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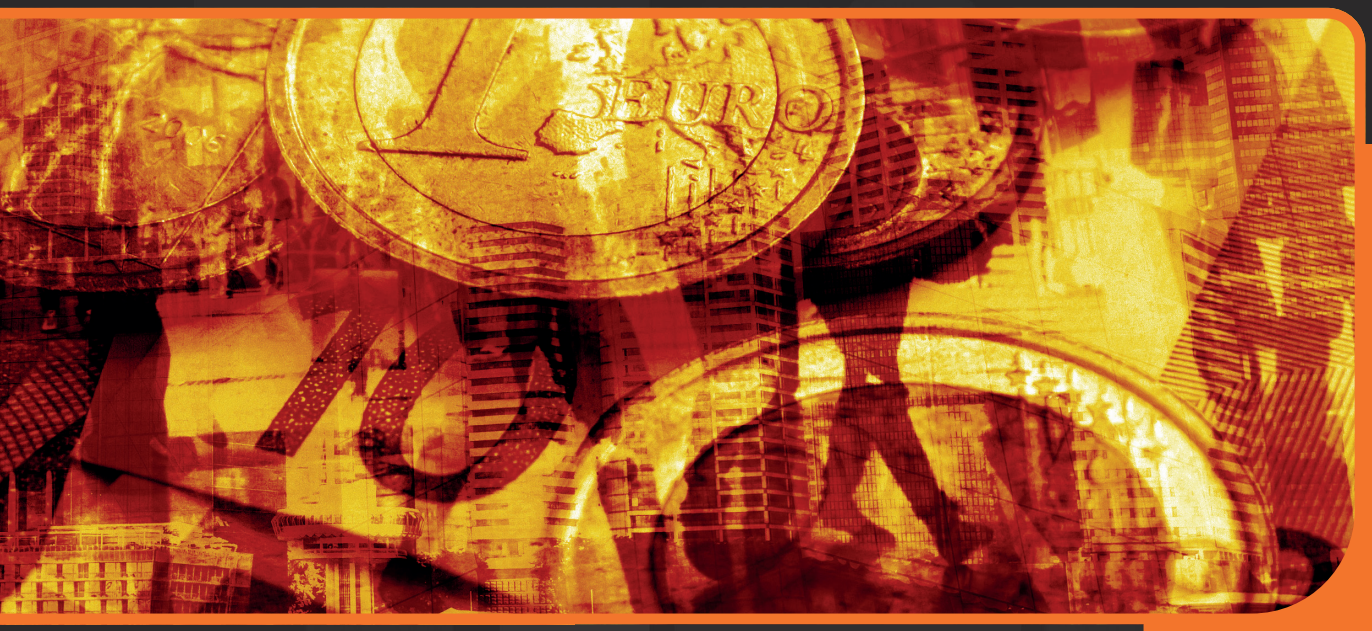

Practical cross-border insights into public investment funds

Public Investment Funds 2023

Sixth Edition

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1 Registration

1.1 Are funds that are offered to the public required to be registered under the securities laws of your jurisdiction? If so, what are the factors and criteria that determine whether a fund is required to be registered?

Yes. Andorra is not a member of the European Union ("EU"). Accordingly, the freedom to provide financial services in the European Economic Area ("EEA") regime does not apply, and all financial activities carried out within the Principality of Andorra ("Andorra" or the "Jurisdiction") are subject to prior authorisation from the Andorran financial regulator "*Autoritat Financera Andorrana*" ("AFA" – previously the Andorran National Finance Institute "*Institut Nacional Andorrà de Finances*").

Under Andorran law, all financial activities rendered inside the Jurisdiction can only be carried out directly, with the limitations and conditions set forth in the laws, by the local entities that compose the Andorran financial system, which are subject to exclusive supervision and to a reservation of activity regime accessible upon obtaining prior authorisation from the AFA.

The Andorran Act 10/2008, June 12, governing collective investment schemes ("*Llei 10/2008, del 12 de juny, de regulació dels organismes d'inversió col·lectiva de dret andorrà*") (the "Funds Act") determines that all funds offered to the public, both Andorran and foreign funds, must be registered before the AFA prior to their marketing or commercialisation to investors.

