

No-deal Brexit ready? A Q&A for Irish Investment Funds

As the possibility of a no-deal Brexit continues, so too does the preparatory work of promoters of Irish funds and Irish management companies to be ready for such a scenario. We have produced the below Q&A checklist tool to assist promoters and managers in conducting a health-check of existing arrangements if a no-deal Brexit were to happen. The Q&A, which has been revised and updated on several occasions since its initial publication on 15 March 2019, highlights the principal impacts of a no-deal Brexit in various situations, including related mitigation measures or consequences where no mitigation measures are in place.

NO-DEAL BREXIT IMPACT	UCITS	UCITS MANCO	QIAIF	RIAIF	AIFM	CONSEQUENCES / MITIGATION MEASURES
Can asset management continue to be delegated to a UK licenced investment manager?	Yes	Yes	Yes	Yes	Yes	Memoranda of Understanding in the event of a no-deal Brexit between the EU securities regulators and the UK Financial Conduct Authority (FCA) were agreed on 1 February 2019.
Can a UK licenced investment manager be newly appointed to act as investment manager of an existing Irish fund?	Yes	Yes	Yes	Yes	Yes	UK licenced investment manager applicants will be subject to a regulatory review process by the Central Bank which requires the completion of the Central Bank's Investment Manager Application Form.
Can a UK UCITS management company continue to act as fund manager of a UCITS?	No	N/A	N/A	N/A	N/A	UK UCITS management companies will no longer benefit from authorisation and will be treated as 'third-country' AIF managers.
Can a UCITS management company/ AIFM second staff from the UK?	N/A	Yes	N/A	N/A	Yes	Applications for the use of secondees will be considered by the Central Bank on a case by case basis.
Can the sale of UCITS across the EU continue to be undertaken by a UK licenced firm?	Local laws apply	N/A	N/A	N/A	N/A	Individual Member States' national marketing & distribution rules may preclude entities without a MiFID licence from selling funds in their jurisdiction.

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Will deposits and ancillary liquid assets held with UK credit institutions continue to be UCITS eligible investments?	Yes	N/A	N/A	N/A	N/A	As UK credit institutions will be non-EEA, 'third-country' credit institutions and the Commission has not adopted an equivalence decision under CRR in respect of the UK, the UCITS eligibility of any UK credit institution will depend on it continuing 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".
Can a UK AIFM continue to act as AIFM of an Irish AIF?	N/A	N/A	Yes	No	N/A	Non-EU AIFMs, including a UK AIFM in a no-deal Brexit scenario, can manage Irish QIAFs. Non-EU AIFMs cannot currently manage Irish RIAIFs.
Can a UK AIFM continue marketing an AIF in the EU?	N/A	N/A	Local laws apply	Local laws apply	N/A	UK AIFMs will be non-EU AIFMs and the marketing of AIFs by non-EU AIFMs in other Member States is subject to local laws.
MODIFIED Can the marketing of units of funds in the UK continue?	Yes	N/A	Yes	Yes	N/A	The UK Temporary Permissions Regime (TPR) will enable UCITS and EEA managed AIFs to continue to market in the UK upon notification to the FCA. The current deadline for notifications of funds who wish to use the TPR is 30 October 2019. New sub-funds of funds notified for TPR prior to Brexit and which are authorised post Brexit, may be added to the regime.
Will UK UCITS continue to be eligible investments for Irish UCITS and RIAIFs?	Yes	N/A	N/A	Yes	N/A	UK UCITS will become non-EU AIFs. They will continue to be eligible investments for Irish UCITS and RIAIFs subject to applicable investment restrictions.
MODIFIED Will the use of the UK Central Securities Depository (CSD) continue to be permitted?	Yes	N/A	Yes	Yes	N/A	The UK CSD (CREST) has been recognised for a period of 24 months (until 30 March 2021) in the event of a no-deal Brexit.

