Keeping up with Alternative Investment Funds

October 2020

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Introduction

Welcome to our October edition of Keeping up with Alternative Investment Funds.

As we move into winter, we continue to see a tightening of restrictions following a resurgence in Covid-19 cases across the UK and mainland Europe as well as record numbers of cases in certain US states. Beyond the pandemic, with Brexit trade talks again brought to a standstill, it is ever important for firms to persist with efforts to prepare for the end of the transition period in December, in order to remain agile and able to respond to the risks and opportunities this new world presents. As always, we hope you and your families continue to remain safe and well in these uncertain times.

To support organisations with their response to the ongoing impact of the Covid-19 pandemic, our **COVID-19 website** will continue to feature the latest guidance, updates, and details of how we can offer help and support to businesses, from crisis scenario planning, to cashflow management and cyber security.

Our recent October client roundtable focused on the tax landscape horizon with topics including the potential tax impacts of the US Presidential election and the outlook for taxation across Europe. Looking forward, our November roundtable will be asset-class focused with a deeper dive into hot topics including client panel discussions on PE, Private Credit, Real Estate and Liquid Assets.

We are still keen to hear feedback from clients on the virtual client roundtables held to date regarding frequency (bi-monthly vs monthly), content, format and any suggested topics to be covered at future events. Please contact **richard.madden@pwc.com** or **Robert.mellor@pwc.com** if you have any feedback or suggestions.

Our October newsletter covers a wide variety of topics including an update on the Profit Diversion Compliance Facility ("PDCF") and articles by our colleagues in the Channel Islands on topical issues in their territory.

See the full list of articles in this newsletter below:

- Profit Diversion Compliance Facility Update
- Keeping on top of Operational Taxes – local Capital Gains Tax filing obligations
- The new Investment Firms Prudential Regime and the impact on the managers of Alternative Investment Funds
- Guernsey launches fast-track immigration system for investment funds

Please do continue to reach out to your usual PwC contacts if you would like to discuss any of the above, and please do share your feedback with us if there is a particular topic or issue you would like us to cover in the future.

Kind regards,

PwC Alternative Investment Funds team

Marc Susgaard-Vigon
Partner
M: +44 (0) 7795 222478
E: marc.susgaard-vigon@pwc.com

Robert Mellor
Partner
M: +44 (0) 7734 607485
E: robert.mellor@pwc.com

News Bulletin

EU MDR – Changes to the EU non-cooperative jurisdictions – Anguilla and Barbados added, Cayman Islands and Oman removed

The Council of the EU has decided (6 October 2020) that **Anguilla and Barbados** should be added to the list of non-cooperative jurisdictions for tax purposes. At the same time, they have decided that the **Cayman Islands and Oman** should be removed from the list.

From an EU MDR perspective, this has implications for which arrangements may be disclosable under hallmark C1b(ii). This hallmark requires the disclosure of cross-border arrangements involving deductible cross-border payments between associated enterprises where the recipient is resident for tax purposes in a jurisdiction on either the EU's or the OECD's lists of non-cooperative jurisdictions. The main benefit test does not apply to this hallmark and hence purely commercial transactions will be disclosable.

What this means in practice is:

- Cross-border arrangements involving relevant deductible payments to the Cayman Islands or Oman where the first EU MDR 'trigger point' is after 6 October 2020 will no longer be reportable under hallmark C1b(ii). Relevant trigger points are when the arrangement is 'made available', 'ready for implementation', the date of the first step of implementation and when a service provider provides their 'aid, assistance or advice'.
- However, where you are advising on a cross-border arrangement involving relevant deductible payments to Anguilla or Barbados and the first trigger point is on or after 6 October 2020 (unless and until they are removed from the EU's list), these may now become reportable.

Following this update, **twelve jurisdictions remain on the EU's list of non-cooperative jurisdictions**: American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Spain: Financial Transactions Tax Law

Earlier this month the Financial Transactions Tax Law as approve by the Senate in Spain. The Financial Transactions Tax (“FTT”) has been created with the purpose of contributing to the objective of consolidating public finances and to reinforce the principle of fairness of the tax system. The law will enter into force on 16 January 2021.

The scope of the application of the tax is extraterritorial. The FTT is based on the principle of issuance of the securities. Therefore, the application of the FTT is not impacted by the place where the acquisition is made or the residence of the counterparties to the transaction in scope. The Spanish FTT is heavily based on the French FTT introduced in 2012. Some of the challenges faced when the French FTT was introduced will be similarly relevant as companies prepare for the implementation of the Spanish FTT.