The Funds Act establishes two main categories for Andorran funds: (i) OICVMs ("*organismes d'inversió collectiva de valors mobiliaris*"), which are similar to undertakings for the collective investment in transferable securities ("UCITS"); and (ii) other undertakings of collective investment schemes ("*Altres OIC*" ("other UCIs")), which include real estate UCIs ("*OIC immobiliaris*"), alternative UCIs ("*OIC alternatius*") that in turn can be common alternative UCIs ("*OIC alternatius comuns*"), alternative UCIs for qualified investors ("*OIC alternatius per a inversors qualificats*") and other UCIs.

1.2 What does the fund registration process involve, e.g., what documents are required to be filed?

The registration process starts with a prior authorisation to be granted by the AFA. In this vein, a distinction needs to be made between Andorran funds and foreign funds.

In respect of Andorran funds, prior to their registration before the AFA, it is mandatory to carry out a procedure to obtain authorisation granted by such regulatory body. Nonetheless, the specific fund acquires the conditions of an undertaking of collective investment scheme upon its registration. The resolution of the administrative procedure for obtaining such prior authorisation must be resolved within 30 business days, either from the date of submission of its application before the AFA or the moment of completion of the required documentation. Upon obtaining prior authorisation, the registration procedure exclusively requires the submission from the fund management company, investment company and/or the fund's depositary of: (i) the deed of incorporation; and (ii) the definitive versions of the totality of the documents submitted concerning the prior authorisation procedure (overall: prospectus(es); agreement between the management company and depositary entity; technical dossier gathering specific characteristics of the fund and the investment programme; delegation and identification contracts for natural persons performing delegated functions; and distribution/sub-distribution agreements).

Concerning foreign funds, the application for registration must be submitted by a financial entity authorised to operate within the Andorran financial system ("*entitat operativa del sistema financer andorrà*") by the AFA under Act 7/2013, May 9, on the regime for the operating entities in the Andorran financial system and other provisions that govern financial activities in Andorra (the "Financial Act"), and Act 8/2013, May 9, on the organisational requirements and operating conditions of operating entities in the Andorran financial system, investor protection, market abuse and financial securities agreements (the "Financial Securities Act") as a local distributor of foreign funds.

Usually, such entity will be a local bank ("*entitat bancària*") acting as the distributor of units of the specific foreign fund on the basis of a distribution or sub-distribution agreement formalised with the foreign fund's management company. However, the following entities can also act as distributors of the foreign fund: (i) management companies of collective investment schemes established under Andorran laws; and (ii) other entities authorised to carry out this activity in Andorra. This last category refers to investment financial companies ("*Societats Financeres d'Inversió*" ("SFIs")) and investment financial agencies ("*Agències Financeres d'Inversió*" ("AFIs")) according to Andorran legislation and the criteria of the AFA. Consequently, as the aforementioned entities are authorised to perform the distribution of foreign collective investment schemes, they will also be authorised to perform marketing activities regarding the foreign fund.

The application must include the following documents, which may be submitted in Catalan, English, French or Spanish:

(a) documents evidencing the authorisation of the foreign fund and evidence that it offers the same level of operational guarantees as Andorran funds to investors and, in particular, the fact that such operational guarantees are subject to an external and continuous control by a

regulator (including a breakdown of the regulation to which it is subject);
(b) category of the fund;
(c) prospectus(es);
(d) identification of the durable medium where the net asset value of the fund can be checked;
(e) documents evidencing that the local entity authorised to operate as a distributor is granted access to all the information that the managing company of the fund may apply for (e.g. annual audit, quarterly reports, etc.); and
(f) description of envisaged modalities for the commercialisation of segregated account portfolios within Andorra.

The AFA will communicate its decision within 30 working days after the day of reception of the complete documentation. If approved, and after the payment of the application for registration fees (€2,316 plus €1,108 per sub-fund for foreign funds), the fund can be considered registered.

