

# **The FCA's approach to recognition of funds under the Overseas Funds Regime**

## **Introduction**

The aim of this document is to assist you in making an application for an overseas investment fund to be recognised under the Overseas Funds Regime. We set out details of the process and explain some of the factors we will look at when deciding whether an overseas fund meets the conditions for being recognised under the Financial Services and Markets Act 2000.

## **What is the Overseas Funds Regime?**

The Overseas Funds Regime (OFR) is a new legislative gateway to allow certain investment funds established outside the UK to be promoted in the UK, including to retail clients. If a fund applies for and is given "recognised scheme" status under the OFR, it can be promoted in the same way as an authorised collective investment scheme established in the UK.

## **Who can use the Overseas Funds Regime?**

The categories of funds that can use the OFR are specified in legislation following an equivalence determination by the Government. At the outset, the OFR will be available to most funds established in EEA and EU member states that have been authorised under the UCITS Directive. The exceptions are EEA UCITS that have been authorised as money-market funds.

## **Applying for recognition**

If your fund meets the criteria set out in the UK Government's Overseas Funds Regime designation order, you can make an application to the FCA for your fund(s) to be recognised in the UK. Recognition will allow you to promote your fund to retail investors in the UK.

We set out below the key steps when preparing to make a recognition application:

- 1) Read everything on this page / these pages
- 2) Prepare for the making of your application by gathering together all of the information that is detailed on these pages, so the completion of the application is as efficient as possible for you
- 3) Obtain the latest supporting documents for the fund so they can be submitted alongside the application
- 4) Ensure you have an appropriate method of paying the application fee – this forms part of the application
- 5) Any person who wishes to make an overseas funds application must first register for the FCA [Connect](#) System

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- 6) A person with appropriate authority at your firm will need to enrol into the FCA Connect System. This will create a principal user for your firm who, once assigned, will be able to delegate access to other people (either within the firm or at an external firm). Anyone who has registered / been delegated will be able to submit applications on behalf of the firm. A third party is not able to enrol on behalf of a firm (see our 'How to Enrol' guide for further information).
- 7) Submit the relevant application (you'll do this on our Connect System) and pay the relevant application fee.

### **What to know before submitting your application**

There is the information that will be required when you submit your application:

<b>Information category</b>	<b>Specific requirements</b>
Information identifying the fund	Fund name, including sub-fund names
	Product Reference Number for funds in the TMPR (the PRN is the FCA-issued 6/7 digit number)
	LEI, including sub-fund LEIs
	Country / jurisdiction of fund domicile
	Legal structure and fund type
	Name and contact details of fund operator (UCITS management company if there is one, or else confirm that the company is self-managed)
Information on the fund's profile	Investment objective, policy and strategy as stated in the prospectus
	Value of total assets under management (AUM) at the most recent valuation date and the proportion specifically attributable to UK investors
	If applicable, the reason for any suspension of dealing in the past 5 years
	Fund category and main categories of asset class (a full list of applicable options will be provided in the application form and you will need to indicate which is the most appropriate)
	Information on use of derivatives (efficient portfolio management; investment purposes or both)

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	Geographic location of portfolio assets (lists will be provided in the application form and you will need to indicate one country that represents the majority of your assets)
	Use of benchmarks
	Whether the fund is actively or passively managed
	Whether the fund is an ETF
	Dealing frequency
	Target investors (retail, institutional or both)
	Any particular ESG focus
Fees and charges at fund and share class level	Initial and exit / redemption charges payable to fund operator / its associate
	Ongoing charges figure
	Performance fees
	Any other relevant fee or charge
	Amount of annual management charge (AMC) retained by the management company /operator (e.g. for an AMC of 1% per annum, the management company retains 0.75% per annum)
Characteristics of unit / share classes to be promoted in the UK	Name / designation
	Identifiers, including LEI or ISIN
	Whether tokenised or not
	Accumulation or income
	Minimum initial investment amount
Name and LEI (or other unique indicator) of parties connected to the scheme	Management Company / Operator
	Depositary
	Delegated portfolio manager, and any sub-delegates appointed
	UK representatives
	UK authorised person approving financial promotions on behalf of the fund
	Any sponsor or other person influencing the fund's design or management
Information about marketing and distribution	Details of any promotional payments to entities associated with marketing or distributing the fund

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## **After submitting your application**

We'll assign a case officer to assess your application. The case officer will:

- assess whether your application meets the Overseas Funds Regime legislative requirements
- check your application against information held by other regulatory agencies in the UK or overseas
- make a decision on your application

You may hear from your case officer throughout the application process. We may have follow-up questions and may ask for further documentation or want to hold a call with you. If we hold a call with you, we might record it (capturing the audio and visuals) to help us assess your application.

