



June 2016

## What's Next for Post-Brexit Fund Management ?

We now know the result of the UK's vote but none of us - the UK included - know what the consequences are or might be. We have seen market turmoil today but that may calm down in the short term, but the fallout from yesterday's Brexit vote will remain and it might prove to be a messy divorce. There may even be some immediate pressure from EU governments to accelerate the 2 year time frame for negotiation of the UK's exit given the impact on EU businesses, particularly exporters to the UK, who may be suffering from dramatic fluctuations in the Euro/Sterling exchange rate.

In the Asset Management and Investment Funds sector - one of our principal practice areas - the impact will very much depend on where one's target market is and what one's longer term objectives may be. Yes, it is true that we don't know the terms (let alone the outcome) of the exit negotiations but it would appear very strange to us if, having said all that it has, the UK would end up in the EEA. We don't see the UK in the EEA but very little is certain at this stage other than that the UK will not be within the EU.

So what might some of the more immediate consequences of Brexit be for the Asset Management and Investment Funds sector?

### Member State Regulated Market

An initial consequence is that the London Stock Exchange will not be an EU Member State regulated market. That will have an impact on market abuse rules as well as on admission to dealing and public

For further information on any of the issues discussed in this article please contact:



**Andrew Bates**  
DD: +353 (0)1 673 1704  
[andrew.bates@dilloneustace.ie](mailto:andrew.bates@dilloneustace.ie)



**Cillian Bredin**  
DD: +353 (0)1 673 1889  
[cillian.bredin@dilloneustace.ie](mailto:cillian.bredin@dilloneustace.ie)

offer rules and, in addition to the Market Abuse Directive, the Prospectus Directive and the Transparency Directive. Funds and their managers will need to look at the impact of Brexit on audit regulations and on so much more.

Be wary that some little things can trip you up. A UCITS, for example, can generally only invest in instruments which are listed or traded on the recognised exchanges set out in its prospectus. Those lists capture all markets and exchanges in EU Member States and also EEA members, but without naming them individually. If the UK is not in the EU and does not join Iceland, Liechtenstein and Norway in the EEA, then until the prospectus is changed to list the UK markets by name, investing on those markets is not allowed. Small job to change, but don't forget to do so (for all your funds.....).

Check your investment policies too!

## UK MiFID firms managing Irish Funds

What about UK asset managers managing Irish domiciled funds? At one level, there should be no immediate change.

Irish law as it currently stands allows an asset manager from outside the EU to provide asset management services to non-natural person Irish based clients without requiring a separate authorisation. So a UK firm acting as an asset manager to an Irish UCITS or AIF will still be fine but will need to go through a Central Bank approval process (under funds legislation), being treated no differently to (or no better than) , for example, a US asset manager. Those already approved should not require any new approvals.

## Investment Services to Irish retail clients

This will be a problem. Without an EU passport or a local Irish head office authorisation, selling to/servicing retail clients in Ireland may face a big problem so it is worth careful consideration with your advisers.

## Distribution capacities for UK firms managing Irish UCITS

Remember that fund sponsors set up funds which they seek to manage and which they seek to distribute. Where and to whom they distribute are key factors in any discussion of distribution post-Brexit?

If you are a UK manager managing an Irish UCITS which you sell mainly or exclusively in the UK, the impact on you may be minimal (although remember that to be a UCITS the fund has to be promoted for sale somewhere within the EU) as UK rules will govern your distribution activities as well as the capacity of the UCITS itself to enter the UK market.

There will likely have to be a new notification process for the UK, new arrangements entered into between the Central Bank and the FCA and, possibly a UK Supplement for your prospectus. None of that should be problematic.

However, if you are looking to sell into the EU the position changes. The EU distribution capacity of a UK investment manager (given its role as a promoter or sponsor of the Irish UCITS) will be negatively impacted as it will not (unless the exit negotiations provide a solution) have the benefit of any EU passport to do so. That will mean that it will either need to engage suitably authorised distributors in the local markets who have the requisite capacity or to set up its own EU based distributor (or UCITS ManCo) or look to more imaginative solutions like, for example, having board members of the UCITS represent it in cross border sales, given that it is the UCITS itself which has the passport. A UCITS may even hire its own employees to market it but remember that you will need to look at where sales charges go and the impact of such proposals on the tax status of the UCITS, not to mention employee rights.

## What about AIFs ?

In the case of the alternative investment fund (AIF) industry, the position will also be somewhat different.

Remember, for a start, that in the AIF space the product doesn't get a passport. The two passports under AIFMD go with the AIFM. So it's quite different to UCITS.

Noting that there are two AIFM passports, one of managing and one of marketing, a UK AIFM will probably become what is known as a non-EU AIFM and so may well end up being treated just like a non-EU AIFM from the US.

It will not have the capacity to market its EU domiciled AIFs cross-border within the EU. It also will not have any passport to manage cross-border within EU but should be able to act as investment manager to Irish funds in the same way that a US manager can.

## But if you want more....

All of the above might not be a problem for you if you are a UK based UK centric manager.

However, if you are a UK manager with plans to develop a business off the back of the large EU marketplace or if you are a US manager, for example, looking to establish a European beachhead for your fund products or asset management services, you might want to consider a jurisdiction which facilitates growing your business.

What might that involve? You might want to consider:

- setting up a UCITS Manco or AIFM (or Super ManCo) in Ireland
- using a third party AIFM (but that may not solve practical distribution issues)
- putting your product on a third party platform (but that may not be optimal for future growth of your business)

Other options or solutions may be available.

### And even Governance needs to be considered

A further potential fly in the ointment is the proposal in the Irish Central Bank's latest consultation paper on corporate governance in the funds arena that at least two thirds of a fund's/ManCo's directors must be based in the EEA and that at least two thirds of designated persons similarly be based in the EEA.

As noted, we don't see the UK joining the EEA. So, if these proposals do go ahead (and if the UK does not join the EEA), we may end up with the result that, from a supervisability perspective it will be okay to have your designated persons based just short of the Russian border but not in Belfast.

.....

So what's the upshot of all of the above. It seems to be no changes for those UK managers who are UK centric, which presumably they will be happy with. For those UK managers who see the EU as a real distribution opportunity or for non-EU managers looking to establish EU based operations, it looks like Ireland will be a pretty good home.

We encourage you to get in touch with any Brexit related queries or concerns that you may have. For more details on how Dillon Eustace can assist you, to request copies of our most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any member of our Brexit Team listed on the cover page of this article, or your usual Dillon Eustace contact.

**Dillon Eustace**  
**June 2016**

DILLON  EUSTACE

**Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

**Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

**New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

**Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

**DISCLAIMER:**

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

**Copyright Notice:**

© 2016 Dillon Eustace. All rights reserved.