The commercial documentation must comply with the Andorran general advertising principles (which is a responsibility that must be fulfilled by the entity authorised to operate as a local distributor). Specifically: advertising must be adjusted to the principles of truth, objectivity and not be misleading; services available to consumers must provide enough information about its main characteristics; advertising materials must not go against the dignity of individuals or constitutional rights/values; and advertising materials must not be disloyal (i.e. create unfair competition). The last point covers references in materials in which other products or services are undervalued or when comparisons are used and are not based on the essential characteristics of the products, or when the intention is to assimilate one product or service to the product or service of another company.

Moreover, the commercial documentation must comply with general rules on advertising arising from the fund's regulations.

1.3 What are the consequences for failing to register a fund that is required to be registered in your jurisdiction?

The consequences of failing to register a fund before the AFA are of a dual nature: (a) criminal sanctions, to the extent that, as stated in question 1.1, carrying out financial activities in Andorra requires prior authorisation from the AFA (i.e. applicable to entities other than Andorran operating entities); and (b) administrative sanctions, exclusively applicable to Andorran operating entities:

- criminal sanctions: (i) imprisonment of one to four years; and (ii) a fine of up to €150,000;
- administrative sanctions (on the relevant director or responsible individual of the entity other than an Andorran operating entity): (i) public reprimand in the *Official Gazette of the Principality of Andorra* ("*Butlletí Oficial del Principat d'Andorra*"); (ii) a fine of at least the gross profit made as a result of the infringement, but no more than five times that amount or, in cases where this amount is not qualifiable, a fine of between €90,000 and €300,000; and (iii) the permanent cancellation of the authorisation/licence; and
- administrative sanctions on individuals: (i) a public reprimand in the Andorran official journal; (ii) a fine between €60,000 and €90,000; and (iii) removal from the position with prohibition to hold administrative or management positions in the same financial institution or in any other institution of the same nature, for a period not exceeding five years.

Furthermore, other consequences of failing to register the fund would be the liability for the foreign entity and/or its directors/other individuals who knowingly participated in the offence, and that the resulting contract(s) may be held to be unenforceable.

1.4 Are there local residency or other local qualification requirements that a fund must meet in order to register in your jurisdiction? Or are foreign funds permitted to register in your jurisdiction?

In respect of a foreign fund distributed within Andorra, supervision must be carried out by the supervisory authority of the fund's home state. Such fund must at all times comply with the legislation in force within Andorra.

The Funds Act merely establishes that distribution of a foreign fund share requires: (a) prior registration before the AFA; (b) the register authorisation to be reflected in all documents and marketing material of the foreign fund distributed in Andorra; and (c) the distribution of the foreign fund shares being carried out by a local entity authorised to operate as distributor.

2 Regulatory Framework

2.1 What are the main regulatory restrictions and requirements that a public fund must comply with in the following areas, if any? Are there other main areas of regulation that are imposed on public funds?

i. Governance

Management companies, depositary entities and commercialising/distributing entities (authorised to operate within Andorra by the AFA) of the fund must comply with conduct of business rules of the financial sector in place within Andorra.

Specifically regarding governance requirements, requirements applicable to the aforementioned entities are: (i) the administration body shall adopt the form of a board of directors composed of, at least, three members; (ii) members of the board of directors, including individuals representing legal entities on such organisation, shall be persons of recognised commercial and professional honourability that must possess adequate knowledge and professional experience; (iii) the management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks involved; (iv) the elected chairman shall not be the general manager of the entity; and (v) the board of directors shall draft and approve a set of internal operating rules along with a corporate governance plan that favours compliance with legal obligations and promotes the responsibility of all of its members.

In short, please note that corporate governance requirements stated in: Directive 2013/36/EU of the European Parliament and of the Council of June 26, 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ("CRDIV"); and Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26, 2013 on prudential requirements for credit institutions and investment firms ("CRR"), have been implemented into the Andorran regulatory framework by means of Act 35/2018, December 20, on solvency, liquidity and prudential supervision of banking entities and investment firms ("*Llei 35/2018, del 20 de desembre, de solvència, liquiditat i supervisió prudencial d'entitats bancàries i empreses d'inversió*"), which entered into force on January 25, 2019 (the "Prudential Supervision and Capital Requirements Act"); however, the particulars and singularities of the Andorran financial sector/entities have been taken into account in this respect.