You can track the progress of your application in Connect, and will have the opportunity to correct mistakes or gaps. However, if you make substantive changes which indicate to us that you're not able to meet the required Overseas Funds Regime standards, we may ask you to withdraw your application and reapply when you are ready.

If your application is complete, we have two months to take a decision on your recognition application. In the majority of applications, we will aim to reach our decision much sooner than this.

## **Successful applications**

If we approve your application and recognise your fund(s), these are the next steps.

1

### **We publish your details and those of your funds on the Financial Services Register**

Upon recognition, you're automatically added to our [Financial Services Register](#). We'll give you a Firm Reference Number (FRN) that uniquely identifies your firm, and Product Reference Numbers (PRNs) that uniquely identify your funds.

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### **We write to you**

We'll write to you confirming the recognition of your fund(s).

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## **You have some things to do next**

### Immediately

Please review our Register immediately and make sure that the information appearing on it is correct.

### On an ongoing basis

On an ongoing basis, make sure the information on the Register remains up to date and accurate. Our Handbook, in particular the [Collective Investment Schemes sourcebook](#) (COLL), sets out our expectations of you so you should keep it under review.

Once registered, you will be under certain ongoing obligations, like notifying us of certain changes affecting your fund(s) such as a change to your firm's details, or to the parties associated with the fund(s). Further details of how to do this can be found on [here](#).

You can also [contact us](#) for assistance when updating your information.

## **Unsuccessful applications**

### **Rejections** of incomplete applications

We'll reject your submission without assessing it if you don't provide the minimum information we ask for. If this happens, we'll explain the reason(s) and state what information is missing.

You can resubmit an application, containing all the relevant information, at any time.

### **Withdrawing an application**

You can decide to withdraw your application at any time during the recognition process.

Common reasons for doing this are:

- needing time to address our concerns, or produce or gather missing information
- understanding that recognition is likely to be refused

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If you withdraw your application, your application fee won't be refunded. However, it's possible to make another application after an application has been withdrawn. If your application is withdrawn on the above grounds, an additional application fee will be required if you choose to make a subsequent application.

Many firms choose to withdraw their applications and reapply once they've addressed the feedback from their case officer.

### **Refusals**

**The FCA has an obligation to refuse an application for recognition if it is desirable in order to protect the interests of investors and potential investors in the UK.**

If we think that your application doesn't meet the standard for recognition and you don't agree to withdraw it, we'll recommend that it's refused.

If we refuse your application, your application fee won't be refunded.

Find out more about [our refusal process](#).

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## **FCA Expectations and Approach**

Asset management in the UK is a cross-border industry. The UK is recognised worldwide as a leader in the sector, consisting of approximately 2,600 firms managing around £10.9 trillion of assets. The global nature of the industry, supported by effective regulation based on strong international standards, can benefit firms, consumers, markets and global economies.

The FCA is committed to strengthening the UK's position in global wholesale markets through our strategy and business plan. We want the UK to continue to be seen as one of the leading global markets of choice when compared to other high-quality markets.

Many of the funds offered to investors in the UK are from outside the country. The Overseas Funds Regime will allow streamlined access for overseas funds to market to UK retail investors. We believe this will promote effective competition that serves the best interests of consumers, by offering UK investors a broad choice of investment funds, thereby increasing competition. This outcome requires overseas funds to operate under regulatory regimes offering equivalent investor protection to that of the United Kingdom.

The OFR is based on principles of equivalence: jurisdictions can be approved by the Government if they are assessed as offering adequate arrangements for co-operation between the FCA and the relevant national competent authorities (NCAs), and if they provide equivalent consumer protection outcomes for particular categories of scheme.

