

The impact of a hard Brexit on non-listed indirect real estate investment

- > An entity's domicile determines the impact of Brexit
- > Investors should be minimally affected
- > Little change for third-country entities expected

Domiciled in one of the 27 remaining EU Member States

Fund Managers and Service Providers

AIFMD: EU fund managers with an AIFMD authorisation will continue to be able to manage and market funds in the 27 remaining EU Member States, but an AIFMD passport will no longer enable EU fund managers to manage and market funds in the UK. To do this in the UK, they will need to seek and obtain permission from the UK FCA and to operate under the FCA's rules, which are currently similar to the AIFMD, until such time as they are amended by the UK Parliament.

Service providers such as administrative agents, auditors or advisors, should generally be able to provide support to EU AIFs without interruption; however, some, such as depositaries, may need separate arrangements in the UK.

MIFID II*: EU fund managers that provide top-off services such as segregated accounts or otherwise provide services falling within

the scope of MIFID II will continue to be able to provide these services in the 27 remaining EU Member States, but will no longer be able to do so in the UK. To provide these services in the UK, they will need to seek and obtain permission from the UK FCA and to operate under the FCA's rules, which are similar to MIFID II, until such time as they are amended by the UK Parliament.

Investors

Investors will continue to be able to invest in EU and UK AIFs and other non-listed investment vehicles such as segregated accounts, JVs and Club Deals. The investor protection provisions under AIFMD will continue to apply to AIFs managed by an EU AIFM.

Domiciled in the UK

Fund Managers and Service Providers

AIFMD: UK fund managers with an AIFMD authorisation before Brexit will continue to

be able to manage and market funds in the UK, but they will no longer benefit from the management and marketing passport for EU AIFs in the 27 remaining EU Member States. To manage these funds, they will need to seek and obtain permission as required by the national rules applicable to the AIF. To market funds, they will need to comply with each relevant EU Member State's private placement regime where potential investors are domiciled.

However, an AIFMD passport would be available if a new AIFM authorisation is obtained by the UK fund manager in one of the 27 remaining EU Member States, subject to all regulatory criteria there. If an EU fund manager is appointed, some AIFM functions can be also delegated to UK domiciled entities as long as the EU fund manager is not deemed a 'letter-box entity'.

Service providers should generally be able to provide support to UK AIFs without interruption; however, some, such as depositaries, may need separate

'UK Managers can opt to obtain AIFM authorisation in one of the 27 remaining EU countries to maintain passporting rights. All substance and regulatory criteria apply; however, some, but not all, functions can be delegated to UK entities'.

arrangements in the 27 remaining EU Member States.

MIFID II*: UK fund managers that provide top-off services such as segregated accounts or otherwise provide services falling within the scope of MIFID II will continue to be able to provide these services in the UK, but will no longer be able to do so in the 27 remaining EU Member States. To provide these services in the 27 remaining EU Member States, they will need to seek and obtain permission from each relevant EU Member State and to operate under the Member State's rules, which could vary somewhat beyond the base requirements in MIFID II.

Investors

Investors will continue to be able to invest in AIFs and other non-listed investment vehicles such as segregated accounts, JVs and Club Deals in the UK. It is likely that the current investor protection provisions under AIFMD and other regulations will continue

to apply in full until they are repealed by the UK Parliament (although existing funds may benefit from grand-fathering rules). Then, UK national investor protection rules will apply.

Domiciled in a Third Country

Fund Managers and Service Providers

Fund managers will continue to need to seek and obtain permission from each relevant EU Member State or the UK's FCA to manage funds set up in the EU. To market funds, they need to seek and obtain permission under each relevant EU Member State's or the UK's private placement regime.

Third Country Marketing passports, which are contemplated under AIFMD, will not become possible in the near term. However, the benefit of the AIFMD passport would be possible if AIFM authorisation is obtained by the third country fund manager (just as UK fund managers after Brexit) in one of the 27

remaining EU Member States, subject to all the regulatory criteria of AIFMD being fulfilled there. Some, but not all, AIFM functions can be delegated to entities domiciled in third countries or in the UK in such cases.

Investors

Investors will continue to be able to invest in AIFs and other non-listed investment vehicles such as segregated accounts, JVs and Club Deals in the 27 remaining EU Member States as well as in the UK, subject to their national private placement rules being complied with. The investor protection provisions under AIFMD and other regulations will continue to apply to investors in EU AIFs under the AIFMD and to investors in UK AIFs under the FCA's rules, which are currently similar in practice to the AIFMD, until they are amended by the UK Parliament.

**MIFID II comes into effect in January 2018.*



Although this mapping exercise is designed to show the impact of a hard Brexit on non-listed indirect real estate investment, the political situation around Brexit remains fluid. Regulations and tax rules, particularly in the UK, could change rapidly in response to a hard Brexit.