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Will UK resident directors and designated persons be treated like EEA residents for the purposes of the Irish 'location rule'?	Yes	Yes	Yes	Yes	Yes	This is under consideration by the Central Bank of Ireland but 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.
Will UK MiFID firms continue to be eligible OTC counterparties for UCITS and RIAIFs?	Yes	N/A	N/A	Yes	N/A	The Central Bank of Ireland has confirmed UK firms whose MiFID licences will expire will not be treated as ineligible counterparties.
Will the transfer of non-centrally cleared pre-EMIR derivative contracts from UK counterparties to EU27 counterparties impact their exempted status?	No	N/A	No	No	N/A	Commission legislation will be introduced in a no-deal Brexit scenario to allow OTC derivative contracts pre-dating EMIR to be transferred from a UK counterparty to an EU27 counterparty while maintaining their exempted status under EMIR for 12 months post-novation.
MODIFIED Will it be possible to continue to use UK Central Counterparties (CCPs) to meet EMIR central clearing obligations?	Yes	N/A	Yes	Yes	N/A	Three UK CCPs (LCH, ICE Clear Europe and LME Clear) have been recognised from the date of a no-deal Brexit until 30 March 2020.
Will it be possible to satisfy the MiFIR share trading obligation by trading dual (UK&EU) listed UK shares on UK markets?	Yes	N/A	Yes	Yes	N/A	Shares with GB ISINs will be permitted to be traded on UK markets irrespective of the existence of EU market liquidity for such shares.
Will it be possible satisfy the MiFIR share trading obligation by trading EU shares on UK markets?	No	N/A	No	No	N/A	Shares with EU ISINs must be traded on an EU regulated market.
Where EU law necessitates the use of credit ratings, will it be possible to use a credit rating issued by a UK CRA?	No	N/A	No	No	N/A	UK CRAs will become third-country agencies and their registration under the CRA Regulation will be withdrawn. Unless a credit rating issued by a UK CRA has been endorsed in accordance with the endorsement regime under the CRA Regulation, it will not be possible to use such credit ratings to comply with EU law requirements stipulating the use of a credit rating.

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For derivatives subject to the EMIR reporting obligation, can I continue to report to a UK trade repository?	No	N/A	No	No	N/A	UK trade repositories currently registered with ESMA will lose their EU registration and no longer be eligible entities to whom derivatives reporting may be made under EMIR.
Will the BoE/other UK bodies involved in managing public debt continue to be exempted from the reuse requirements under the SFTR?	Yes	N/A	Yes	Yes	N/A	A draft Delegated Regulation which extends the list of excluded entities under the SFTR to include UK institutions will take effect on the day following the UK's withdrawal from the EU.
Money Market Funds - will deposits with UK credit institutions be eligible assets under the MMFR?	No	N/A	No	No	N/A	UK credit institutions will be 'third-country' credit institutions and the Commission has not adopted an equivalence decision in respect of UK rules and supervision for EU regulatory purposes.
Will UK markets continue to qualify as regulated markets under MiFID II?	No	N/A	No	No	N/A	UK markets will be third-country markets and no equivalence decision has been adopted by the Commission under MiFID II in respect of UK markets.
MODIFIED Funds that use a benchmark as defined under the Benchmarks Regulation (BMR) – can funds subject to BMR continue to measure performance against/ define their asset allocation/track a UK benchmark index?	YES		YES	YES		UK administrators of benchmarks and third-country benchmarks recognised or endorsed in the UK will be deleted, prior to the date of a no-deal Brexit, from the 'ESMA register of administrators and third-country benchmarks'. Funds will be permitted to continue to use such benchmarks up until 31 December 2021* or such further date as may be provided for, and availed of by the fund, under the BMR. <i>*final legislation extending the deadline from 1 January 2020 to 31 December 2021 was published on 11 October 2019 and is expected to come into effect in the coming weeks.</i>
NEW Will it continue to be possible to transfer personal data to the UK?	YES	YES	YES	YES	YES	As the UK will be a third country for GDPR purposes, measures may need to be put in place (e.g. standard contractual clauses) to permit the transfer of personal data by an Irish fund/management company to the UK from the EEA.

Contact Us

The Q&A is intended as a “ready-reckoner” only and is not a comprehensive list of all implications of a no-deal Brexit for all Irish fund management companies / Irish funds. If you have any queries in relation to this or would like to know more about the services we are offering, please contact any of our Asset Management and Investment Funds partners below or your usual contact at William Fry.



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