As stated above, we want to see effective competition that serves the best interests of UK consumers. Our strategy for authorising and supervising funds and their managers is based around key areas of organisation and conduct. The fund must:

- be managed in the best interests of investors
- hold appropriate investments that align with a clear investment objective and policy
- be subject to good governance
- have appropriate and transparent costs and charges

The fund manager must ensure there is:

- appropriate management of conflicts of interest
- appropriate risk management
- a process to value assets appropriately
- effective liquidity management

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We expect any funds being promoted to UK retail investors to meet standards that demonstrate alignment with these key areas of concern.

Some funds may exhibit certain features that we consider are unlikely to be compatible with one or more of the standards set out above. Save in exceptional circumstances, if your fund exhibits such features we may consider them to be grounds for refusal of your application, as explained above. The following table gives more information about these features.

<b>Feature</b>	<b>Rationale</b>	<b>FCA Expectation</b>
Funds with unsuitable names	<p>We expect any fund name to be appropriate, clear, fair and not misleading.</p> <p>A fund name should not:</p> <ul style="list-style-type: none"> <li>• imply that the fund has merits or qualities that cannot be justified</li> <li>• be inconsistent with fund objectives and policies</li> <li>• mislead investors into thinking that persons other than the operator are responsible for the fund</li> </ul> <p>We are also concerned when a recognised fund has an identical name to a UK authorised fund, as we consider that could be cause for investor confusion and investors could potentially invest in a fund in a jurisdiction not of their choosing.</p>	<p>We would expect the name of any overseas fund applying for recognition to adhere to the principles set out here.</p> <p>If an overseas recognised fund has an identical name to a UK authorised fund, we will expect the overseas fund operator to take reasonable steps to prevent confusion.</p> <p>The fund operator should ensure that it is comfortable that all the distribution channels for the fund make the fund's domicile sufficiently clear and that the operator has taken reasonable care to prevent a UK investor from mistakenly selecting the OFR fund rather than the UK authorised fund. Reliance on the difference between the ISINs is not a sufficient mitigant.</p>
Funds that invest in or have economic exposure to cannabis-related investments	<p>We are aware of some overseas funds that invest in or have exposure to companies deriving their profits from cannabis. While medicinal cannabis-related investment was legalised in the UK in</p>	<p>If we were to receive an application to recognise a fund that invests in cannabis-related investments, we would require the fund operator to provide a legal opinion to the FCA as part of the application,</p>



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	<p>2018, investment in overseas-licensed medicinal cannabis businesses remains a legally complex area. A risk remains that the proceeds from overseas medicinal cannabis business may constitute 'criminal property' for the purpose of the UK Proceeds of Crime Act 2002 (PoCA).</p>	<p>confirming that it is satisfied on reasonable grounds that if a UK investor were to invest in the fund, they would not contravene the Proceeds of Crime Act 2002 by doing so.</p> <p><a href="https://www.fca.org.uk/news/statements/listings-cannabis-related-businesses">https://www.fca.org.uk/news/statements/listings-cannabis-related-businesses</a></p>
<p>Funds that invest in or have exposure to crypto-currency</p>	<p>We have previously said that we will not authorise a fund that references exchange tokens (i.e. crypto-currencies such as BitCoin or Ethereum) unless we have confidence in the integrity of the underlying market. This currently rules out direct investment by UK authorised funds in crypto-currencies.</p>	<p>It may be possible for a fund to invest in transferable securities or units of other CIS which themselves reference crypto-currencies as an underlying asset.</p> <p>If an operator wishes to submit a recognition application for a fund that invests in this way, the operator should ensure that any risks to consumers are mitigated.</p>
<p>Funds that invest in or have exposure to contingent convertible bonds</p>	<p>We are aware that the portfolios of some overseas funds have very substantial exposure to this type of bond, which may lead to heightened risks of loss. We would not normally expect to see a UK fund taking a substantial exposure to these bonds.</p>	<p>If an operator wishes to submit a recognition application for a fund whose portfolio has significant exposure (exceeding 20% of net asset value) to this type of bond, the operator should ensure that any risks to consumers are mitigated.</p>
<p>Liquid funds that charge permanent redemption / exit charges</p>	<p>We are aware of some overseas funds that have taken the power to charge investors a permanent exit fee (payable to the management company) when they redeem investments in the fund, regardless of the length of time an investor has held units in the fund.</p>	<p>If an overseas fund charges a permanent exit fee to investors, we would expect a share class to be made available to UK investors where a permanent exit fee is not levied.</p> <p>Liquidity charges payable to the fund itself to cover buying</p>