In addition, the fund and *Société d'investissement à Capital Variable* ("SICAV") must reach the minimum amount stated in "iii. Capital structure" from the registration date before the AFA, as otherwise the specific fund shall be liquidated.

ii. Selection of investment adviser, and review and approval of investment advisory agreement

The function of advising the fund can be performed by: (i) the management company of the fund incorporated under the laws of Andorra; and (ii) those Andorran financial entities authorised to carry out the financial service of provision of personal recommendations to a client, either upon its request or at the initiative of the operating entity, in respect of one or more transactions relating to financial instruments. In both scenarios, such entities must be authorised to operate within the Jurisdiction by the AFA.

iii. Capital structure

The share capital of the fund cannot be less than €1.25 million. In case of a fund with legal personality (SICAVs) and without management entity, the minimum share capital of the fund must be €300,000. Such amounts must be maintained during the time the fund is registered by the AFA.

On the date of incorporation, the fund and, if applicable, each of its sub-funds, will have covered a minimum of 10% of the aforementioned minimum amounts.

Concerning real estate UCIs, the minimum share capital must be €6 million – which must be maintained at all times – and €2 million for each sub-fund.

iv. Limits on portfolio investments

Concerning OICVMs, the Funds Act provides for generic limits on portfolio investments. Overall, such limits are:

(a) Andorran funds can neither invest more than 10% of their assets in transferable securities or in money market instruments issued by the same issuer (20% at an entity group level), nor more than 20% of their assets in deposits held by the same entity. The total value of the transferable securities and money market instruments comprised in the portfolio that individually exceed 5% of its assets cannot exceed 40% of the portfolio total value;

(b) the risk exposure of the counterparty in an OTC derivatives transaction cannot be superior to 10% of its assets, when such counterparty is a banking entity whose registered address is located within the EU, Andorra or an OECD state;

(c) the first of the limits stated in (a) may be increased to up to 35% or 25% when the investment is made on debentures issued by a banking entity whose registered address is located within the EU, Andorra or an OECD state, subject to special public surveillance to protect the debentures' holders. When an Andorran fund invests more than 5% of its assets on such debentures issued by a unique entity, the total value of such investment cannot exceed 80% of the total portfolio value; and

(d) Andorran funds may acquire units of an Andorran fund with a concentration limit of 20% of its total assets in units of a single fund (OICVMs) and 30% on other UCIs.

Moreover, there are certain restrictions to investments on Andorran funds, such as:

(a) the acquisition of precious metals and bullion certificates;

(b) the acquisition of voting-right shares that allow the exercise of significant influence on an issuer's management;

(c) obtaining loans (except for back-to-back loans);

(d) granting loans, credits, guarantees, bonds or similar instruments to third parties;

(e) leveraging over 10% of its assets or its estate (for temporal loans) and 10% for investment companies (for loans granted to purchase real-estate goods essential to the continuation of their direct activities), with a cap for both percentages of 15%;

(f) acquisition of more than 10% of non-voting-right shares from an issuer;

(g) acquisition of more than 10% of debentures of the same issuer; and

(h) acquisition of more than 25% of units of an Andorran fund or other UCIs.

The limits stated in (d) to (h) above will not necessarily be met at the moment of the acquisition; it may not be possible to calculate the gross amount of the debentures, money market instruments or transferable securities at such time. Certain exemptions are available to the aforementioned limits under the Funds Act. Pursuant to Andorran funds (other UCIs), specific limits on portfolio investments are foreseen.

In respect of foreign funds, limits on portfolio investments will be determined by the applicable home state's regulations.

v. Conflicts of interest

The Funds Act defines conflicts of interest ("*conflicte d'interès*") in case of misalignment between the interests of the investors in the funds and the interest of the management company and depositary entity in order to perform investment operations.

Specifically, the management company and depositary entity are subject to a duty of care in preventing the generation of conflicts of interest and, if they materialise, are obliged to offer solutions to investors to avert detrimental consequences to them.