With the short timeframe to implementation it is important that alternative investment funds start thinking about how the law will impact them now. There will be a number of operational aspects to consider in preparing for the Spanish FTT to come into force. It would be efficient to leverage the processes and infrastructure in place for the French FTT due to the similarities.

News Bulletin cont.

HMRC publishes guidance on carried interest and disguised investment management fees

HMRC has published guidance on the Carried Interest and Disguised Investment Management Fee ("DIMF") rules in its Investment Funds Manual. The guidance can be found here:

- Carried Interest
- DIMF

The guidance derives from the draft document that HMRC circulated in 2016. However, there are some changes in substance:

Equity participation in a global share plan

There was some concern in the industry that share awards / unit awards granted to partners could be taxed under DIMF. Confirmation has now been given that, if it can be demonstrated that the share awards are not part of a wider scheme to deliver a disguised fee, neither the DIMF rules nor the carried interest rules will apply to those shares (or any dividends received in respect of those shares).

Dividends as an owner of the business

The guidance confirms that where an individual is a founder of a group with full commercial substance in the UK then dividends paid in respect of the shareholding in the parent company will not be a disguised fee and neither will any disposal proceeds. However, the DIMF rules may apply if this is part of a wider arrangement designed to deliver a disguised fee.

Double tax relief where foreign tax paid

HMRC make reference to a page in the guidance that will cover double tax relief on carried interest where tax is paid in an overseas jurisdiction (e.g. in the US), however the page has not yet been published. As such, there is still a question of whether double tax relief will be granted (i) where the overseas tax has been paid or (ii) after the exhaustion of all possible ways to reclaim that foreign tax, including under any mutual agreement procedure.

Marc Susgaard-Vigon
Partner
M: +44 (0) 7795 222478
E: marc.susgaard-vigon@pwc.com

Robert Mellor
Partner
M: +44 (0) 7734 607485
E: robert.mellor@pwc.com

Profit Diversion Compliance Facility Update

With the recent issue of the fourth tranche of HM Revenue & Customs ("HMRC") Profit Diversion Compliance Facility ("PDCF") 'nudge' letters and as we approach the time of year when we typically observe HMRC raising queries in relation to filed tax returns, now seems an opportune time to provide an update on our experience of HMRC's recent activity and our recommendations in this space. In particular, we have observed a recent increase in the number of transfer pricing audits into alternative investment fund managers by HMRC.

In summary, **HMRC increasingly now adopts an evidence-based approach** to investigations and relies heavily on primary evidence to support representations regarding the 'facts on the ground'. This puts considerable emphasis on contemporaneous materials such as emails, professional advice received, Board or committee meeting minutes and intra-group contracts, but also detailed analysis of people, their location and their roles, as well as a forensic approach to costs and cost allocations.

In detail

Fourth tranche of PDCF 'nudge' letters issued and our experiences to date

Since the PDCF was launched back in January 2019, there have been three tranches of 'nudge' letters issued by HMRC suggesting that the taxpayer review their arrangements and consider registering for the PDCF. Each of these three tranches has included taxpayers from the financial services industry. The fourth tranche was issued on 15 September and a smaller fifth tranche is expected to arrive later this year.

If taxpayers who receive a nudge letter don't register for the PDCF, they are likely to face a formal HMRC enquiry.

It is also worth noting that the PDCF is open to businesses who wish to register on a voluntary basis even if they have not yet received a 'nudge' letter and provided that they are not already under enquiry.

Whilst the PDCF enables businesses to manage an accelerated process to get their tax affairs up to date without the need for an HMRC investigation, businesses should consider carefully the resource implications of using the PDCF as a very detailed evidence-based process and report will be required. The business will also have to be comfortable to share details of its global business model with its UK advisers.

The PDCF can also now be used to cover any Offshore Receipts in respect of Intangible Property ("ORIP") issues from 2019 onwards.

We have pulled together a summary of key points from our experience of the PDCF after 18 months and three tranches of 'nudge' letters:

- Registration and pre-submission meetings are constructive and well received by businesses.
- In the majority of cases, the tax risks identified by businesses and the work plan presented at the pre-submission meeting are fully accepted by HMRC.
- HMRC has accepted the majority of final reports submitted with few or no amendments.
- Where there has been a difference in views, our clients have been given the opportunity to revisit the issue and gather further evidence in order to reach a satisfactory outcome.
- Outcomes on cases concluded so far are in line with HMRC's expectations in terms of additional tax paid although some 'nil adjustment' cases have been accepted.
- Internally, HMRC's success is measured by the % of acceptable reports, not the amount of additional tax.

