

Irish & EU investment funds

Brexit reminder

Additional considerations for:

1. EU-UK equivalence in financial services	<p>The European Commission, EC, has assessed the UK's replies to the EC's equivalence questionnaires. A series of further clarifications will be needed, in particular regarding how the UK will diverge from EU frameworks after 31 December, how it will use its supervisory discretion regarding EU firms and how the UK's temporary regimes will affect EU firms. For these reasons, the EC has not made an equivalence decision and assessments will continue.</p>
2. Staff availability and increased interactions with CBI	<p>Firms to ensure there is appropriate resourcing available and fund boards are contactable at short notice to accommodate increased interaction with clients and with the CBI.</p> <p>The CBI issued a Brexit questionnaire to firms for completion in October 2020. It covered the areas of operational readiness, risks and cyber security. Questions raised by the CBI in advance of previous Brexit deadlines covered enhanced liquidity reporting, customer communications plans, data transfer, availability of key staff and resource contingency planning.</p>
3. Seconded staff from the UK	<p>Applications for the use of secondees from the UK by UCITS management companies / AIFMs will be considered by the CBI on a case by case basis.</p>
4. Staff eligibility to work and travel	<p>EU citizens should apply to the UK government's EU Settlement Scheme to secure status in the UK and continued right to work, if required.</p> <p>Under the terms of the Common Travel Area (CTA) arrangements, which was reconfirmed, Irish citizens able to travel and work freely in the UK (and vice versa) after the end of the transition period.</p>
5. Short-term business visitors	<p>Under the TCA, the EU and the UK shall allow the entry and temporary stay of short-term business visitors for the purposes of carrying out the activities listed in an annex to the TCA covering business visitors for establishment purposes, intra-corporate transferees and short-term business visitors. Permissible length of stay shall be for a period of up to 90 days in any six-month period. Financial services personnel are listed as being able to carry out commercial activities as short-term business visitors, subject to qualifications and narrow conditions.</p>
6. UK resident directors and designated persons	<p>EU fund management companies are required to have at least two-thirds of their directors in the EEA. The CBI is still considering whether UK resident directors and designated persons will be treated like EEA residents for the purposes of the Irish 'location rule', but have confirmed that in the meantime funds / fund managers will not be deemed non-compliant with the 'location rule' solely by virtue of having UK-based directors or designated persons.</p>
7. Branches of UK managers in the EU cannot continue to manage UCITS	<p>Branches of UK managers in the EU will be treated as branches of non-EU AIFMs. Non-EU AIFMs, including a UK AIFM, can manage Irish QIAIFs but cannot manage Irish RIAIFs.</p>
8. UK markets no longer qualify as regulated markets under MiFID II	<p>UK markets are third-country markets. There has been no equivalence decision adopted by the Commission under MiFID II in respect of UK markets.</p>

9. UK based Central Clearing Counterparties	UK CCPs' shall be considered to be equivalent to the CCP requirements set out under EMIR until 30 June 2022 under a time-limited temporary equivalence decision.
10. Delegation of safekeeping duties to UK entities	A UCITS or AIF depositary can delegate safekeeping to a UK entity where they demonstrate objective reasons for the delegation and satisfy other legal and technical requirements.
11. Credit ratings issued by a UK Credit Rating Agencies (CRA) no longer acceptable for EU law purposes	UK CRAs are third country agencies and their registration under the CRA Regulation will be withdrawn. In order to use a rating from a UK CRA, this CRA must have been endorsed in accordance with the endorsements regime under the CRA Regulation.
12. EU managers who want to market/continue to market into the UK	<p>EU managers who wish to begin marketing/continue to market into the UK after 31 December 2020 should have applied to the TPR in order to market/continue to market in UK.</p> <p>UCITS sub-funds under an umbrella that was registered under the TPR are permitted to be added into the TPR and can market to UK retail investors. However, new AIF sub-funds cannot access the TPR even if the umbrella had other AIF sub-funds registered under the TPR, and these can only be marketed using National Private Placement Regime</p> <p>Overseas Funds Regime will eventually replace the TPR as the permanent structure for overseas funds to access UK retail investors.</p>
13. Irish management company managing a UK UCITS	An Irish management company managing a UK UCITS will also need to be authorised as an AIFM in order to be able to continue to manage the UK fund after 31 December 2020.
14. Data Processing and Data Flows between the UK	<p>The TCA includes a 'bridging mechanism' providing for the free flow of personal data from the EU/EEA to the UK for up to 6 months after 1 Jan. 2021, or until an adequacy decision is adopted. This is a temporary measure to allow the EC to make an adequacy decision although there is no guarantee that an adequacy decision will be made.</p> <p>The UK has, on a transitional basis, deemed the EU and EEA EFTA States to be adequate to allow for data flows from the UK.</p> <p>If standard contractual clauses, or SCCs, were put in place before 1 January 2021 to cover the UK becoming a 3rd country, there is no need to immediately update the contract. SCCs are not technically needed yet but they will be if no adequacy decision is achieved by 30 June 2021.</p>
15. UCITS fund of fund rules - UK domiciled UCITS may lose their UCITS status	Irish UCITS investing in UK UCITS may be required to rebalance their portfolios.
16. UK UCITS marketing to Irish investors	A UK UCITS becomes a non-EU AIF being managed by a non-EU AIFM. If a UK UCITS has been passported into Ireland, via the UCITS marketing passport, the marketing permissions will fall away when the transition period ends meaning new permissions will be needed. A Regulation 43 notification to the CBI is the process where only professional investors in Ireland are targeted. The CBI's guidance on inward marketing to retail investors describes the process where retail investors in Ireland are targeted.

<p>17. UK AIFMs marketing EU AIFs or non-EU AIFs in Ireland</p>	<p>UK AIFMs marketing EU AIFs in Ireland will need to change their existing Regulation 33 notification to the CBI to a Regulation 43 notification. UK AIFMs marketing non-EU AIFs in Ireland will need to change their existing Regulation 37 notification to the CBI to a Regulation 43 notification.</p> <p>In both cases, if the notification was submitted on or before 1 January 2021 it will be effective from 1 January 2021 and the UK AIFM may commence marketing from that date. The CBI has issued a Q&A style note to Irish Funds on these issues.</p>
<p>18. MIFIR share trading and derivatives trading obligation</p>	<p>ESMA's October 2020 final position on the share trading obligation provides an exemption for any EEA ISIN being traded on a UK trading venue where it is being traded in GBP. The FCA, in its statement at the beginning of December, will allow UK firms to continue trading all shares on EU trading venues following the end of the transition period on 31 December 2020.</p> <p>ESMA public statement in November 2020 clarified that the DTO will apply, unchanged, following the end of the transition period. EU counterparties subject to the DTO and UK counterparties wishing to trade derivatives with each other after the end of the transition period will face conflicting requirements where the derivatives fall within the scope of the EU and UK DTOs (in-scope derivatives).</p>
<p>19. Anti- Money Laundering considerations</p>	<p>A no-deal Brexit will likely trigger a change in designation of the UK from EU member state to third country for AML purposes.</p> <p>The CBI Brexit FAQ notes that differences can arise between national AML legislative frameworks, and that minor differences may already exist between the UK and Ireland's national AML legislative frameworks. Post-Brexit, such differences may be accentuated in certain circumstances and firms authorised in one jurisdiction need to be aware of any differences that may exist in another jurisdiction's AML legislative framework if they plan on providing services in that other jurisdiction.</p>

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