Provisions of conflicts of interest stated in the Financial Securities Act are strengthened by the Prudential Supervision and Capital Requirements Act. Broadly, this upgraded framework states that operative entities of the Andorran financial system shall adopt adequate organisational and administrative measures to detect and avert conflicts of interest that may arise at the time of providing any investment service or ancillary service between the entity itself, its senior management, its personnel or the financial agents appointed by the entity as well as the entity's clients or between clients, which may harm the interests of one or more clients. Moreover, financial operative entities of the financial system shall: (a) establish in writing the policy and procedures as to avoid conflicts of interest; (b) pay close attention to any conflicts of interest arising in connection with members of the board of directors, which must refrain from acting in case of a potential conflict of interest; (c) carry out periodic analysis as to the suitability and effectiveness of their corporate governance plans and resolution of conflicts of interests; (d) produce an ethical code (or similar deontological code) covering conflicts of interest; and (e) make sure that their remuneration policies are in line with the business strategy, objectives, values and long-term interests of the institution and incorporates measures to avoid conflicts of interest.

vi. Reporting and recordkeeping

In respect of reporting, management or investment, companies must submit, for each of the Andorran funds under its management: (i) a complete prospectus; (ii) a simplified prospectus; and (iii) quarterly reports that gather aggregate information collected from the beginning of the year. The complete prospectus must be available to the investors before formalisation of the agreements, the simplified prospectus and quarterly reports must be offered to investors in identical circumstances, and quarterly reports must also be available to the public in the locations set out in both prospectuses.

With regard to recordkeeping, there are no specific provisions in the Funds Act. Nonetheless, generic provisions provided for the Financial Securities Act are applicable. Thus, operative entities of the Andorran financial system shall establish a register that includes the document(s) that set out the agreement(s) between the specific entity and the client, and establish the rights and obligations of each of the parties as well as the other terms on which the entity provides the service to the client. The operative entities of the Andorran financial system

shall keep a register of all the types of transactions and services that they undertake and, in all cases, at least a register of orders and a register of transactions. These registers shall be kept for at least five years from the date of receipt of the order or the execution of the transaction and, when the entity has made a communication of a suspicious transaction in matters of market abuse to the AFA, the corresponding registers shall be kept for at least five years from the date of that communication.

vii. Other

There are no other restrictions or requirements of which to be aware.

2.2 Are investment advisers that advise public funds required to be registered and/or regulated in your jurisdiction? If so, what does the registration process involve?

Investment advisers advising public funds must be authorised by the AFA to operate within the Jurisdiction, vesting the form of the entities provided for in the Financial Act.

Usually, such investment advisers shall be investment entities ("*entitats financeres d'inversió*") or management entities ("*societats gestores*").

The authorisation process is regulated by Act 35/2010 on the legal regime for authorising the creation of new operating entities within the Andorran financial system ("*Llei 35/2010, del 3 de juny, de règim d'autorització per a la creació de noves entitats operatives del sistema financer andorrà*") as amended by the Prudential Supervision and Capital Requirements Act.

This piece of legislation determines a common procedure for creating new Andorran operating entities. Overall, such procedure encompasses: (a) building up a deposit in favour of the AFA as proof of his adequate solvency and the seriousness of the application; and (b) submitting an application accompanied by certain documentation to obtain such authorisation. Once this documentation is submitted, the AFA will grant the definitive authorisation, which shall be published in *the Official Gazette of the Principality of Andorra*. After such authorisation, the specific entity has a maximum period of 12 months to initiate the activities stated in its social objectives.

The Prudential Supervision and Capital Requirements Act foresees an enhanced cooperation procedure between the AFA and other Andorran (e.g. the police department and the Andorran Financial Intelligence Unit "*Unitat d'Intelligència Financera d'Andorra*") and foreign supervisory authorities.

2.3 In addition to the requirements above, are there additional regulatory restrictions and requirements imposed on investment advisers that advise public funds?

There are no other restrictions or requirements of which to be aware.

2.4 Are there any requirements or restrictions in your jurisdiction for public funds investing in digital currencies?

Act 24/2022, June 30, on the digital representation of assets through the use of cryptography and distributed ledger and blockchain technology is the main regulation of digital currencies in Andorra. The Act states certain provision related to funds investing in digital currencies.