Transfer pricing audits

Diverted Profits Tax is only one aspect of HMRC's growing investigative arm that is focused on what they refer to as "profit diversion" by multinational enterprises. HMRC now considers, in one enquiry process, all the tax risks that are related to "arrangements" that they believe to be inconsistent with the aims of the OECD Base Erosion and Profit Shifting ("BEPS") project. HMRC is devoting more resources to the increasing number of these complex and wide-ranging investigations, and regularly looks to cover Company Residence, Permanent Establishment, Transfer Pricing, Diverted Profits Tax, Withholding Tax, Offshore Receipts in respect of Intangible Property, Controlled Foreign Companies, the Hybrid and mismatch rules and VAT risks holistically.

Profit Diversion Compliance Facility Update cont.

Despite this variety of challenges, and the increase in scope and HMRC resourcing, transfer pricing generally remains at the heart of these enquiries. Based on our experience, HMRC still expects that the majority of profit diversion cases will be resolved through a transfer pricing solution, together with any necessary changes to group structures that HMRC sees as creating artificial diversion of profits from the UK.

Recent trends in HMRC behaviour that we have observed across transfer pricing audits include:

- The adoption of a forensic, investigative approach to evidence the underlying assumptions upon which the transfer pricing policies and documentation have relied, sometimes including investigators with experience of HMRC's Fraud Investigation Service. Businesses now find themselves challenged by HMRC with very extensive requests for documents and information, frequently including sizeable email reviews and interviews with employees, in order to defend their existing transfer pricing position.
- We are seeing increasing challenge of a defence relying on power and possession arguments.
- Increased pursuit of penalties.
- Increasing requests for permission to speak with third-party stakeholders to verify what a business has told HMRC.
- The use of information requests to other tax authorities under the UK's tax treaties or through multilateral instruments such as the OECD's Convention on Mutual Administrative Assistance.

Areas of focus / themes that we have identified in recent transfer pricing audits in the alternatives investment fund management industry include:

- A focus by HMRC on details of the transfer pricing review framework in place, including particular emphasis on how the governance process deals with flagging and appropriately pricing any new or one-off inter-company arrangements. We think that this will become an increasingly important area of HMRC attention and is likely to be closely linked with HMRC's increased pursuit of penalties.
- Necessity of a double sided transfer pricing analysis. HMRC are increasingly interested in understanding the activities undertaken offshore, in order to evaluate the reasonableness of the onshore transfer pricing results.
- HMRC has challenged, in detail, management service charges. For example, "Does the cost base include all relevant individuals?" and "Are you allocating enough of their costs?" This is often seen by taxpayers as a 'standard' or 'less complex' aspect of their transfer pricing policy and as such it may not receive the same regular level of review or analysis as the more complex material transfer pricing policies.
- Implementation of the transfer pricing policy becoming a very important part of what HMRC seeks to understand in enquiries. This aligns with our experience of accurate implementation often being a key challenge for taxpayers.

Profit Diversion Compliance Facility Update cont.

Reaching an agreement with HMRC

We would encourage taxpayers who are facing an HMRC challenge not to underestimate the initial challenge presented, but instead engage with it pro-actively and employ a multidisciplinary approach. We see the main elements of such an approach as:

1. Transfer pricing – transfer pricing is the core technical issue and, in our experience, usually the key to an agreed resolution. Taxpayers know their business and how it works, and are best placed to make suggestions to HMRC as to the most efficient way in which HMRC can obtain the necessary level of understanding of the arrangements in scope (which may well extend beyond the UK).
2. Tax Disputes – knowledge of HMRC's governance procedures and powers such as opening enquiries, filing requirements, information powers, discovery assessments, and penalties is essential. These enquiries now also routinely involve review and presentation of large amounts of documentary and other evidence, in particular emails.
3. Legal – a cooperative approach is still the best and most efficient way to progress an enquiry, especially as the overwhelming majority of enquiries will end by reaching an agreed settlement with HMRC. However, diverted profits tax is a piece of anti-avoidance legislation which features many and varied contentious legal points. With the strict time limits applicable to diverted profits tax, the need to be prepared for the prospect of litigation or a claim under the Mutual Agreement Procedure can become a reality much sooner than has been the case in historic transfer pricing enquiries. It can therefore be important to have an appropriate level of legal oversight and advice.

