



Cross-border distribution is key to competition

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Cross-border distribution is key to competition

Despite best intentions, cross-border distribution of investment funds is far from frictionless.

Even though cross-border distribution has been facilitated by regulation for many years, **Europe** still has not completely cracked the issue. The European Commission has made it a priority for 2018 to remove barriers to creating a more competitive pan-EU investment landscape, including for personal pensions. Elsewhere, a number of countries are establishing new domestic fund structures to compete with foreign options.

Meanwhile, use of the **Asian** fund passports remains low. And "Brexit" will impact cross border flows between the **UK** and the rest of the EU, in both directions. Also, the EU regulatory approach to the provision of portfolio management from one jurisdiction to another – or "delegation" – looks set to become more demanding.

On the other hand, bilateral arrangements have come to the fore and countries such as China and India continue to open up their capital markets to foreign investors.

Removing national barriers to EU fund distribution

The **European** Commission has proposed a so-called omnibus regulation to achieve its objective of creating a more competitive EU landscape. Unless barriers are removed, it reasons, CMU¹, a key EU initiative with much political and regulatory support, cannot be achieved.

According to Commission statistics, about 80 percent of UCITS² and 40 percent of AIFs³ are marketed across borders, but one-third of these are marketed into only one member state, usually the state in which the investment manager is domiciled. A further one-third are marketed into no more than four other member states.

Bringing down barriers within the EU

The European Commission has identified six categories of national barriers that need to be tackled:

- Host states can set national requirements on financial promotion and consumer protection, giving rise to initial research costs for firms and to additional ongoing costs.
- EU funds can be subject to regulatory fees imposed by home and host member states that vary significantly in scale and calculation methods.
- A number of states impose special administrative arrangements to make it easier for investors to subscribe, redeem and receive payments from funds. Some states force funds to use certain institutions and to provide additional information to the regulator and investors.
- Despite the increasing use of online platforms to distribute funds nationally, barriers exist across borders.
- When fund documentation has to be updated, managers are required to give written notice to the host regulator, adding cost and time to the process.
- Different tax treatments create barriers to cross-border business.

“ retail investors should receive the same level of protection, regardless of the location of the firm providing the service ”

The Commission says that the reasons the cross-border fund market remains geographically limited include the concentrated fund distribution channels in individual member states, cultural preferences and a lack of incentives to compete across borders. Also, member states imposed additional national requirements when transposing AIFMD⁴ and the UCITS Directive.

Views differ about how to address the problems. **France** and **Germany**, for example, have expressed reservations about the European Commission's proposals to eradicate barriers to cross-border distribution via legislative amendments. The AMF⁵ notes that the European passport for the distribution of investment funds is a “remarkable success”. It is of the view that remaining limits to cross-border distribution are mainly due to the architecture of national distribution networks, cultural savings habits and fiscal rules. It has identified targeted areas where further clarity on applicable rules would be beneficial and could be achieved by ESMA⁶ guidance.

Meanwhile, ESMA has made it clear that retail investors should receive the same level of protection, regardless of the location of the firm providing the service. This is seen as important both to the free movement of services within the EU in general and to the success of the CMU initiative in particular.

The draft rules issued by the Commission include explicit prohibitions on member states requiring a physical domestic presence by the UCITS management company or AIFM⁷ in order to serve investors in their jurisdiction. Electronic or other means of distance communication may be used instead. It also sets out a precise timetable within which national regulators must communicate decisions on changes to a UCITS's notification, and similarly for AIFs.

The draft regulation also includes rules on marketing communications, publication of national provisions and verification of marketing communications by national regulators, as well as common principles regarding regulatory fees or charges and their publication, and standardization of notifications.

¹ Capital Markets Union

² Undertakings for Collective Investments in Transferable Securities

³ alternative investment fund

⁴ Alternative Investment Fund Managers Directive

⁵ Autorité des Marchés Financiers

⁶ European Securities and Markets Authority

⁷ alternative investment fund manager

ESMA will be required to establish, publish and maintain a database of AIFMs and UCITS management companies, the AIFs and UCITS they manage, and the member states in which those funds are marketed. It must also establish and publish an interactive database showing national fees and charges.