Only the category of "other UCIs" according to the Funds Act may create sub-funds that invest in digital assets. All sub-funds investing directly into digital assets must belong to the same type of UCIs according to the Funds Act.

OCIVMs and other UCIs may invest in digital assets issued or marketed in Andorra by a registered entity. However, the divestment must take place simultaneously for all participants. The participants must be qualified investors, according to the Funds Act.

The UCIs will ensure to solve the risks related to assets valuation, the management of their liquidity and their custody guarantee. They must determine the procedure used to value cryptocurrencies and other digital assets they manage, considering their volatility, fragmentation, and their international regulatory dispersion. In the case of liquidity, its management must be fixed, and the way to manage the liquidity risk to be able to fulfil the obligations related to financial leverage they may have incurred. On top of that, UCIs must analyse how to guarantee the custody of digital assets.

2.5 Are there additional requirements in your jurisdiction for exchange-traded funds?

There are no additional requirements for exchange-traded funds.

3 Marketing of Public Funds

3.1 What regulatory frameworks apply to the marketing of public funds?

The marketing of public Andorran and foreign funds within the Jurisdiction is regulated by the Funds Act, the Financial Act and the Financial Securities Act as amended by the Prudential Supervision and Capital Requirements Act, Technical Communication 163/05, February 23, 2006, of the AFA in respect of rules for ethics and behaviour ("*Comunicat 163/05 del dia 23 de febrer de 2006, sobre normes ètiques i de conducta*") and Technical Communication 189/09, July 27, 2009, of the AFA in respect of registration of foreign collective investment undertakings ("*Comunicat 189/09 de 27 de juliol de 2009, sobre inscripció dels OIC de dret estranger*").

3.2 Is licensure with a regulatory authority required of persons (whether entities or natural persons) engaged in marketing activities? If so: (i) are there commonly available exceptions that may be relied on?; and (ii) describe the level of substantive regulation applied to licensed persons.

All active marketing activities conducted within the Jurisdiction (by telephone, email, mail or in person) in relation to Andorran or foreign funds may constitute active marketing activities and, as such, are subject to local licensing requirements (i.e. prior authorisation from the AFA).

Active marketing refers to any approach to potential clients, without their prior request, to provide them with sufficient information on the specific fund to decide whether to purchase them. According to the Funds Act, it is necessary to distinguish between: (a) the marketing of funds exclusively addressed to entities operating in the local financial market (e.g. banking entities acting for their own account); and (b) other entities that are not operating in the local financial market.

In the first case, marketing activities are not considered a reserved activity under an express legal exemption and,

therefore, their performance within the Jurisdiction shall not trigger licensing requirements. In the second case, the marketing of funds addressed to entities that are not operating in the local financial market is considered a reserved activity and, consequently, it is necessary that these entities meet certain requirements to obtain the corresponding licence from the AFA (see question 2.2).

The AFA defines active marketing of a collective investment scheme as attracting clients by means of an advertising activity on the account of the collective investment scheme or any entity acting on its behalf or any of its distributor's behalf, for the contribution of assets, rights or obligations to the collective investment scheme.

Regarding commonly available exemptions (other than the express legal exemption referred to in (a) above): (i) the circulation of generic information to institutional investors (i.e. information that does not refer (directly or indirectly) to specific funds) or initial contact to gauge interest, which involves discreet one-to-one discussions with a limited number of institutional investors, is unlikely to constitute an active marketing activity; and (ii) although no express exemptions are available, approaches made to potential institutional investors based in Andorra on a genuine unsolicited basis (reverse solicitation scenario) should not trigger licensing requirements. However, any marketing materials distributed will make it more difficult to argue that the approach was genuinely unsolicited.

Since it is a reserved activity, the active marketing of funds within the Jurisdiction can only be carried out by legally authorised Andorran operating entities, authorised by the AFA to act as distributors of the funds.

The marketing prohibition does not apply if funds are distributed to investors located outside of Andorra. In this sense, marketing activities conducted in person by a foreign entity outside the Jurisdiction would be subject to the applicable law of the country where the activity is effectively performed.

