

## UK Update- Financial Conduct Authority (FCA)

### CP 20/20: Our Approach to International Firms,

September 2020.

The UK FCA issued Consultation Paper CP20/20 setting out the approach to international firms. The consultation period ends 27 November 2020.

This document will be relevant to our international Clients that may be seeking to be authorised in the UK.

The FCA is seeking to obtain feedback from international firms against minimum standards when they apply for authorisation and during ongoing supervision by the FCA, and the FCA's general expectations.

It is a useful opportunity for the international community to be invited to engage with the regulator.

<p><b>Who this applies to</b></p>	<ol style="list-style-type: none"> <li>1. <b>European Economic Area (EEA) firms</b> that are seeking to apply, have applied for authorisation in the UK, including those for the Temporary Permissions Regime;</li> <li>2. <b>Firms from Non- EEA countries</b> that are seeking to apply, have applied for authorisation in the UK, or are already authorised in the UK.</li> </ol>
<p><b>Persons excluded from the scope</b></p>	<ol style="list-style-type: none"> <li>1. Firms that are not required to be authorised to operate in the UK;</li> <li>2. Firms required to be authorised or registered under the Payment Services Regulations 2017;</li> <li>3. Firms required to be authorised or registered under the E-Money Regulations 2011 with their registered office in the UK;</li> <li>4. Depositaries, trustee and managers (also referred to as operators) of UK authorised funds (including UK UCITS schemes). The relevant on-shored legislation requires such entities to be incorporated in the UK, and for their affairs to be administered in the UK;</li> </ol>

	<p>5. International alternative investment fund (AIF) managers. After the transition period, only firms with their registered office in the UK can obtain permission to manage an AIF;</p> <p>6. International benchmark administrators. The relevant on-shored legislation does not allow non-UK entities to obtain permission for benchmark administration, but there will be a separate regime under which they can apply to be recognised.</p>	
<p><b>Objective of the consultation</b></p>	<p>To obtain feedback from the international community about the approach to supervision and minimum standards that will be relevant to international firms.</p> <p>The objective is to ensure that international firms can understand the expectations to enable them to operate in the UK in a way that also protects consumers and market integrity.</p>	
<p><b>Applicable Standards</b></p>	<p><b>Minimum standards</b></p>	<ol style="list-style-type: none"> <li>1. Minimum standards for authorisation- based on Threshold Considerations for Authorisation;</li> <li>2. Impact and conduct of the international firms overseas operations, their personnel, decision-making/governance structures, systems and controls;</li> <li>3. Assessment of the international firms' potential to cause harm and the respective mitigation.</li> </ol>
	<p><b>Subsidiary v branch</b></p>	<p>The regulator will consider the ability to supervise, risk of harm and overall risk framework in place when determining whether to accept branches of international firms. This is because a branch entity is not a separate legal entity with its own Board/governance structure or operating model, therefore the manner in which it is governed and operates internationally, may impact the UK consumer, if the international operations are complex or present certain challenges.</p>

	<p>Particular challenges with branches of international firms:</p> <table border="1" data-bbox="716 394 1338 915"> <tr> <td data-bbox="716 394 906 533"><b>Retail harm</b></td> <td data-bbox="906 394 1338 533">Harm to retail customers, particularly in the event of insolvency.</td> </tr> <tr> <td data-bbox="716 533 906 680"><b>Client assets harm</b></td> <td data-bbox="906 533 1338 680">Risk to client assets safeguarded via the branch of the international firm.</td> </tr> <tr> <td data-bbox="716 680 906 915"><b>Wholesale harm</b></td> <td data-bbox="906 680 1338 915">Shocks and risks originating from the overseas office may be more difficult to detect, affecting the integrity and stability of the UK markets.</td> </tr> </table> <p>Clear mitigation of these risks will need to be articulated by the international firm.</p>	<b>Retail harm</b>	Harm to retail customers, particularly in the event of insolvency.	<b>Client assets harm</b>	Risk to client assets safeguarded via the branch of the international firm.	<b>Wholesale harm</b>	Shocks and risks originating from the overseas office may be more difficult to detect, affecting the integrity and stability of the UK markets.
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<p><b>FCA’s expectations with regards to international firms</b></p>	<p>The FCA will authorise an overseas firm if it meets and continues to meet, minimum standards as a whole, including the overseas office and applies the following general expectations:</p> <table border="1" data-bbox="513 1205 1414 1829"> <tr> <td data-bbox="513 1205 753 1444"><b>Nature of a firm’s operations</b></td> <td data-bbox="753 1205 1414 1444"> <ul style="list-style-type: none"> <li>• Ability to access information for monitoring;</li> <li>• Active place of business in the UK;</li> <li>• Effective governance for the UK operations;</li> <li>• Supervisory cooperation between the FCA and home state supervisor.</li> </ul> </td> </tr> <tr> <td data-bbox="513 1444 753 1730"><b>Personnel and decision-making</b></td> <td data-bbox="753 1444 1414 1730"> <ul style="list-style-type: none"> <li>• Effectiveness of the governance framework including ability to comply with the UK Senior Managers &amp; Certification Regime (SM&amp;R);</li> <li>• Senior management to spend sufficient time and commitment in the UK.</li> </ul> </td> </tr> <tr> <td data-bbox="513 1730 753 1829"><b>Systems &amp; controls</b></td> <td data-bbox="753 1730 1414 1829"> <ul style="list-style-type: none"> <li>• Adequate systems and controls, including human resources must be in place. Any outsourcing</li> </ul> </td> </tr> </table>	<b>Nature of a firm’s operations</b>	<ul style="list-style-type: none"> <li>• Ability to access information for monitoring;</li> <li>• Active place of business in the UK;</li> <li>• Effective governance for the UK operations;</li> <li>• Supervisory cooperation between the FCA and home state supervisor.</li> </ul>	<b>Personnel and decision-making</b>	<ul style="list-style-type: none"> <li>• Effectiveness of the governance framework including ability to comply with the UK Senior Managers &amp; Certification Regime (SM&amp;R);</li> <li>• Senior management to spend sufficient time and commitment in the UK.</li> </ul>	<b>Systems &amp; controls</b>	<ul style="list-style-type: none"> <li>• Adequate systems and controls, including human resources must be in place. Any outsourcing</li> </ul>
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		<p>arrangements must not impair the quality of the firm's governance and internal controls and ability for effective regulatory supervision.</p>
	<p><b>Home State Supervision</b></p>	<ul style="list-style-type: none"> <li>• Authorisation of the Firm will extend to the entire firm including the overseas office, in respect of branches.</li> </ul>
<p><b>Impact on firms</b></p>	<p>International firms will be expected to consider, among other matters:</p> <ul style="list-style-type: none"> <li>• Legal/ operating structure;</li> <li>• Decision making structure/ governance framework;</li> <li>• Ability and controls to mitigate the 3 risks of harm (Retail harm/ Client Assets harm/Wholesale harm).</li> </ul>	
<p><b>EEA Firms</b></p>	<p>EEA firms providing services that will require authorisation once passporting falls away, a Financial Services Contracts Regime (FSCR) has been granted by the UK Government in addition to the Temporary Permissions Regime (TPR).</p>	