What's next for Alternative Investment Fund Managers?

With the recent issue of the fourth tranche of 'nudge' letters, and an increase in transfer pricing audits, this is clearly a key and growing area of focus for HMRC.

Businesses therefore need to pay particular attention to their transfer pricing policies. If you have received a 'nudge' letter, or would like to discuss any areas of risk for your business, please get in touch with one of the authors or your normal PwC contact.

Amanda Pybus
Director

M: +44 (0) 7787 863825
E:amanda.m.pybus@pwc.com

Rochelle Gianfrancesco
Senior Manager

M: +44 (0) 7701 296047
E:rochelle.m.gianfrancesco@pwc.com

Ben Proctor
Senior Manager

M: +44 (0) 7711 562040
E:ben.m.proctor@pwc.com

Dana Walker
Senior Manager

M: +44 (0) 7718 980892
E:walker.dana@pwc.com

Keeping on top of Operational Taxes – local Capital Gains Tax filing obligations

In these uncertain times, now is a good opportunity to consider what, if any, local tax filing and payment obligations arise from your funds holding debt and equity investments around the world. In particular, a number of countries levy Capital Gains Tax (“CGT”) on sale of assets by non-residents and tax authorities may begin to apply greater scrutiny here as they consider opportunities to raise revenues.

These requirements can potentially be missed by funds as they generally fall outside the remit of funds’ custodians or administrators and, unlike local tax agent requirements (which some countries also have in place), filing the relevant returns is not a prerequisite to invest into that country.

We have previously highlighted the introduction of the UK Non-Resident Capital Gains Tax rules for disposals of investments in UK REITS from April 2019. However, other countries apply a broader non-resident capital gains tax regime that covers a wide range of assets, including equities, bonds and repurchase agreements.

Key countries to consider

In particular, our experience has identified domestic legislation in jurisdictions such as Australia, Portugal, Spain, Canada, Japan and Poland which may, prima facie, subject non-resident fund vehicles to tax on gains arising from disposals of certain assets.

In these countries there may be exemptions enshrined in domestic law for certain fund vehicles, or protection afforded under a Double Tax Treaty from CGT being charged in the country in which the asset is held. However, where the fund vehicle is resident in a country without an extensive treaty network and/or that is a “blacklist” jurisdiction (either from inclusion in the **list of** EU non-cooperative jurisdictions or a local blacklist), the position in the relevant countries should be considered carefully.

In the event it is held that a filing obligation arises (and this is missed by the fund), penalties and interest over and above the CGT liability are likely to apply. Furthermore non-payment of tax in countries in which a charge would otherwise apply could result in UK penalties under the Corporate Criminal Offence regime for UK Alternative Fund managers.

In some countries the payment mechanism operates by way of a withholding tax being applied (rather than a standalone filing obligation). In these countries it is important to confirm whether responsibility for payment and any penalties lies with the fund or the broker/intermediary in the event the tax is not correctly withheld. In some countries, such as Canada, it is the fund that is ultimately responsible.