The element that has caused immediate concern among the industry is the introduction of a definition of "pre-marketing" into AIFMD. The Commission seeks to draw a distinction between testing an investment idea or strategy with a professional investor in order to test their interest in an AIF that is not yet established and promoting an established fund without notification in the investor's member state. Questions have been raised about how this definition might work in practice and whether it could have an indirect impact on the working of other pieces of legislation that refer to "marketing" but do not define it.

The bigger policy question, though, is whether yet more rules will have the intended effect – to remove unnecessary "red tape". If relevant provisions are removed from national rule books, one might expect there to be some benefits for both investors and firms. But it is not clear whether, or how, these proposals can address the strong national bias among retail investors, in particular, for home-grown funds or the structural market differences due to the predominance of certain types of distribution channels in different member states. Digital distribution platforms and different generational approaches may smooth out these biases over time, rather than more rules.

In the meantime, might more rules actually lead to more red tape, not less?

Creating competitive fund structures

Regulators are increasingly facilitating structures that allow local firms to compete on the world stage.

Hong Kong plans to launch an open-ended fund company (OFC) structure, as part of the government's long-stated policy of bolstering Hong Kong as a full-service asset management hub. Up until now, the preferred hedge fund structure is an offshore limited liability company, typically domiciled in the **Cayman Islands**.

The advantages of an OFC over a Cayman fund, it says, largely center on the savings in management time and money, and the simplicity in dealing with one jurisdiction instead of two. As an adjunct to the single regulator approach, the SFC is proposing a streamlined application process.

“ might more rules actually lead to more red tape, not less? ”

The legal framework for the establishment of OFCs was set out in the Securities and Futures (Amendment) Ordinance 2016, and is expected to come into force in mid-2018. OFC Rules and a non statutory OFC code were the subject of an SFC consultation in 2017.

Singapore, too, is consulting on establishing variable capital companies ("S-VACCs"), to complement existing fund structures. S-VACCs will be supervised by MAS⁸ and can be singular or umbrella structures. Various requirements of company law will be dis-applied (as is common with variable capital companies elsewhere) and foreign incorporated funds will be able to re-domicile as an S VACC.

With effect from 1 January 2018, various changes to the collective investment scheme (CIS) code came into effect, including enhanced transparency and market discipline requirements. MAS has also introduced specific rules in its CIS code for precious metal funds, which can invest in gold, silver and platinum.

In **Bahrain**, the regulator has sought to provide an alternative domestic fund structure for alternative investments. Laws were enacted to introduce three commonly-used alternative asset class structures: Trust law, the Investment Limited Partnership law and the Protected Cell Companies law. Bahrain became the first country in the GCC⁹ area to introduce such structures into its mainland legislative framework. All the structures fall within the regulatory purview of the CBB¹⁰.

Bahrain also became the second GCC state to establish REITs¹¹ as a regulated investment structure, after the UAE, and the first to introduce an Investment Limited Partnership Law and integrate it in the country's legal system. The move allows investors to establish limited partnerships nationwide, as oppose to only in identified free zones.

In the **UAE**, the aim of regulation allowing the development of listed REITs was to attract more interest from retail investors, who typically cannot buy real assets in many prime locations.

In **Canada**, the CSA¹² have proposed an alternative funds regulatory regime to allow the distribution of non-traditional fund products, such as liquid alternatives.

⁸ Monetary Authority of Singapore

⁹ Gulf Cooperative Council

¹⁰ Central Bank of Bahrain

¹¹ real estate investment trust

¹² Canadian Securities Administrators

Proposed amendments to the Alternative Investment Funds framework in **Cyprus** are expected during 2018, in order further to modernize its legal and regulatory framework. The government is fully supportive of the asset management sector and is proactive in upscaling the framework, to support and promote this evolving industry in Cyprus.

The two most awaited amendments relate to the enhancement of the Limited Partnership vehicle and the introduction of a regime for “registered,” but not authorized, AIFs to facilitate quick and cost efficient fund launches. These can be marketed to professional investors and will be managed by a full scope Cyprus or EU AIFM.

