its units in the UAE;
- The foreign fund must be licensed and supervised by an authority in its home jurisdiction that is the equivalent of ESCA (or supervised by an authority in a UAE free zone);
- All parties related<sup>3</sup> to the foreign fund must be licensed and supervised by an authority in their home jurisdiction that is the equivalent of ESCA; and
- The foreign fund must contract with a local UAE company (an “Authorized Local Distributor”) that is duly authorized by ESCA<sup>4</sup> (i.e., a local promoter and distributor).

## COMPLIANCE WITH THE PROPOSALS

The Investment Funds Regulation, as currently drafted, may cause foreign funds active in the UAE some concerns.

Although it is important to recognize that the Proposals are currently in draft form, the following issues may be relevant to some foreign funds:

- The dual requirement to obtain approval from both ESCA and the UAE Central Bank may result in delays in the ability to promote a foreign fund in the UAE.
- A requirement for the foreign fund to be licensed in its home jurisdiction may be at odds with the structure of many foreign funds which may not be subject to such licensing or regulatory supervision in their home jurisdiction.
- The extension of similar licensing and regulatory requirements to cover all parties that are related to the foreign fund may have wide-ranging ramifications to certain foreign funds with complex cross-border structuring arrangements.
- In addition, the necessity of contracting with an Authorized Local Distributor may result in logistical delays in fund raising and increased expense to local investors seeking to access foreign funds.

## APPOINTMENT OF AUTHORIZED LOCAL DISTRIBUTOR AND REPORTING REQUIREMENTS

The requirement to appoint an Authorized Local Distributor appears from the Proposals to extend to using the Authorized Local Distributor to carry out multiple tasks associated with the fund.

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<sup>2</sup> For the purposes of the draft Investment Funds Regulation, a fund is deemed to be a foreign fund if it is “established outside the UAE in accordance with the applicable laws and regulations of a foreign state” or established in a free zone in the UAE (and would therefore include funds established in the Dubai International Financial Centre). The concept of promotion is construed widely and includes offering, marketing, distributing, or advertising a fund or its units.

<sup>3</sup> The draft Investment Funds Regulation defines “related parties” as the founding company of the fund, its board of directors, and any entity contracted to provide services to the fund.

<sup>4</sup> The draft Investment Funds Regulation defines “local companies” as companies established in accordance with the provisions of the UAE Commercial Companies Law, excluding companies established in free zones (and therefore excluding companies established in the Dubai International Financial Centre).

The draft Investment Funds Regulation also imposes significant reporting requirements in respect of the foreign fund on the Authorized Local Distributor.

As well as potentially having to provide daily pricing information on fund units, the Authorized Local Distributor would be required to provide a means of enabling investors to have access to reports and quarterly financial statements prepared by the fund's auditors within 30 days of the end of each quarter.

The Authorized Local Distributor would also have to provide a report and audited annual financial statements of the fund to ESCA within three months of the end of the foreign fund's financial year, in addition to any other reports or data that ESCA may require.

The reporting requirements set out in the Proposals may be seen to be significantly different from generally accepted reporting practices and related timescales recognized internationally by the funds industry, and compliance with them may be difficult to achieve in funds with illiquid holdings.

## **NO EXEMPTION FOR PRIVATE PLACINGS OR LIMITED OFFERS**

Under the existing regulatory regime, a view has historically been taken that the promotion of funds in the UAE on a discrete basis to a small number of sophisticated investors was tolerated by the UAE authorities.

The draft Investment Funds Regulation does not currently contain specific provisions that would exempt non-retail private placements made to sophisticated or high-net-worth investors from the proposed new regime.

The fact that the Proposals specifically address the promotion of foreign funds in the UAE in some detail and yet do not contain any such private placement exemption is likely to raise significant concerns about whether previous tolerated fund-raising practices will be permitted in the future.

## **CONCLUSION**

The Proposals contained in the draft Investment Funds Regulation and draft Investment Management Regulation are currently in consultation phase.

In the event that they are enacted in their current form, fund raising in the UAE will be the subject of significantly increased levels of local UAE regulation.

## **LAWYER CONTACTS**

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com](http://www.jonesday.com).

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