3.3 What are the main regulatory restrictions and requirements in the following areas, if any, that must be complied with by entities that are involved in marketing public funds?

i. Distribution fees or other charges

There are no regulatory restrictions nor requirements pursuant to distribution fees, which are usually agreed on a free basis between the management company of the funds and the local distributor (in the case of foreign funds).

In respect of remuneration of: (a) a management entity; and (b) a depositary entity, it is worth noting that:

(a) the management entity is entitled to a management fee, subscription fee and reimbursement fee, which shall cover the costs inherent to the performance of its function. There are no specific restrictions on these fees; and

(b) the depositary entity is entitled to a depositary fee calculated on the basis of the average estate under custody or according to the sort of assets under custody.

The regulation and prospectuses of the fund must determine maximum percentages and/or amounts charged over the funds for these concepts, their calculation form and frequency of their liquidations.

ii. Advertising

Commercial documentation of the fund must comply with the Andorran general advertising principles, as this is a liability upon the Andorran operating entity that distributes the fund. In this vein, the AFA has issued Technical Communication 7/SGOIC, regarding ethical and conduct standards, and Technical Communication 20/SGOIC, on clarification regarding the Funds Act, which contain certain advertising rules and principles. These specify that:

- advertising must be adjusted to the principles of truth and objectivity and must not be misleading;
- the services available to consumers must provide enough information about their main characteristics;
- advertising materials must not go against the dignity of individuals or constitutional rights/values; and
- advertising materials must not be disloyal (i.e. create unfair competition). This covers references in materials in which other products or services are undervalued or when comparisons are used and are not based on essential characteristics of the products, or when there is the intention to assimilate one product or service to the product or service of another company.

Moreover, the commercial documentation must comply with the general rules on advertising arising from the Funds Act.

iii. Investor suitability

The Monetary Agreement signed between Andorra and the EU in June 2011 (which came into effect on April 2012) establishes that the Markets in Financial Instruments Directive ("MiFID") regulations will apply within the Jurisdiction. Andorra has already implemented investor protection regulations aligned with MiFID I. Consequently, the distinction between retail investors and professional investors under MiFID I is relevant.

The Funds Act defines qualified investors as entities or individuals that have the abilities or means to evaluate rigorously and exhaustively the operating risks of financial instruments. They must have: (i) a written declaration of being a qualified investor; (ii) minimum investment of €50,000; and (iii) completed an assessment by the distributor of the fund regarding their knowledge, investment background and the acknowledgment of the risks that are present. However, a qualified investor according to the Funds Act could be considered a retail investor according to MiFID I.

A retail investor according to MiFID I is any individual or legal person other than a professional investor. A professional investor is a client who possesses the experience, knowledge and expertise to make its own investment decisions and to properly assess the risks that it incurs.

Please note that the implementation of MiFID II is planned for 2023.

iv. Custody of investor funds or securities

Under the Funds Act, the management company and depositary entity must establish adequate mechanisms and procedures to guarantee that the disposal of assets of the fund is not made without its consent and authorisation.

Designation of the depositary entity is reflected by means of a contract entered into with the management entity. The provisions of such contract must comply with the content set out in article 68 of the Funds Act (*inter alia*, the rights and obligations of both parties, functions and obligations of the depositary and depositary fees).

The management company and the depositary entity can share resources (excluding personal resources) as long as, on the one hand, the conditions for protecting investors are complied with and conflicts of interest situations are avoided and, on the other hand, an authorisation is requested from the AFA.

Sub-custody of assets of the fund may be entrusted to a third party or to a central securities depository located in Andorra or outside Andorra. The depositary entity must also ensure that the management company of the fund complies with all applicable laws, the regulation, and prospectuses of the fund in

connection with: (a) the calculation procedures of the net value, issue price and reimbursement of units or shares of the fund; and (b) investment decisions of the fund and the outcome of the distribution of the fund. Furthermore, the depositary entity shall communicate to the AFA the actions and procedures of the management company that are considered adequate.