In **Ireland**, the CBI¹³ amended the rules governing loan-originating funds. Previously, these vehicles were prohibited from engaging in activities other than lending and related operations. Following a review of this restriction, the CBI concluded that it is appropriate to allow loan-originating Qualifying Investor AIFs to have broader credit-focused strategies. The rule change, which took place in March 2018, means these funds can now invest in credit and debt instruments, as well as issuing and participating in loans, and participating in lending.

As part of the modernization of the legal framework in **France** for asset management and debt financing, the regime for securitization entities was overhauled. A new type of specialized financing vehicle – the “OFS” – was introduced to operate alongside and complement the existing vehicle. An OFS is a non-tranching AIF that is allowed to raise financing by issuing bonds. OFS managers are subject to the full requirements of AIFMD, benefit from the cross-border marketing passport and are eligible to use the “European Long-Term Investment Fund” label.

In **Germany**, too, the regulator has made changes to the operation of loan funds. It has adopted for all UCITS management companies and AIFMs a new approach towards a holistic internal governance that goes beyond risk management requirements. The new requirements for loan funds are in line with those for banks and include functional and hierarchical separation, voting on loan agreements and sound practices in loan origination.

In **Guernsey** and **Jersey**, the regulators have recently updated the local regulations for the Private Investment Fund and the Jersey Private Fund, respectively. This was in response to market demand for a product designed for relationships between investors and manager that are much closer than that of a typical agent, and therefore a more proportional regulatory regime was thought appropriate.

A changing landscape for personal pensions

Cross-border distribution of investment funds may also be supported by the much-discussed pan-**EU** personal pension product (PEPP). The European Commission issued, in July 2017, the long-awaited draft regulation for the PEPP, which is being debated by the European Parliament and Council.

The PEPP is a voluntary scheme for saving for retirement. The intention is that it will be offered by a broad range of financial companies across the EU and will be available to savers as a complement to public and occupational pension systems, and alongside existing national private pension schemes.

The proposed PEPP requirements cover authorization, distribution, investment policy, switching provider, and cross-border provision and portability. The mechanism behind the portability concept envisages a compartment within each individual PEPP account for the different member states to which the PEPP saver moves over time. These compartments would be adaptable to the different national tax incentives.

Delegated acts are envisaged in the areas of conflicts of interest, inducements, selling PEPPs with and without advice, product oversight and governance, provision of information, investment options and reporting to national authorities. A review of the operation of the regulation is proposed after five years.

The PEPP proposals may not get an easy ride, though. The difference in national tax treatments is difficult to resolve. Also, the Parliament’s lead rapporteur wants to introduce a restriction regarding the way products pay out during the retirement phase, which could limit the ability of fund managers to be PEPP providers.

Things are more promising for **German** asset managers. The law strengthening occupational pensions, which came into force at the beginning of 2018, encourages for the first time the creation of government-subsidised occupational pension plans with defined contributions. The law introduces a ban on guarantees traditionally provided by insurers, which is expected to open up the pension market for asset managers.

In **Japan**, the so-called “Expert Discussion on Stable Asset Formation for Households,” aims to encourage stable pension portfolios by shifting household financial assets into a balanced portfolio. Long-term portfolios have been stimulated with the launch of tax-exempted NISAs (individual savings accounts) in January 2018.

¹³ Central Bank of Ireland

The **Australian** Government continues to consult on a framework for Comprehensive Income Products for Retirement. To facilitate the consultation, the Government announced on 19 February 2018 the establishment of a consumer and industry advisory group, whose primary objective is to provide feedback and advice to the Treasury on possible options.

But not all barriers are coming down

The **European** Commission has still not granted the AIFMD passport to any non-EU countries, despite ESMA's advice in July 2016 that the passport should be given to 12 non-EU countries. The Commission indicated that there are a number of issues to resolve, including taxation and anti money laundering.

It seems likely that third countries might have to wait until deep into 2018 or beyond for progress. The Commission may decide to delay extending the AIFMD non-EU passports until this work is nearer completion. It is an open question whether the delay is also partly due to Brexit.

