



25
celebrating **25**
years as the voice
of the industry

The background of the lower half of the page is a composite image. It features the Irish flag (green, white, and orange vertical stripes) on the left and the European Union flag (a circle of twelve gold stars on a blue background) on the right. The flags are shown in a stylized, overlapping manner with a green tint.

BREXIT UPDATE

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irishfunds.ie

NAVIGATING IN THE WAKE OF BREXIT

Vanora Madigan – Associate Director
DMS Investment Management Services (Europe) Ltd



As a result of the UK vote to leave the European Union (EU), businesses must address crucial challenges and questions before formal separation negotiations begin. The long-term consequences of how the UK will fit into the Alternative Investment Fund Manager Directive (AIFMD) and the Undertaking for Collective Investment in Transferable Securities (UCITS) regulatory environment are uncertain. Whilst there will be political and economic consequences, changes to the legal and regulatory environment will be gradual.

EU Domiciled Funds

One of the most important negotiations will be around “passporting.” Currently, the EU marketing passport allows UK managers access to the EU single market without restriction. While speculating at this early stage about the outcome of negotiations is difficult, the UK will likely negotiate to retain its passport rights throughout the EU. UK investment firms and AIFMD and UCITS funds may, however, become “third-country” firms unable to benefit from MiFID, AIFMD, and UCITS passport rights.

As the withdrawal process develops, all regulatory regimes driven by EU legislation will need to be assessed and reconsidered. It is vital that businesses

educate themselves about their options so they can make informed choices.

The possibility of loss of passport rights and the uncertainty around how EU domiciled funds may be marketed in the UK requires careful planning to ensure that businesses retain passport rights through re-domiciling or establishing parallel vehicles in the EU.

One notable difference now is EU funds will be added to the offering, if only UK funds are being currently presented. This will allow the marketing passport to be availed of for distribution throughout the EU. It is yet to be seen how an EU domiciled fund may be marketed into the UK.

Non-EU Domiciled Funds

Traditionally, the UK has been one of the more popular countries in the EU for marketing non-EU domiciled funds. At this stage more needs to be understood from the UK Financial Regulator on how this will be permitted going forward under AIFMD. How marketing these funds will proceed is presently unclear, especially in light of the recent ESMA Advice and Opinion on the extension of the passport to non-EU jurisdictions, and the UK vote only serves to increase the uncertainty as to if and when the European Commission will make a decision on this.

Regulatory regimes like MiFID, EMIR, and AML which are driven by EU legislation will also need to be considered as the UK withdrawal process develops.

The Ireland Solution

For both investors and managers looking for pan-European marketing and distribution solutions, Ireland, as an EU Gateway Hub, is certainly a domicile of choice. Irish domiciled funds can continue to avail of the marketing passport and be sold into every EU member state without the need for local authorisation.

In addition to its well established fund industry, its geographical proximity to the UK and mainland Europe, it is the only other EU jurisdiction with English as its official language. Furthermore Ireland has significant standing within the EU, a favourable taxation regime and treaties, and a comprehensive legal and regulatory landscape.