irish funds

BREXIT DAY: PLANNING AND PRACTICAL ADVICE

[Last updated 11 November 2019]

With Brexit day (31 January 2020, or sooner) 12 weeks away at the time of writing, and with increased uncertainty around the political process, it is imperative that funds industry companies plan for a no-deal Brexit and put in place measures to identify and counteract risks to the extent possible.

With this in mind, the Irish Funds Brexit Steering Group has prepared the following non-exhaustive list as a guide for identifying some of the main issues which may arise during Brexit planning.

The material contained in this document is for general information and reference purposes only and is not intended to provide legal, tax, accounting, investment, financial or other professional advice on any matter, and is not to be used as such.

1. Possible increased market volatility and reduced liquidity

- There is a possibility of increased market volatility and reduced liquidity around some securities in the run up to and immediately following Brexit day. This could lead to increased difficulty in producing fund valuations.
- Firms should prepare for potential difficulties in pricing and the possibility of requiring fund boards to sign off fund valuations.
- If there are extreme market volatility and liquidity issues, there are likely to be increased operational issues which firms may want to plan for.
- In the case of reduced liquidity in underlying securities this also could lead to pricing issues or in extremis, a need to suspend fund dealing.

2. Staff availability

- Firms have been identifying particular staff who may be required to be onsite or available in the days leading up to and following Brexit day.
- It is understood the Central Bank of Ireland (CBI) have also contacted firms requiring any necessary staff to have been identified and available in the period leading up to and after Brexit day.
- Firms may also want to ensure that fund boards (and ManCos) are contactable at short notice during the period.

3. Staff eligibility to work and travel

- The status of EU staff working or travelling in or out of the UK should be considered prior to Brexit day. EU citizens should apply to the UK government's EU Settlement Scheme to secure status in the UK and continued right to work, if required.
- It is important to note, Irish citizens should be able to travel and work freely in the UK (and vice versa) after Brexit, under the terms of the Common Travel Area (CTA) arrangements but there could be increased travel delays at airports. (The CTA was recently reconfirmed in an MOU between Ireland and the UK.

4. **Fund documentation and compliance**
    - The Central Bank issued a reminder to funds in August 2019, to ensure that entities are appropriately prepared for the impact of Brexit. This included any amendments to fund documentation which may be required.
    - Updates may include amendments to a fund's list of regulated markets reflecting that the UK will cease to be an EU market post Brexit, or policy updates clarifying the geographical focus of a UCITS or Retail Investor AIF (RIAIF).
    - The Central Bank had previously requested that document updates for UCITS and RIAIFs be submitted to the Central Bank by 30 September 2019 in order to be in place for 31 October 2019 deadline, it is not yet clear if there will be a new deadline for submitting documents for the 31 January 2020 deadline.
    - Relevant Irish Funds Working Groups are preparing an information paper outlining a consensus approach to the treatment of possible issues relating to this.

5. **Segregated account Investment Management Agreement ("IMA") requirements**
    - Some firms have been updating and engaging with segregated account clients regarding certain Brexit related investment restrictions which may be contained in their IMAs, for example around trading non-EU securities.

6. **Share Trading Obligation**
    - In May ESMA published an updated approach to the Share Trading Obligation (STO) of Article 23 (1) of MiFIR. This will require EU 27 ISIN securities to be traded on an EU exchange, but UK ISIN securities may be traded on a UK exchange. Firms should assess potential impacts on existing positions and ability to trade impacted securities. The ESMA application of the STO can be found here. The FCA statement regarding the application of the STO can be found here.

7. **Counterparties**
    - Firms should make an assessment if there are possible impacts trading with UK counterparts.

8. **Temporary Permissions Regime (TPR)**
    - For funds wishing to avail of the FCA's Temporary Permissions Regime, they should note that the notification date has been extended to 30 January 2020.
    - If funds have been added to a fund managers population since an earlier notification was submitted to the FCA, the new funds will not be included in the temporary marketing permission regime unless fund managers request to update their notification with the FCA and include these funds in that updated notification.
    - Any fund managers that, as a result of this extension, wish to update their notification before the notification window closes on 30 January 2020, should email recognisedcis@fca.org.uk by the end of 15 January 2020 at the very latest.
    - Further information on the TPR can be found on the FCA website.

9. **Data**
    - In the case of no deal Brexit on 31 January, data processing and data flows between the UK and the EU may require additional specific contractual requirements.
    - The Data Protection Commissioner in Ireland has produced guidance on transfer of personal data from Ireland to the UK in the event of a 'No-Deal' Brexit which can be found at the following link.

10. **System updates**

- Firms should identify and plan for any system changes that may be required to deal with Brexit.
- Furthermore, it may be prudent to not put in place other systems changes in the lead up to Brexit day. (It is understood this was also included in a recently issued CBI Brexit questionnaire issued to firms.)

11. Regulatory environment in the UK

- Attention should be paid to the applicable regulatory regime in the UK on the day following Brexit. While the UK has stated its intention is to ensure current EU regulations would apply in the UK following Brexit, it is not clear that the required transposition of all regulations has taken place or will be in place by Brexit day.

Useful Brexit information:

Irish Funds – Brexit information page:
https://www.irishfunds.ie/getting-started-in-ireland/brexit-resources

Central Bank of Ireland:
https://www.centralbank.ie/regulation/how-we-regulate/brexit-faq
https://www.centralbank.ie/regulation/brexit
https://www.centralbank.ie/regulation/markets-update

UK Government:
https://www.gov.uk/government/publications/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal-information-for-financial-services-institutions

FCA – Brexit considerations for UK firms:
https://www.fca.org.uk/firms/preparing-for-brexit/uk-firms-considerations