The issue does not appear to worry the Channel Islands, as the marketing of AIFs is typically limited to no more than four or five member states in over two-thirds of cases. The local industry and its clients say the national private placement regime (NPPR) framework works more effectively in these cases, so the delay in introducing the non-EU passport is not a major concern. **Guernsey** Finance said "this delay in itself has created an additional flexibility for managers seeking options around marketing into Europe. Managing an AIF by using an EU entity allows, and indeed ordinarily requires one to use, the AIFMD passport. Managing from **Guernsey** by contrast still allows managers to use the existing and familiar private placement regime."

The **Jersey** Fund Association agreed. "NPPR is giving non-EU fund managers a really reliable, straightforward and efficient route for marketing alternative funds into Europe. It's stable, it's cost-effective and it's tried and tested. Against a complex geopolitical backdrop in Europe, that's a really attractive proposition for fund managers right across the private equity, real estate, hedge and infrastructure fund asset classes, as well as for institutional pooling vehicles invested in securities."

It is not only NPPRs that are important, though. In **Germany**, for example, guidelines issued by BaFin¹⁴ are viewed by alternative asset managers as a *de facto* ban on German pension funds investing in non-European loan funds.

Asian passporting schemes meet resistance

The various Asian passporting schemes, launched with some fanfare over the past years, have not made rapid progress. While the **China Mainland-Hong Kong** Mutual Recognition of Funds (MRF) is firmly entrenched, flows are scarce. The Asian Region Funds Passport (ARFP) has barely gained any traction either. Cultural and linguistic barriers have combined with currency and capital restrictions to thwart their take-off.

The Monetary Authority of **Singapore** recently signing a Memorandum of Understanding with the Securities Commission **Malaysia** (SCM) and the Securities and Exchange Commission of **Thailand** to enhance the Association of South-East Asian Nations Collective Investment Scheme Framework (the ASEAN CIS Framework). The agreement between the three countries, which incorporates feedback from extensive industry consultations, seeks to promote more cross-border offerings of ASEAN funds and to allow fund managers to offer a broader range of fund products to investors in the region.

The key enhancements will enable a wider range of fund managers to participate in the ASEAN CIS Framework by lowering qualifying criteria from USD 500 million to USD 350 million assets under management, shortening the time-to-market for the launch of funds, and giving fund managers more flexibility to delegate the investment management of a fund.

Will Brexit raise barriers?

Amid efforts to bolster competition in the **European** investment market, there are concerns that the ramifications of the **UK** leaving the EU – "Brexit" – may have a counterproductive effect. Most market participants are agreed that Brexit needs to be managed well to ensure vital market structure and capital market flows are not damaged.

While the investment landscape post-Brexit is as yet unclear, it is apparent that the ramifications of Brexit will be far wider than a simple break between the EU and the UK. A number of MEPs¹⁵ are now calling for a fundamental review of the different "third country" rules in EU legislation, for example. The outcome could have a significant impact on the UK's "equivalence" status post-Brexit and that of all other non-EU/EEA countries.

In last year's report¹⁶, we described the complex issue of how the UCITS, AIFMD and MiFID passports are likely to work post-Brexit. This analysis – undertaken in

¹⁴ Bundesanstalt für Finanzdienstleistungsaufsicht

¹⁵ Member of the European Parliament

¹⁶ <https://home.kpmg.com/xx/en/home/insights/2017/05/evolving-investment-management-regulation-fs.html>

“ the ramifications of Brexit will be far wider than a simple break between the EU and the UK. ”

2016 – still holds true. Indeed, the European Commission issued papers in February 2018 that make the same points about how the legislation works.

However, with the issuing of an opinion by ESMA in May 2017 on principles for the supervisory approach to the relocation of activities from the UK to elsewhere in the EU, followed in July 2017 by more detailed sector-specific opinions, a further and significant issue has arisen: the future regulatory approach to delegation.

ESMA says that no reliance should be placed on firms' existing authorizations and there should be no derogations or exemptions. It adds that regulators should consider carefully their ability to assess documentation presented in a foreign language without appropriate translation.

ESMA also published a letter from Steven Maijoor, ESMA's chair, to Vice-President Dombrovski, inviting the Commission to consider extending its proposed enhanced approach for the recognition of third country central counterparties to other entities. This intervention further underlines that the EU's evolving approach to third countries is a business risk for firms around Europe and elsewhere, as Brexit approaches.

