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Potential Impact of Brexit on the Irish Asset Management Industry - Passporting

by

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On 23 June 2016 the electorate in the UK voted to exit the European Union (EU).

Asset management is an area which is heavily regulated at EU level and there is now great uncertainty surrounding what will happen to the UK's asset management offering.

The three major regulatory regimes affecting the asset management industry in the EU are:

1. The Undertakings for Collective Investment in Transferable Securities Directive (UCITS) which governs collective investment schemes open to retail investors;

2. The Alternative Investment Fund Managers Directive (AIFMD) which governs collective investment schemes which invest in alternative asset classes; and

3. Markets in Financial Instruments Directive (MiFID) which governs investment firms.

Currently, an entity which is authorised under any of these three regulatory regimes is permitted to market itself on a pan-EU basis and provide services cross border, without the necessity for local authorisation, the establishment of a subsidiary or compliance with the local private placement rules. Although it is possible that the UK may negotiate to retain its passporting rights, it is more likely that UK investment firms and collective investment schemes will become “third country firms” and cease to benefit directly from the MiFID, AIFMD and UCITS passporting regimes following an EU exit.

The impact of the loss of passporting rights on asset management and investment funds domiciled in the UK will depend on the location of the investors and target markets. Where marketing within the EU is a key part of the distribution strategy, the loss of passporting rights may necessitate the migration of funds or fund managers out of the UK, or the establishment of subsidiaries within the EU.

In the event of a large scale migration of asset managers and/or investment funds out of the UK, it is possible that many will choose to redomicile to Ireland, given its reputation and experience in the area, its favourable tax regime, its proximity to the UK, and because it is the only other English speaking country in the EU.

However, while an influx of business would be positive for the asset management and investment fund industry in Ireland, it is also important to consider the negative impact it may have on Irish investment funds and asset managers, if the UK is excluded from the passporting regime. Irish domiciled investment funds and asset managers who previously marketed into the UK under the passport regime may have to negotiate private placement rules following Brexit. Again, the impact of this is unclear at this point and will largely depend on the distribution strategies of the individual funds and asset managers as well as the private placement regime implemented in the UK following a Brexit.

Investment funds and asset managers who are domiciled in the UK, or who market into the UK under the MiFID, AIFMD and UCITS passporting regimes, will now need to begin implementing their contingency plans in the wake of the “leave” vote.

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About the Authors