Brexit: trade and cooperation agreement

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Irish UCITS and QIAIFs with UK managers or investment managers

An EU-UK trade and cooperation agreement, the TCA, was concluded on 24 December 2021 and is provisionally applicable since 1 January 2021. The TCA covers financial services in broad terms but not any decisions related to equivalence for financial services. The EU and the UK have stated an intention to aim to agree by March 2021 a Memorandum of Understanding, or MoU, establishing a framework for regulatory cooperation on financial services. In the absence of an equivalence decision and until the terms of any MoU are agreed and can be analysed, the position for Irish investment funds affected by Brexit is effectively the same as if there had been a no-deal Brexit.

Outlined below are some implications for UCITS and QIAIFs authorised in Ireland with UK management companies, AIFMs or investment managers effective since **1 January 2021**:

	UK ManCo / AIFM	UK Investment Manager	Marketing into the UK	Investment considerations
1. Irish domiciled UCITS	UCITS must be domiciled in the EU and managed by an EU management company. Therefore, any UCITS currently with a UK management company needs to either: 1. appoint an EU management company; or 2. become self-managed, if possible. The above equally applies to EU branches of UK managers, which are treated as branches of non-EU AIFMs.	UCITS are entitled to have non-EU investment managers. UK entities **already cleared to act as an investment manager** by the Central Bank of Ireland (**CBI**) can continue to do so. This is provided for under the MoU agreed on 1 February 2019 between ESMA, national securities regulators and the UK's Financial Conduct Authority (**FCA**). The CBI has advised that UK investment managers currently acting for Irish entities will be **required to notify the CBI in relation to the change of their regulatory status following the end of the transition period**. UK investment managers may have relied on an EU passport and also **distribute** the UCITS. The passport no longer operate after Brexit and the UCITS may need to explore distribution arrangements. Where a **UK investment manager is appointed after 31 December 2020**, that investment manager will need to apply to the CBI for clearance as a non-EU investment manager.	The UCITS marketing passport cannot be relied on by UCITS marketing into the UK once the transition period. If a UCITS made an application to the temporary marketing permissions regime (**TPR**) the UCITS can rely on its TPR permission to continue marketing in the UK while waiting to seek UK recognition. You can read the TPR update and TPR Q&A prepared by the ALG Global Fund Registrations team for more information. There is a specific exemption for UCITS sub-funds authorised after 31 December 2020. They can enter the TPR provided that at least one other sub-fund of the same umbrella has already entered the TPR prior to the end of 30 December 2020.	UCITS are not permitted to invest more than 30% in non-UCITS collective investment schemes. As UK UCITS became UK AIFs post 31 December 2020, investment mandates may need to be re-assessed. A UCITS may only invest in an AIF authorised under laws which the CBI considers to offer an equivalent level of supervision as EU laws. The CBI has already indicated that UK AIFs will be eligible for the time being. This determination will be kept under review. The CBI has confirmed that deposits and ancillary liquid assets held with UK credit institutions will continue to be UCITS eligible investments provided the credit institution continues to be "a credit institution authorised within a signatory state, other than a Member State of the EEA, to the Basle Capital Convergence Agreement of July 1988". UCITS and asset managers generally will need to consider any EU/EEA related investment guidelines or restrictions to accommodate investment in the EU/EEA (minus the UK) and the UK, and update fund documentation and investment management agreements where necessary.

	UK ManCo / AIFM	UK Investment Manager	Marketing into the UK	Investment considerations
2. Irish authorised QIAIFs	QIAIFs can continue to use a UK AIFM which has been reclassified as non-EU AIFM. However, QIAIFs migrating to such an arrangement need to assess the impacts arising from the resulting loss of the marketing passport under AIFMD including notification to investors, amendments to documentation, filings with the CBI or other supervisory authorities and any other operational issues (see **Marketing into the UK**).	AIFMs are permitted to delegate portfolio management to EU and non-EU investment managers subject to certain conditions. The position for UK entities **already acting as investment managers** in respect of an Irish QIAIF, **notifying the CBI of change of regulatory status, distributing** an Irish QIAIF and **seeking clearance to act as an investment manager after 31 December 2020** is the same as outlined above in respect of UCITS.	The marketing passport under the AIFMD is granted to the AIFM rather than the fund. The AIFM marketing passport cannot be relied on by AIFMs marketing into the UK from 1 January 2021. AIFMs who applied to the TPR can avail of the permission under the TPR to continue marketing in the UK while the AIFM notifies the FCA under the FCA's National Private Placement Regime (**NPPR**). You can read the TPR update and TPR Q&A prepared by the ALG Global Fund Registrations team for more information.	As noted above in relation to UCITS, QIAIFS and asset managers generally will need to consider any EU/EEA related investment guidelines or restrictions to accommodate investment in the EU/EEA (minus the UK) and the UK, and update fund documentation and investment management agreements where necessary.

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