Improving the operation of EU passports

ESMA recommends as good practice that:

- Regulators should consider not only the activities of a ManCo¹⁷/AIFM in their own member state but also its cross-border activities, especially where via a branch
- Regulators should review the compliance of a branch of a ManCo/AIFM not only on receipt of the notification, but on an ongoing basis
- Where AIFMs operate across borders, regulators should take this into account, with the amount of supervisory activity reflecting the size and impact of the AIFM's activity
- Regulators should take into account all the marketing activity of an AIFM, not just that in its own jurisdiction

¹⁷ management company



Delegation debate heats up

The **European** Commission says that "the future departure of the EU's currently largest financial center means that supervisory arrangements must be strengthened to ensure that financial markets continue to support the economy on an adequate and sound basis."

The Commission proposes to mandate ESMA to review the arrangements of firms that intend to make extensive use of delegation or outsourcing to third countries. It would amount to second guessing national regulators' views and has moved to center stage the practice of domiciling a fund in one EU member state and delegating the investment management function to the UK.

The Commission notes that current supervisory practices vary from one member state to another. It argues that

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"we are not looking to question, undermine or put in doubt the delegation model." Steven Maijoor, ESMA Chair

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this gives rise to regulatory arbitrage (a race to the bottom), with firms benefiting from the EU passport while essentially performing substantial activities outside the EU. It also exposes the EU to financial stability risks, it says, particularly where the third country's supervisory authorities lack the necessary tools to supervise those activities.

It is proposed that where a firm intends to delegate or outsource a material part of its activities or any of the key functions to a third country, the national regulator must notify ESMA, providing sufficient detail to enable ESMA to make an assessment. ESMA has up to two months to issue an opinion. If the regulator chooses not to follow ESMA's view, ESMA must make its view public. It therefore seems unlikely that a national regulator would go against ESMA's opinion, as the firm could face reputational risk.

ESMA has sought to reassure the industry. Its chair, Steven Maijoor, said in March 2018 "we are not looking to question, undermine or put in doubt the delegation model. We know that this is a key feature of the investment funds industry and that the flexibility to organise centres of excellence in different jurisdictions has contributed to the industry's success." He said that



ESMA is seeking to address the risk of letterbox entities and that the opinions "simply clarified what this means in practice and what factors have to be taken into account when assessing whether there is sufficient substance." He observed that national regulators have been interpreting these requirements differently.

Neither is there any indication that ESMA's new powers would be applied retrospectively, but it seems inevitable that the detailed rules on delegation under the AIFMD will be extended to UCITS. The Commission said the lack of harmonization between AIFMD and the UCITS Directive makes it challenging to interpret the two directives "with the same spirit". It indicated that it was open to the idea of creating stricter rules on delegation in the UCITS directive too.

Opposing views come from around the globe

Non-EU countries potentially impacted by rule changes are demanding a say in how the rules are formulated.

Hong Kong's fund trade body, for one, called for non-EU jurisdictions to be able to contribute "meaningfully" to the development of UCITS fund regulation. Sally Wong, chief executive of the Hong Kong Investment Fund Association (HKIFA), said the "growing importance" of Hong Kong as a sales hub for UCITS means European authorities should "bear in mind" the global nature of the product.

Hong Kong is believed to be the fifth-largest market for Europe-domiciled cross-border funds sales. **Singapore** and **Taiwan** have also become significant markets, far outselling the UK, Belgium and France in 2017.

The HKIFA says it has "concerns" and "questions" about the ability of funds to delegate key activities such as portfolio management to third countries.

Some of those concerned about changes in delegation rules, are now seeking international intervention. In December 2017, several associations escalated the matter to IOSCO¹⁸. They hoped that new IOSCO delegation principles would supersede any rules set out by ESMA. IOSCO is reportedly receptive to discussing the rules governing delegation and has made it an "agenda item".

The **UK** is pushing back against any change in approach within the EU. Megan Butler, executive director of supervision for investment, wholesale and specialists at the FCA¹⁹, said she saw "no real justification for unnecessarily complicating rules around delegation and outsourcing".

