Implications of Brexit for Asset Managers and Investment Funds

On 23 June 2016 the UK voted to leave the European Union ("**EU**"). There will be much conjecture and debate about what the consequences of this decision will be for the UK, for the EU and for Ireland, and much will depend upon the terms of the withdrawal agreement that will be negotiated between the UK and the EU. The process by which a member state leaves the EU is governed by Article 50 of the Lisbon Treaty ("**Article 50**"), which provides for a two year period, running from the date upon which the UK formally serves notice on the European Council, during which the UK and the EU will negotiate the withdrawal agreement. This two year period may be extended with the unanimous consent of the other 27 member states. It is difficult at this stage to predict what the terms of the withdrawal agreement may be, as this is the first time that the Article 50 procedure has been applied and there is no precedent for the withdrawal agreement.

Ireland remains committed to its membership of the EU and retains its important position as an English speaking gateway to one of the world's largest markets. We have outlined in the table below the potential impact the withdrawal of the UK from the EU may have on Irish domiciled investment funds, depending on the structure of the fund, its level of engagement with UK service providers and its marketing strategy.

Irish Domiciled Fund	UK Management Company / AIFM	UK Investment Manager	Marketing	Investment Mandates and Parameters
UCITS	UCITS must be domiciled in the EU and be managed by an EU management company. In the absence of a renegotiation of the status of UCITS management companies, a UCITS with a UK management company would need to appoint a management company in an EU jurisdiction, become self-managed if possible or re-domicile the existing	UCITS are entitled to have non-EU investment managers. Therefore, UK investment managers are likely to be able to continue to act as the investment manager to an Irish authorised UCITS post-Brexit. When the UK leaves the EU, it may be necessary to have the UK entity approved by the Central Bank of Ireland ("**Central Bank**") as a non-EU	From a marketing perspective, there will be **no significant impact on Irish UCITS**. Irish UCITS will still have an EU wide marketing passport. Where the UCITS has a UK investment manager, some practical hurdles may need to be overcome to allow the UK asset manager's staff to retain a central role in the marketing and distribution process.	UCITS may not invest more than 30% of their assets in non-UCITS collective investment schemes. Investment mandates may therefore need to be re-assessed to account for the UK not being an EU member state. Indeed, more broadly than UCITS, asset managers will need to consider any EU related investment parameters to accommodate investment in the EU (minus the UK) and the UK. Asset

Irish Domiciled Fund	UK Management Company / AIFM	UK Investment Manager	Marketing	Investment Mandates and Parameters
	UK management company to another EU jurisdiction.	investment manager. It should be noted, however, that the UK investment manager may no longer have the benefit of any EU passport in relation to the distribution of funds (eg, under the Markets in Financial Instruments Directive). Distributors in local markets may therefore need to be engaged.	In terms of marketing the Irish UCITS into the UK, this will be a matter for local UK law post-Brexit and may require action on the part of the UCITS to seek authorisation / register for public sale in the UK.	managers may need to revisit and update investment management agreements and fund documentation. Investors in funds may also be subject to similar restrictions, and so will need to review their internal procedures and investment guidelines (for example, if investors have any restrictions on investment in non-EU funds).
Alternative Investment Funds ("AIFs")	A UK alternative investment fund manager ("**AIFM**") managing an Irish AIF will no longer be able to do so as an authorised EU AIFM. It should be able to continue to manage the Irish AIF as a third country AIFM, similar to arrangements currently in place for US investment managers of Irish AIFs. Irish authorised AIFs with UK AIFMs may therefore need to consider becoming self-managed AIFs, establishing an AIFM in Ireland or another EU jurisdiction, or appointing a third party AIFM in another EU jurisdiction, with the portfolio management function delegated to the UK manager. Many UK managers are already familiar with this structure.	Authorised EU AIFMs are permitted to delegate portfolio management to non-EU investment managers, subject to certain conditions. UK investment managers are likely to be able to continue to act as investment managers of Irish authorised AIFs. When the UK leaves the EU, it may be necessary to have the UK entity approved by the Central Bank as a non-EU investment manager.	The marketing passport under the Alternative Investment Fund Managers Directive ("**AIFMD**") is not granted to the fund product itself, but rather to the AIFM. As only authorised EU AIFMs can access the marketing passport, post-Brexit, **Irish AIFs with UK AIFMs will be significantly impacted**. Marketing of an Irish AIF with a UK AIFM will depend on the private placement regimes in place in each jurisdiction into which the AIF is marketed. While the AIFMD provides that the AIFMD marketing passport may be extended to EU AIFs with non-EU AIFMs, it is not yet clear whether the passport will in fact be extended to non-EU AIFMs.	As noted above in relation to UCITS, investment management agreements and fund documentation may need to be revisited where fund portfolios have EU related investment parameters.

UK Domiciled UCITS and Fund Service Providers

Post-Brexit, it is likely that it will no longer be possible to market UCITS established in the UK throughout the EU on a passported basis, and UK UCITS may not be recognised in important non-EU markets such as Hong Kong and Singapore. As a consequence, asset managers with UK domiciled funds will need to change the way in which they manage and market their funds, perhaps re-domiciling UK UCITS which rely on the EU passport to an EU member state such as Ireland. Furthermore, the UCITS Directive requires that the depositary of a UCITS is established in the UCITS' home member state and that the UCITS has an EU management company and therefore changes to key service providers may also have to be considered in addition to the re-domiciliation of the fund.

Following the withdrawal of the UK from the EU, UK entities would not be eligible to act as depositaries of EU UCITS or EU AIFs.

Comment

There is currently little clarity on what the UK's relationship with the EU will look like post-Brexit. Many different possibilities were discussed during the referendum campaign, with no consensus as to the best approach to take. The impact of the UK's withdrawal from the EU on its membership of the European Economic Area and the European Free Trade Agreement will need to be agreed, but it seems unlikely that any withdrawal agreement would allow for the unaltered continuation of UK asset managers / UK funds current passporting rights under EU legislation. Relocation of fund service providers and funds themselves to EU member states such as Ireland may therefore need to be considered to ensure ongoing access to the European market. We would be happy to discuss with you any queries you may have arising from the UK vote to leave the EU.

Please get in touch with your usual Asset Management and Investment Funds Group contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.

Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.

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