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	We consider this to be unfair to such investors. For the avoidance of doubt, we have no issue with an exit fee being charged during a defined period to discourage short-term investment.	and selling costs at portfolio level are permitted.
Funds that make promotional payments to third parties out of the scheme property	We do not consider it appropriate for promotional payments to be paid out of the fund's assets to any person, other than the operator, for the acquisition or promotion of the sale of units in a fund – see COLL 6.7.12R	If an overseas fund permits such payments, we would expect a share class to be made available to UK investors that does not allow such payments to be deducted.
Inappropriate charging structures	We expect funds to charge an appropriate level of fees and charges, so that investors are not subject to undue costs and a fund's charges are commensurate with the value the fund provides to investors.	We expect overseas recognised funds to adhere to these principles.
Bearer shares	Units / shares represented by bearer certificates cannot be issued to UK investors. All units / shares must be in registered form.	If an overseas fund offers such units / shares, these could not be made available to UK investors. We would expect any share class made available to UK investors to issue registered units / shares only.
Segregation of liability between sub-funds not ensured in umbrella schemes	If a UK investor invested in a recognised sub-fund of an umbrella, we would not expect any other sub-funds in the umbrella to be able to seek recourse to the assets of that sub-fund to cover their own liabilities	For overseas funds wishing to make an application to the FCA we would expect operators to be able to agree to the following statement: "the assets of a <u>sub-fund</u> belong exclusively to that <u>sub-fund</u> and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other <u>person</u> or body, including the <u>umbrella</u> , or any other <u>sub-fund</u> , and shall not be available for any such purpose"

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Unitholder's liability to pay not limited	We consider that a unitholder should never have to pay more than they have subscribed to meet any fund liabilities.	For overseas funds wishing to make an application to the FCA we would expect operators to be able to agree to the following statement:  "a unitholder in an overseas fund is not liable to make any further payment after he has paid the price of his units and no further liability can be imposed on him in respect of the units which he holds."
Investment in related second schemes could permit double-charging	If a fund invests in units / shares of another collective investment undertaking (a 'second scheme') managed by the same operator or an associated entity, we consider there should be no double-charging of any initial or exit charges. Double-charging of annual management fees is unlikely to be in investors' best interests.	We would expect operators to have regard to our view on related second scheme charging.
Inappropriate liquidity management tools	We consider that an operator should deploy sufficient liquidity management tools to meet its obligation to manage fund liquidity effectively.	We would expect operators to have appropriate and usable liquidity management tools in place to meet their obligations.
Depositary independence not demonstrated	We consider it essential that the depositary is able to act independently of the operator.	If the depositary is in the same group as the fund operator, we will expect the fund operator to be able to demonstrate that the depositary acts in an independent capacity and conflicts are appropriately managed.
Fund application was refused by the FCA or withdrawal was encouraged	If we have previously refused a fund application or encouraged the applicant to withdraw it, we would not expect a duplicate application to come in via the OFR as a means of	If such an application has been refused by the FCA or withdrawal has been encouraged, we do not expect the fund operator to make an application on the same basis via the OFR.

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	trying to market the fund to UK investors	
Individual / Firm prohibited from carrying out regulated activities in the UK	If an individual or a firm has been prohibited from carrying out regulated activities in the UK, we do not allow individuals or firms to perform those activities indirectly in the UK from another country	If an individual or firm that is involved in the creation, management or operation of the fund has been prohibited from carrying out regulated activities in the UK, we do not expect the fund operator to make an application via the OFR.

### **FCA expectations of operators of overseas recognised funds**

We expect operators of OFR recognised funds to:

- notify us of certain changes / events which we have specified
- regularly check our [Public Register](#) to ensure the details we hold for you and your funds remains up to date and accurate
- pay any application and periodic fees promptly

Once a fund has been recognised, and if potential harm is later identified by the FCA through the course of our work, we may look to revoke recognition or suspend marketing where it is desirable to do so to protect the interests of participants or potential UK participants in the scheme.