

United Arab Emirates: a nationwide passporting scheme for funds

In March 2019, based upon a prior agreement between three financial authorities, the enactment of fund passporting rules established a passporting scheme for funds in the United Arab Emirates (UAE). The scheme concerns three jurisdictions: the Dubai International Financial Centre (DIFC), the Abu Dhabi Global Market (ADGM), and the Onshore UAE. The passporting rules comprise the Fund Passporting Rules of the ADGM and of the Onshore UAE, as well as the Fund Protocol Rules of the DIFC. The three financial authorities are the Securities and Commodities Authority (SCA), the Dubai Financial Services Authority (DFSA), and the Financial Services Regulatory Authority (FSRA).

Under the newly created passporting regime, upon completion of a notification and registration procedure in its jurisdiction of establishment or domiciliation (“home jurisdiction”), a collective investment fund (as defined by the DFSA or the FSRA) or an investment fund (as defined by the SCA) that is established or domiciled in the UAE (“domestic fund”) can be promoted in the other jurisdictions (“host jurisdictions”) without the need (a) to obtain additional authorisation, or (b) to appoint a distributor located in the host jurisdiction.

The passporting rules apply to fund managers, agents or other licenced persons that are: (a) established or domiciled in one of the three aforementioned jurisdictions; (b) authorised by the financial authority responsible for regulating the domestic fund, or, in relation to a fund manager, in the jurisdiction where the domestic fund is established or domiciled (“home regulator”); and (c) promoting a passported fund in or from a jurisdiction. The notion of “promotion” is large, including the marketing and sale of units of a passported fund to investors domiciled in the UAE through any form of communication. The notion of “sale” comprises any arranging, dealing and advising activities pertaining to units. It is therefore essential that fund managers, agents and other licenced persons be appropriately authorised by their home regulator to conduct the applicable activity for the passported fund in the home jurisdiction.

The participation in the passporting regime being voluntary, the units of a domestic fund may still be sold to investors in a host jurisdiction through current means in accordance with the laws of each host jurisdiction. However, those fund managers who wish to benefit from the passporting rules must comply – with respect to each domestic fund – with the specified notification process. In addition, they need to pay the applicable fees to the home regulator: (a) a notification fee; and (b) an annual fee. At the moment, the host regulator does not levy any additional fees with regard to a passported fund.

Following notification, the home regulator and host regulator(s) will update their respective registers of passported funds, to the effect that the domestic fund qualifies as a “passported fund”.

If the passported fund is a private fund, it may be solely promoted to “qualified investors” (in the DIFC and the Onshore UAE) and “professional clients” (in the ADGM), pursuant to the applicable definitions in the relevant passporting rules. By contrast, a passported fund that is a public fund may be sold to any person in the host jurisdiction(s).

Under the passporting regime, the fund manager must notify the home regulator of material events in accordance with applicable legislation in the home jurisdiction, such as changes to the fund manager, agents, licenced persons or any other any material service providers.

Home regulators may exercise supervisory and investigatory powers, which includes the de-registration of the passported fund.

The passporting rules supplement the existing collective investment regimes of the passported fund's home jurisdiction, which continue to apply to the passported fund. Fund managers, agents and other licenced persons in performing any activities in connection with the promotion of a passported fund need to comply at all times with the legislation applicable to them in the jurisdiction in which they are domiciled.

The passporting scheme is likely to stimulate the development of the domestic funds market in the UAE by giving investors access to diverse investment opportunities with greater efficiency. What is more, the ability to undertake UAE-wide promotion of passported funds is expected to further foreign investment, enhance marketability and ultimately cement the UAE's position as an international financial centre.

Irrespective of the new passporting regime outlined above, there have been recent discussions over the introduction of a Gulf Cooperation Council (GCC) funds passport. The GCC countries include Bahrein, Kuwait, Oman, Qatar, Saudi Arabia and the UAE.