

International Funds Net Country Updates

September 2020



EUROPE

UK



FCA temporary permissions regime (TPR) notification window re-opens

The FCA updated its temporary permissions regime (TPR) pages to announce that it is re-opening the notification window with effect from today, 30 September 2020, to allow firms and fund managers that have not yet notified to do so before the end of the transition period. Updated notifications must be received before the end of 30 December 2020.

This will also be an opportunity for fund managers to update their previously submitted notifications, if necessary. Fund managers that want to update their previously submitted notification should notify the FCA by the end of 9 December 2020 at the very latest confirming this and including their firm reference number (FRN). Fund managers should then expect to be able to submit their updated notification from 14 December 2020. As previously, the FCA expects fund managers to only submit their updated notification when they are certain that all the correct funds are included.

The purpose of the TPR

The TPR is designed to help firms and funds continue their UK business with minimal disruption when the passporting regime ends at the end of the transition period.

Considerations for inbound firms

In particular, if you are an inbound firm, the TPR will allow you to continue operating in the UK within the scope of your current permissions for a limited period after the end of the transition period, while you seek full UK authorisation, if required. The TPR covers both your firm's pre-existing business and any new business entered into during the TPR. Firms that have already submitted a notification therefore need take no further action.

Considerations for fund managers

If you are a fund manager marketing funds in the UK via a passport, your funds can enter the temporary marketing permission regime (TMPR), which will allow you to continue temporarily marketing in the UK.

Fund managers should continue to follow current

processes via their home state regulator for marketing new funds in the UK and should allow sufficient time for notifications to be received and processed by the FCA to ensure that any new funds are eligible for the TPR. Fund managers can continue to create new draft notifications on Connect to monitor their fund population. If new funds have been added to a fund manager's population since an earlier notification was submitted, the new funds will not be included in the temporary marketing permission regime unless fund managers request to update their notification and include them in that updated notification.

Operators, depositories and trustees of funds in the TMPR will need to continue to comply with all relevant marketing and reporting requirements.

EU law during the transition period

During the transition period, EU law remains applicable in the UK in accordance with the EU-UK Withdrawal Agreement. This means that firms must continue with implementation plans for EU legislation that is still to come into effect before the end of December 2020.

Navigating the implementation period and TPR regime

In light of the above, we have updated [our various flowcharts](#) to help navigate the implementation period and TPR regime:

- Flowchart for firms
- Flowchart for funds
- Flowchart on the options, next steps, requirements and processes for the marketing of funds into the UK after IP Completion Day

ASIA PACIFIC

Cambodia



New anti-money laundering laws

Cambodia's new Anti-Money Laundering and Combating the Financing of Terrorism Law (the 2020 AML/CFT Law) came into force in June 2020, abrogating the 2007 law of the same name and the accompanying sub-decree from 2013.

The 2020 AML/CFT Law differs in a number of ways from the 2007 law: (1) more specific definitions, (2) a requirement for reporting entities to introduce enhanced due diligence measures, and (3) increased

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penalties for non-compliance.

The 2020 version of the law has changed several definitions to provide further clarity and increase the scope of the law:

- "Financing of Terrorism" is expanded by the addition of a list of examples of actions that could qualify as terrorism financing, including traveling or training with the intent to aid terrorists.
- "Politically Exposed Persons" is broadened to include local officials (in addition to foreign officials) and "international politically exposed persons," or prominent individuals in an international organisation. In practice this means that reporting entities will now be required to monitor these persons' transactions.
- "Ultimate Beneficial Owner" is expanded to include any person who exercises ultimate effective control over a legal person through shares or voting rights.

Trustees have been added as a category of reporting entity, in keeping with the Law on Trusts which went into effect in early 2019. Otherwise, the comprehensive list of reporting entities is largely the same as in the 2007 law.

Reporting entities must deploy enhanced customer due diligence (CDD) measures, as more types of transactions and business relationships have been classified as high risk. This also applies retroactively, and must be conducted on existing customers who newly fall into the "high risk" category. Enhanced due diligence measures may include obtaining additional information on the customers' identification, the source of funds, the purpose of the transaction and the intended nature of the business relationship. Additional ongoing customer monitoring procedures may also be required.

If a reporting entity believes that carrying out these additional CDD measures will result in a particular customer becoming aware of the entity's suspicions of them, the entity is allowed to cease conducting the measures and must report the customer and the activity that led to the initial suspicions to the Cambodia Financial Intelligence Unit (CAFIU).