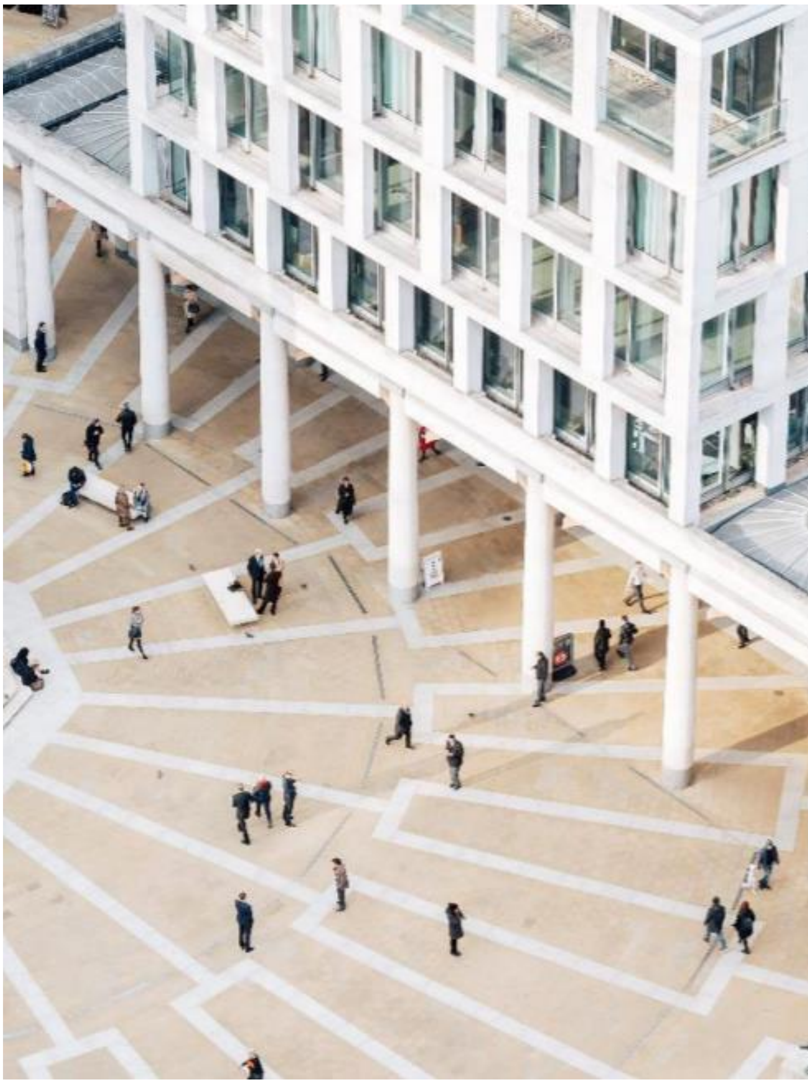
Keeping on top of Operational Taxes – local Capital Gains Tax filing obligations cont.

Remediation steps

Potential CGT filing and payment (or withholding) obligations can be picked up in ASC 740 (“FIN48”) reviews of uncertain tax positions for funds that prepare their accounts under US GAAP. Where uncertain tax positions are identified, appropriate remediation should take place to determine whether a filing or withholding obligation does exist in that jurisdiction, confirm the responsible party and, where required, ensure the relevant filings and payments are made.

Where no such analysis is being performed, it is important to ensure that processes are in place to monitor fund investments for any potential CGT liabilities, ensure the relevant filings and payments are made and, as above, ensure it is clear who bears responsibility in cases of deficit payments.

Besides, CGT, funds should also be aware of other operational taxes which can impact the investors returns, from withholding taxes on income, to Stamp duty taxes and financial transaction taxes.



What’s next for Alternative Investment Fund Managers?

Review FIN48 analysis (where performed) and check governance procedures in place to cover local tax filing and payment (or withholding) obligations on fund assets.

We have assisted a number of clients with portfolio analysis and remediation steps and would be happy to have a deeper discussion on issues impacting your organisation. Please get in touch with the authors or your normal PwC contact.

Robert Mellor
Partner

M: +44 (0) 7734 607485
E: robert.mellor@pwc.com

Pooja Thakrar
Senior Manager

M: +44 (0) 7483 448389
E:pooja.thakrar@pwc.com

Simon Pearce
Manager

M: +44 (0) 7730 599438
E:simon.pearce@pwc.com

The new Investment Firms Prudential Regime and the impact on the managers of Alternative Investment Funds

In June, the FCA published the first stage of its implementation of the new Investment Firms Prudential Regime (IFPR) which will apply to all MiFID firms and is expected to be implemented on 26 June 2021 in the UK. The IFPR is wide-ranging, spanning capital, liquidity, reporting, disclosure and remuneration. The FCA sees this as more than just new 'rules', citing 'a new approach to prudently regulating and supervising firms.

The IFPR is originally an EU initiative and will be implemented in the EU on 26 June 2021, but the UK has committed to delivering a very similar regime. Here we primarily consider the UK rules; although the EU approach is broadly similar, there is some divergence.

Application to managers of Alternatives Investment Funds (AIFs)

The IFPR will apply to the managers of Alternative Investment Funds (AIFs) who are regulated under MiFID. It will not apply to the AIFs themselves. As there are many different business models applied by managers of AIFs in the UK, each firm must consider if it is captured. Any managers of AIFs that have the following prudential categorisations will be in scope of the IFPR: IFPRU firms; BIPRU firms; CMPI firms; and exempt CAD firms.

See below a summary of the key rules.

Firm Classifications

The FCA is proposing to remove the existing UK range of firm classifications, replacing them simply with:

- Credit institutions;
- Investment firms - that are not small and non-interconnected investment firms (non-SNIs);
- Small and non-interconnected investment firms (SNIs).