Ms. Butler said it is "crucial for the UK investment industry and the rest of Europe" to maintain open

markets rather than sacrifice them "as an inevitable response to Brexit". There is already sufficient regulatory infrastructure to supervise delegation arrangements when the UK becomes a third country, she added.

The FCA has found an ally in **Luxembourg**, with the Luxembourg finance ministry saying it planned to "deploy best efforts" to engage with the European Parliament and European Council to contest changes to delegation rules.

ALFI²⁰ said the European Commission's proposals would "add an additional bureaucratic layer to the fund authorization procedure with the involvement of ESMA and as such time to market will be affected". ALFI added: "The delegation model in particular is tried and tested, and has worked in the European fund industry for three decades."

In **Germany**, the BVI²¹ agreed that the proposal to give ESMA a direct role in vetting delegation arrangements is unnecessary. Also, the **Swiss Funds & Asset Management Association** said member firms are worried about the worst-case scenario whereby "delegation is not possible anymore". The association wants clarification of the technical points included in the guidance, such as what "substance" means.

Meanwhile, Paul Stevens, chief executive officer of **US** fund industry trade body, the Investment Company Institute, said Brussels' proposal "risks closing off Europe to third-country fund managers" and "puts at risk the success of UCITS". At a meeting of regulators held in Washington in January 2018, US representatives told their EU counterparts they were firmly against changes to delegation rules.

The AMF in **France** appears to stand on the other side of the argument. Secretary General, Benoît de Juvigny, warned that some EU member states could allow the creation of "letterbox" entities in order to attract UK-based asset managers. Mr. Juvigny said: "In European regulation like [the AIFMD], letterbox entities are forbidden, but we would appreciate some clarification on minimal requirements in terms of resources and presence to locate entities in EU member states." It supports increased powers for ESMA in order to ensure a consistent regulatory approach across the EU to the amount of "substance" required in the delegating entity.

The French industry group, the Association Française de la Gestion Financière, supports the Commission's aim of greater regulatory and supervisory convergence. In particular, it says that delegation or outsourcing to third countries should remain possible as long as the substance of the activity remains in the EU.

¹⁸ International Organization of Securities Commissions

¹⁹ Financial Conduct Authority

²⁰ Association of the Luxembourg Fund Industry

²¹ Bundesverband Investment und Asset Management

A large French asset manager has publicly argued that EU-based managers should be able to outsource all functions to another EU country. However, it says flexibility should not apply to the outsourcing of activities to a non-EU country, which should be subject to a different regulatory framework.

Regulators already flexing their muscles over "substance"

There is already evidence that ESMA is flexing its muscles, with reports in January 2018 that it was investigating substance issues at four firms.

Alos, the CSSF²² in **Luxembourg** is reported to be reviewing firms' ratios of staff and management positions to funds under management.

In **Ireland**, the CBI²³ conducted an evaluation of how it deals with the issues covered by the three ESMA Opinions on outsourcing and delegation of activity by firms, to ensure that its authorization and supervisory processes are materially aligned with the Opinions. A number of procedural enhancements will be made in the near future through the updating of the CBI's application forms and internal procedures. In the interim, these enhancements will be incorporated into the CBI's current authorization process.

The evaluation was in addition to the review of outsourcing arrangements of investment firms that the CBI conducted by issuing a survey of firms in late 2017. Firms were asked to provide information including the types of services and operations outsourced, materiality and concentration of outsourced arrangements, as well as contractual arrangements. The survey informed the subsequent outsourcing provisions contained within the 2017 Investment Firm Regulations and associated Guidance.

UK responds to threat to its asset management sector

The FCA has asked the **UK's** biggest asset managers for information on how they are preparing for Brexit. Partly in response to attempts by other European national regulators to attract UK-based firms to relocate activities. It announced plans to create an asset management hub to support "new entrants" to the UK fund space, in particular with regard to the various regulatory hurdles.

The hub will help start-ups through the pre-authorization and authorization procedures by means of a "user-friendly" support system. The first phase of the program was launched in late 2017, with start-ups offered pre-application meetings and dedicated case officers. The regulator plans

to expand the service throughout 2018, providing quarterly surgeries and online booking for pre application meetings.