The list of activities for which a reporting entity must apply enhanced CDD measures has been expanded to include:

- business relations and transactions with institutions or persons in jurisdictions that have a high risk of money laundering or financing of terrorism;
- business relations and transactions with foreign politically exposed persons and their family members and close associates;
- business relations and transactions with international politically exposed persons, Cambodian politically exposed persons, and their family members and close associates, but only in response to a transaction that is identified as "high risk"; and
- all other business relations or transactions that could be identified as having a high risk of being associated with money laundering and/or financing of terrorism.

Penalties for legal entities found to be in violation of the 2020 AML/CFT Law include warnings, fines, revocation of business licenses, and the removal of managers or officers from their positions, applied in addition to applicable sanctions under the Criminal Code. In general, the penalties outlined in the new law introduce higher fines and longer prison terms than were previously imposed under the 2007 Law and its subsequent amendments.

Hong Kong



SFC announces significant enhancements to the private open-ended fund company

The Securities and Futures Commission (SFC) has recently released its [consultation conclusions](#) on the proposed enhancements to the open-ended fund companies (OFC) regime, including:

- removal of investment restrictions for private OFCs;
- expansion of entities eligible to act as custodian of private OFCs; and
- confirmation of the SFC's intention to provide for a statutory mechanism to re-domicile overseas corporate funds to Hong Kong as OFCs.

The SFC has decided to remove all restrictions in relation to the types of assets in which a private OFC is permitted to invest, putting the OFC vehicle on a level playing field with overseas corporate fund vehicles and other private fund structures in Hong Kong. The Code on Open-ended Fund Companies (OFC Code) will be amended to require that the custodian

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shall have sufficient expertise and experience in safekeeping the asset classes, and the offering documents will be required to contain clear disclosures on material risks relating to the types and nature of assets, in which the OFC invests.

The SFC will expand the entities eligible to act as custodians of private OFCs to include intermediaries licensed or registered for Type 1 regulated activity (dealing in securities), as proposed in the consultation paper earlier. The SFC also confirmed the current regulatory framework does not preclude an OFC from appointing multiple custodians, so opens up the possibility that a private OFC could appoint both a cash custodian and one or more prime brokers (that are licensed or registered for Type 1 regulated activity) as the top-level custodians of the private OFC. In addition, new requirements will be imposed on safekeeping the scheme securities and monies of a private OFC, as set out in the new Appendix A to the OFC Code. Existing custodians and prospective custodians will need to conduct a review on their current operations to ensure that the substantive requirements on custody of assets will be complied with in practice. The proposals on the removal of investment restrictions and on custodian eligibility requirements will take immediate effect upon publishing the revised OFC Code in the gazette.

The proposal to provide for a mechanism to re-domicile overseas corporate funds to Hong Kong as OFCs received favourable feedback during the consultation. In order to facilitate the re-domiciliation, the SFC has indicated that upon fulfilling the "key" requirements under the OFC regime, including appointment of eligible operators, other changes can be effected after re-domiciliation. The details on the re-domiciliation mechanism will be set out in detail in new provisions to be introduced into the Securities and Futures Ordinance.

It is expected that the SFC will conduct a further consultation on the customer due diligence requirements to be imposed on OFCs, particularly its proposal to require an OFC to appoint a responsible person to perform anti-money laundering and counter-financing of terrorism functions. This proposal is intended to align OFCs with the requirements for the new limited partnership fund vehicle, which came into effect on 31 August 2020.

Please note that this update on recent legal developments is not designed to provide legal advice and it is advisable to consult with local legal counsel before any actual undertakings.

For more information on these updates or about IFN, our specialist solution for global AIFs and UCITS distribution activities, please contact:



Lindi Rudman
Legal Director

Dir: 0207 919 0837
Int: +44 20 7919 0837
lindirudman@
eversheds-sutherland.com



Michaela Walker
Partner

Dir: 0207 919 0541
Int: +44 20 7919 0541
michaelawalker@
eversheds-sutherland.com



Ronald Paterson
Partner

Dir: 0207 919 0578
Int: +44 20 7919 0578
ronaldpaterson@
eversheds-sutherland.com

[eversheds-sutherland.com](https://www.eversheds-sutherland.com)

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