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New Promotion Regime for Domestic Funds

By Greg Mayew | 30 January 2019

In late November 2018, the Securities and Commodities Authority (**SCA**), the Dubai Financial Services Authority (**DFSA**) of the Dubai International Financial Centre (**DIFC**) and the Financial Services Regulatory Authority (**FSRA**) of the Abu Dhabi Global Market (**ADGM**) announced that they had reached agreement on facilitating the licensing of domestic funds by each authority for promotion across the UAE.

This is a potentially significant development. Historically, onshore legislation in the UAE has not been suitable for the formation of funds in the UAE. This has changed somewhat in light of the new UAE Commercial Companies Law that came into effect in 2015 and subsequent regulations issued by the SCA designed to encourage domestic fund formation.

The DIFC and the ADGM have more comprehensive legislation regarding funds and funds established in these jurisdictions are not subject to the 51% UAE ownership requirement. Hence, they are generally viewed as more attractive destinations to establish funds than the UAE proper. However, the existence of three different regulatory regimes in the UAE has been an impediment to the growth of funds set up in the DIFC or the ADGM. Most potential investors are not located in these financial free zones and a fund set up in one of these zones must comply with the regulatory regime of the SCA when marketing to investors in the UAE. This not only increases the regulatory burden because such funds have to comply with the laws of two different jurisdictions with very different rules but, as a practical matter, it means that a fund set up in the DIFC or the ADGM has been treated the same as a fund set up in foreign country as far as the SCA is concerned.

Hopefully, the new regime that will be developed under the agreement signed by the SCA, the DFSA and the FSRA will put an end to that. The press release states:

> *"The SCA, DFSA, and FSRA agreed on a common legislative framework in their respective jurisdictions, enabling them, to facilitate regulatory coordination amongst them in*

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licensing domestic funds upon the adoption of the legislation. The three bodies confirmed that funds, which are licensed in accordance with the provisions of this agreement and the licensing regulations, may be promoted in or from the financial free zones in the UAE, in line with the provisions of the agreement and the licensing regulations. Under the terms of the agreement, a notification and registration facility will be established by each regulator, facilitating the promotion and sale of domestic funds, set up within the UAE, outside the financial free zones, or in either of the DIFC or ADGM, to potential investors situated anywhere in the UAE, and under a single licence."

In other words, if the new regime works as advertised, a fund set up in the DIFC or the ADGM will be able to market and sell to investors throughout the UAE while only having to comply with the regulatory requirements of its jurisdiction of incorporation.

It is not yet clear how long it will take to implement the new regime contemplated by the agreement. The press release states that the SCA, DFSA, and the FSRA have agreed to establish common rules to implement the regulatory regime contemplated by the agreement but provides no estimated timetable for when such rules might be published. It further explains that the authorities will undertake a consultation process regarding the proposed new regime. Notwithstanding the tentative nature of these formal communications, it appears that some investment firms in the DIFC are already advertising this new capability.

This agreement represents a very encouraging development that could have a positive impact on making the UAE a much more attractive place to establish funds. ■