In late 2017, the UK government vowed to ensure UK-based asset managers can continue to offer UCITS-like funds after Brexit. In a report, the UK Treasury said it sought to improve the outlook for the GBP 8.1 trillion (EUR 9.2 trillion) UK asset management industry to ensure it remains competitive.

An asset management taskforce comprised of chief executive officers and other stakeholders will meet on a quarterly basis until October 2019, several months after Brexit.

Elsewhere, bilateral cross-border arrangements increase

Faced with a lack of strong progress on investment fund passports, bilateral arrangements continue to be made on other matters. Authorities and industry organizations from **Hong Kong** and **Switzerland**, for example, signed three memoranda of understanding in September 2017, providing for co-operation in RMB internationalization, wealth management, infrastructure financing and fintech.

Hong Kong's SFC²⁴ and **France's** AMF signed a Memorandum of Understanding (MoU) on the France-Hong Kong Mutual MRF, which will allow eligible Hong Kong public funds and French UCITS to be distributed to retail investors in each other's market through a streamlined authorization process.

“investors yet to create a substantive footprint in China may increasingly choose this option”

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In addition, in January 2018, Hong Kong Exchanges and Clearing Limited and NZX Limited of **New Zealand** signed an MoU. The two exchanges are looking to co-operate on foreign investment, derivatives, depository receipts, listed debt, dual listings and exchange traded funds.

Meanwhile, the Monetary Authority of **Singapore** and the **Malaysian** SCM said they would work together to facilitate the establishment of a stock market trading link between Bursa Malaysia and Singapore Exchange by the end of 2018. The trading link will allow investors to trade and settle shares listed on each other's stock market in a more convenient and cost-efficient way.

²² Commission de Surveillance du Secteur Financier

²³ Central Bank of Ireland

²⁴ Securities and Futures Commission

MAS and SCM set up cross-border supervisory and enforcement arrangements, and agreed to work with the two exchanges to get the link up and running.

Japan, a founder member of AFRP, established the Financial Market Entry Consultation Desk to help foreign financial institutions enter the Japanese market. One of the reasons for this is to find a home for the large amounts of capital held by Japanese households. This capital used to be largely kept in bank savings accounts, but these accounts now yield little and more productive investments are sought.

In October 2017, a vision for "International Financial City: Tokyo" was created, from which the Consortium for Japan International Asset Management Center Promotion (JIAM) was established by the Tokyo Metropolitan Government.

JIAM will support emerging domestic and international asset managers. They typically need help obtaining a license in Japan, which can take considerable time. In addition, it is difficult for investment companies to attract funds from investors due to insufficient data on their investment performance. JIAM will co-operate with the JFSA²⁵ promptly to grant licenses to selected asset managers and to provide support for fundraising and IT platforms.

Further market opening in China and India

The proposed easing of ownership limits in **China's** financial sector has aroused interest among investors seeking to gain greater access to the world's second largest economy. Following the November 2017 announcement, foreign investors will be permitted a 51 percent holding (up from 49 percent) in securities brokerages, futures companies and fund management companies. After a further three years, all caps on investment are to be removed.

With 40 or so joint ventures already in place, some foreign players holding minority stakes may renegotiate to gain a controlling position. The opportunity to take a majority slice may also stimulate increased interest in new joint ventures – possibly from investors that have previously been cautious.

Investment management wholly foreign-owned enterprises (WFOEs) can already offer private fund products in China, but in three years' time they might also be able to launch mutual fund products. This makes the WFOE option attractive – investors yet to create a substantive footprint in China may increasingly choose this option.

Meanwhile, at the end of 2017, the **Indian** regulator relaxed conditions for foreign portfolio managers to enter Indian markets.

²⁵ Japanese Financial Conduct Agency



Tom Brown

Global Head of Asset Management

KPMG International

T: +44 20 7694 2011

E: tom.brown@kpmg.co.uk

Julie Patterson

Head of Asset Management

Regulatory Change, Risk & Regulatory

Insight Centre, EMA

T: +44 20 73112201

E: julie.patterson@kpmg.co.uk

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