Under the Financial Securities Act, operative entities of the Andorran financial system, when holding the clients' assets at their disposal, shall adopt reasonable measures to protect the clients' rights over such financial instruments and funds entrusted to them, prevent their undue use and establish registers that allow each client's assets to be distinguished from their own. To do this, the clients' financial instruments and cash shall be deposited in an account or accounts apart from those in which the financial instruments and cash belonging to the entity itself are deposited, using accounts with different names in the accounting for third parties, or other measures equivalent by means of which the same level of protection for their clients' assets can be achieved. In this vein, the AFA issued Technical Communication 7/2020, regarding the protection of consumers' assets, which expressly includes the content, means and deadlines relating to the preparation of the annual report that the external auditors have to draw up concerning the adequacy of the measures adopted by the relevant entities.

3.4 Are there restrictions on to whom public funds may be marketed or sold?

As stated in question 3.2, all active marketing activities conducted within the Jurisdiction (by telephone, email, mail or in person) in relation to a fund may constitute active marketing activities and, as such, are subject to local licensing requirements.

Under the Funds Act, Andorran funds can be directly commercialised to the end investors in Andorra, and foreign funds that are actively commercialised under the Funds Act are commonly distributed through local licensed distributors (usually local banking entities, but also possibly SFIs and those holding the appropriate licence granted by the AFA).

If the distribution of the foreign fund does not imply active commercialisation but just intermediation or transmission of orders (including any order given in the context of a managed portfolio), although the provision of such activities will not trigger registering obligations in relation to the fund, they will also be subject to licensing requirements; thus, a local operating entity will be required.

3.5 Are there other main areas of regulation that are imposed with respect to the marketing of public funds?

There are no other relevant main areas of regulation impacting the marketing of public funds.

4 Tax Treatment

4.1 What are the types of entities that can be public funds in your jurisdiction?

Under the Funds Act, undertakings of collective investment schemes may vest the form of funds (without legal personality) or companies (SICAVs – self-managed or with a management entity) that are set up in accordance with Act 20/2007, October 18, on public limited companies and limited liability companies ("*Llei 20/2007, del 18 d'octubre, de societats anònimes i de responsabilitat limitada*") in the forms stated in question 1.1. In both cases, registration before the AFA is a validity condition for the incorporation as a fund.

4.2 What is the tax treatment of each such entity (both entity-level tax and taxation of investors in respect of allocations of income or distributions, as the case may be)?

Broadly speaking, each of the entities referred to in question 4.1 is subject to corporate income tax at a rate of 0%, excluding the management entities of the SICAVs. The allocation of profits to investors that are residents within Andorra benefits from an exemption under Andorran personal income tax legislation "*Llei 5/2014, del 24 d'abril, de l'impost sobre la renda de les persones físiques*". Moreover, the allocation of profits to non-tax-resident investors is likewise covered by an exemption under Andorran non-resident income tax legislation "*Llei 94/2010, del 29 de desembre, de l'impost sobre la renda dels no-residents fiscals*".

4.3 If a public fund, or a type of entity that may be a public fund, qualifies for a special tax regime, what are the requirements necessary to permit the entity to qualify for this special tax regime?

There are no special tax regimes applicable to the entities referred to in question 4.1. However, there are some requirements to qualify for the application of the special tax rate of 0%, in particular: (i) the acquisition of the conditions of the fund upon registration before the AFA; and (ii) once the fund has been incorporated, registration in the Andorran Department of Tax and Borders ("*Departament de Tributs i Fronteres*").

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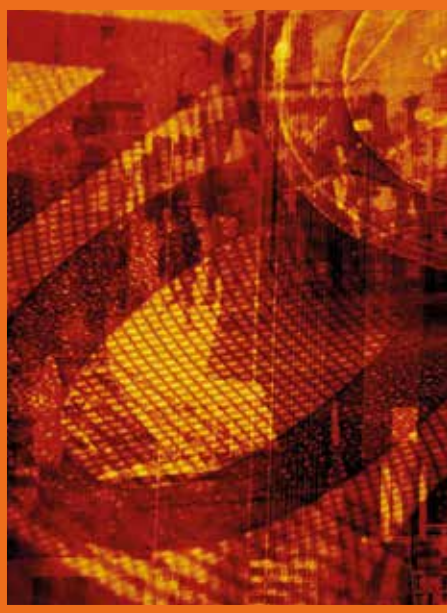

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