We expect managers of in-scope AIFs to either be non-SNI firms or SNI firms. To be an SNI, firms must not trade on their own account, hold client money or safeguard and administer client assets. Below, we have set out the further threshold criteria required to be an SNI.

Measure	Threshold	Application on a individual firm or combined basis
AUM or assets under management (IFR Article 17)	< €1.2bn	Combined
COH or client orders handled – Cash trades (IFR Article 20)	< € 100m/day	Combined
COH or client orders handled – derivatives (IFR Article 20)	< €1bn/day	Combined
On- and off-balance sheet total	< €100m	Combined
Total annual gross revenue from investment services and activities	< €30m	Combined

Own funds

The IFPR broadly follows the approach of CRD/CRR when considering the quality of investment firms' capital. However, certain items have to be fully deducted from own funds, which currently are either not or only-partially deducted.

These full deductions include deferred tax assets and investments in other financial sector entities.

Own funds requirements

The own funds requirements for non-SNI groups will be the higher of the permanent minimum requirement (PMR), fixed overhead requirement (FOR) and their K-factor requirement (KFR), while for SNI groups it will only be the higher of the PMR and FOR. Though SNIs are not subject to a KFR, they will need to monitor the applicable K-factors. We explore the KFR more below.

The new Investment Firms Prudential Regime and the impact on the managers of Alternative Investment Funds cont.

K-factor requirements

The K-factor approach is applicable to non-SNIs. The KFR is calculated as at least the sum of each of the K-factors that apply to the business of the investment firm. Firms only need to apply the K-factors that are relevant to their business models and regulated activities. The range of different K-factors are:

K-factors for RtC that could apply to any investment firm that undertakes relevant business:	
K-AUM	Assets under management
K-CMH	Client money held
K-ASA	Assets safeguarded and administered
K-COH	Client orders handled
K-factors for RtM and RtF that only apply to an investment firm that can deal on own account or underwrite or place financial instruments on a firm commitment basis:	
K-DTF	Daily trading flow
K-NPR	Net position risk
K-CMG	Clearing margin given
K-TCD	Trading counterparty default
K-CON	Concentration risk

Prudential consolidation

The requirement for prudential consolidation is broadly similar to the CRD/CRR. However, all investment firms are now subject to regulatory consolidation, including SNIs, and so an assessment will need to be undertaken by firms to confirm whether they are in scope of regulatory consolidation. If a regulatory consolidation group does exist, it will need to apply the IFPR on a consolidated basis. The obligation for ensuring compliance with regulatory consolidation is now the responsibility of the parent entity, rather than the regulated entity.

Liquidity

Under the new regime all firms will be subject to formal liquidity requirements to ensure resilience against sudden liquidity shocks. The minimum liquidity requirement is one third of a firm's FOR (equivalent to one month's fixed overheads). Firms which provide guarantees to clients also need to hold additional liquid assets equivalent to 1.6% of the total amount of guarantees they provide. With all firms being subject to quantitative liquidity requirements, any existing intra-group waivers and modifications under BIPRU 12 will cease to apply.

Groups subject to prudential consolidation are required to comply with the minimum liquidity requirements on the basis of its consolidated situation.

The new Investment Firms Prudential Regime and the impact on the managers of Alternative Investment Funds cont.

Risk management and governance - ICARA

One of the key areas of change is the approach to risk assessment, and the calculation of a firm's pillar 2 requirement. This includes moving away from the current ICAAP to a new ICARA process, and making all firms, including SNIs, document their ICARA on an annual basis.

The ICARA forces firms to assess risks which are based on the its business model and activities, rather than the existing Basel risk categories, with the FCA categorising risks as risks to client, market and firm. Firms must refine their RCSA processes and consider the development of new risk appetite statements in line with the new approach. Firms must also consider the impact on any wider risk tools in use and their governance, risk and control frameworks. Under the ICARA, there will be a larger focus on the impact of risks and the potential harm to clients, wider markets and the firm itself. Specific examples of the risks firms will need to consider in their potential to cause harm include on/off balance sheet risk relating to the composition of exposures, liquidity, concentration and business viability risks.

There is also a much bigger focus on liquidity in the ICARA, with the FCA expecting the ICARA to be as focused on liquidity as it is on own funds, with firms undertaking a liquidity Pillar 2 assessment.

Remuneration

The IFPR introduces new remuneration rules. These include a ratio of fixed to variable pay, and for certain firms and individuals, specific deferral requirements.

Assuming implementation in Summer 2021, it is most likely that the first performance period in scope will be after June 2021.

Collective Portfolio Management Investment firms (CPMIs)

The FCA currently proposes that CPMI firms are treated as SNI or non-SNI based on their 'MiFID business'. Ultimately, a CPMI firm would apply the IFPR and calculate its KFR on the firm's additional 'MiFID business' as would be required by a MiFID firm.

Transitional provisions

The transitional provisions give some investment firms up to five years to comply with specific elements of IFPR implementation. But these are by exception, and the majority of the regime is expected to come into force in Summer 2021.

What's next for Alternative Investment Fund managers?

The FCA is hoping to implement the IFPR in Summer 2021, broadly in line with the European timeline. It is expected to consult further in late 2020. While we do not yet have the final rules, the general scope has been laid out. We are expecting a very short implementation period so firms must start preparing now.

David Croker
Partner
M: +44 (0) 7718 097331
E:david.w.croker@pwc.com

Andrew Strange
Director
M: +44 (0) 7730 146626
E:andrew.p.strange@pwc.com

Oli Nainby-Luxmoore
Manager
M: +44 (0) 7843 372502
E:oliver.nainby-luxmoore@pwc.com

Guernsey launches fast-track immigration system for investment funds

Guernsey is a funds domicile with more than 50 years' experience in the formation, administration and cross-border distribution of investment funds. The Island provides flexible structures and a robust regulatory environment.

Guernsey has recently introduced a fast-track immigration system for investment funds and their managers that have set up in other jurisdictions to help make the process of redomiciling to Guernsey quick and easy.

Overview of the fast track process

The new fast-track application regime introduced by the Guernsey Financial Services Commission (GFSC) in June 2020 will make it simpler for managers and their funds to apply for a licence and receive regulatory consent to migrate, all within a 10-day review period.

The new regime caters for managers wishing to migrate to Guernsey, as well as those looking to establish a new Guernsey entity and wanting to take advantage of the fast-track application process that is now available.

In addition to the fast-track immigration system for investment funds and their managers, the GFSC has in place a suite of fast-track application regimes. These include Registered Funds and Private Investment Funds, with applications based on declarations from a Guernsey-based licensed administrator. The new regime is considered to be a natural fit to the Island's current fast-track regimes.

The development of the fast-track regime came about following consultation with industry and the Guernsey Investment Fund Association (GIFA) and has been designed first and foremost with the needs of clients in mind.

Information for applicants, including links to the revised forms (Form FTL – for new entities, and Form FTLM – for migrating managers) may be found here.

In addition, the GFSC has taken the opportunity to update its Guidance on Licence Applications for Entities Acting in Respect of Qualifying Investor Funds and Registered Collective Investment Schemes with the inclusion of Overseas Collective Investment Schemes. A copy of this guidance may be found here.

Application Process

The application process for migration is straight-forward and broadly mirrors the existing process available for migrating companies into Guernsey. For a management company, the company will need to complete the GFSC's new forms (Form FTLM) along with the usual licence application Form (Form RA/1) and supporting documents. The company will need an administrator in Guernsey and these forms require the proposed administrator to make specific declarations to the GFSC in order for the company to be able to benefit from the fast-track regime. The GFSC will simultaneously consider the merits of the application to migrate the company into Guernsey and a licence under the POI Law.

For a Limited Partnership, the process includes the submission of a declaration from the general partner that the requirements in respect of the migration have been fulfilled. In addition, the limited partnership will need to submit "migration details" addressing administrative matters including the proposed name, address and nature of the partnership's business, as well as its duration, if any, and whether it is to have legal personality upon registration. Where GFSC consent is required, as per above, this must also be submitted as part of the application.

For regulatory purposes, or depending on local substance requirements or the location of management and/or administration activities, it may be necessary or desirable for the general partner of the investment fund to also migrate into Guernsey, in which case, the application for the management companies above can be followed.

Eligibility

In order to migrate into Guernsey, the migration must be permitted by the jurisdiction in which the Company and/ or Fund is currently registered and the entities must be solvent. This is usually straightforward, as many jurisdictions already provide inbound or outbound migration. Where the entity is regulated in its current jurisdiction, the consent of both jurisdictions is usually required as part of the migration process. The migration must also comply with the terms of founding documents of the entity. Consideration should therefore be given as to whether any amendments, and/ or the consent of the shareholders/ investors, are required prior to proceeding with the migration.

Over recent months, Guernsey has seen a number of migrations to the jurisdiction of both fund managers and funds, so this new regime is already tried and tested.

Guernsey launches fast-track immigration system for investment funds cont.

Effect on Migration

Once the migration application has been approved, the Guernsey Registry will register the entities, allocate a registration number and issue a certificate of registration.

Migration into Guernsey preserves continuity for the entity as it does not result in the creation of a new person or entity. Furthermore, all assets, liabilities, contracts, debts and other obligations of the entities and its shareholders/investors are not affected by the migration.

Why Guernsey?

- Although a British Crown Dependency, Guernsey is outside of the EU and this gives the country the ability to be nimble when it comes to the legal and regulatory landscape.
- Possess a robust regulatory environment, designed for the protection of investors whilst not overburdening financial institutions with excessive costs and bureaucracy. This has led to a fund industry in Guernsey, with structures investing in a range of asset classes such as private equity, venture capital, private debt, real estate and infrastructure, hedge funds and fund of funds.
- There is a significant choice of specialised service providers based both locally and with international connections, along with a pool of experienced non-executive directors.
- Guernsey has strong economic substance requirements, which has allowed the Island to obtain “whitelist” status from the European Union and the OECD for economic substance purposes.
- Guernsey has the highest compliance with the Financial Action Task Force recommendations of any global jurisdiction, meeting 48 out of the 49 recommendations. This supports further EU Endorsement from The European Investment Fund (EIF), backed by the European Investment Bank and the EU, which confirmed that Guernsey is an acceptable jurisdiction in which it’s willing to invest.
- The local regulator, the GFSC, is highly experienced with a range of fund structures and investment holdings.
- As the legal, regulatory and tax frameworks around the world are continually changing, alternative investment fund managers are reviewing their jurisdictional footprint now more than ever. Guernsey’s new regime will allow alternative investment fund managers to redomicile their funds to Guernsey in an efficient manner.

What’s next for Alternative Investment Fund Managers?

The fast-track application process is live and we are already seeing an uptick in interest, as well as successful migrations. If you are an alternative investment fund manager or service provider and considering Guernsey as the fund domicile, then please get in touch with Tony Corbin or Mike Byrne, or your usual contacts within the PwC Channel Islands firm.

Mike Byrne
Partner

M: +44 (0) 7700 838278
E:michael.j.byrne@pwc.com

Tony Corbin
Director

M: +44 (0) 1481 752116
E:tony.corbin@pwc.com

Ben Warner
Director

M: +44 (0) 7700 838274
E:ben.warner@pwc.com

Angela Long
Senior Manager

M: +44 (0) 7911 763717
E:angela.long@pwc.com

Contacts

For additional information please contact:

Marc Susgaard-Vigon
Partner
M: +44 (0) 7795 222478
E: marc.susgaard-vigon@pwc.com

Robert Mellor
Partner
M: +44 (0) 7734 607485
E: robert.mellor@pwc.com

Fiona Carpenter
Partner
M: +44 (0)7818 016620
E: fiona.carpenter@pwc.com

Malcolm Collings
Partner
M: +44 (0)7702 678205
E: malcolm.j.collings@pwc.com

Darren Docker
Partner
M: +44 (0)7761 823601
E: darren.m.docker@pwc.com

Leo Humphries
Partner
M: +44 (0)7802 659271
E: leo.humphries@pwc.com

Christine Cairns
Partner
M: +44 (0)7974 207708
E: christine.cairns@pwc.com

Richard Williams
Partner
M: +44 (0)7725 632540
E: richard.x.williams@pwc.com

Jonathan Page
Partner
M: +44 (0)7876 446492
E: jonathan.page@pwc.com

Lachlan Roos
Partner
M: +44 (0)7738 311271
E: lachlan.j.roos@pwc.com

Aamer Rafiq
Partner
M: +44 (0)7771 527309
E: aamer.rafiq@pwc.com

Editorial team

Pooja Thakrar
Senior Manager
M: +44 (0) 7483 448389
E: pooja.thakrar@pwc.com

Ruhena Miah
Senior Associate
M: +44 (0) 7702 698659
E: ruhena.b.miah@pwc.com

Dan Heineman
Associate
M: +44 (0) 7483 424124
E: daniel.h.heineman@pwc.com

Harriet Close
Senior Associate
M: +44 (0) 7841 074560
E: harriet.x.close@pwc.com