



## Guest article: Travers Smith on the UK Investment Management Strategy

In the same week in December 2017 as the 'will they/won't they' drama over the announcement on the progress of the first phase of the Brexit negotiations covering the framework for an orderly withdrawal, the UK Government (through its economic and finance ministry, HM Treasury) published an updated version of its strategy paper on the UK investment management industry. This paper, "Investment Management Strategy II", is an important signpost to the UK's post-Brexit approach to financial services. It also has wider, international implications because the UK asset management industry is the largest in Europe with £8.1 trillion of assets under management. The UK's Chancellor of the Exchequer describes the strategy as creating "an environment in which firms can deliver the best possible outcomes for investors", and strengthening "the UK's brand for asset management, enabling firms to respond effectively to the UK's withdrawal from the European Union and capitalise upon future trading opportunities".

The strategy paper sets out a number of objectives. These include: focusing on the UK's tax and regulatory environment so that it is stable and competitive; supporting the UK to become a global leader in innovative investment strategies; and international coordination to help the industry attract overseas firms to locate in the UK and promote UK firms overseas. These are lofty ambitions but, as may be expected, the paper is light on details of what the UK Government will actually do. There will also be challenges ahead to reconcile the strategy with the agreed position set out in the Phase 1 Brexit negotiations that the UK will maintain full alignment with the rules of the Single Market as between Northern Ireland and the Republic of Ireland, but will also ensure no new regulatory barriers develop between Northern Ireland and the rest of the UK.

We would suggest there are a number of initiatives the Government should pursue that would fall squarely within its stated strategy and would assist the UK fund management industry (and consequently, because of the UK's position, the global industry). Further, these suggestions are entirely within the control of the UK Government and are not dependent on the nuances of whatever Brexit deal is eventually struck.

1. **Parallel regulatory regimes.** It is hoped that as part of the Brexit negotiation, the UK will be granted 'equivalent' status to the EU in all respects under relevant EU financial services laws, either for a transitional or longer period. This would clearly fit within the 'regulatory alignment' referred to above. However, to achieve the UK's aim of maintaining and enhancing the UK's status as a competitive global centre for asset management, the UK should consider a revised and, in certain respects new, legislative and regulatory framework sitting alongside the EU equivalent regime for managers that are not managing EU funds or marketing under passports to EU investors. This dual regime could alleviate some of the more onerous aspects of EU legislation, whilst at the same time provide appropriate levels of investor protection.
2. **Marketing made easy.** It is not within the control of the UK Government to dictate the marketing restrictions that apply in overseas jurisdictions for the marketing of a UK fund but, as noted in the strategy paper, the government can collaborate on Mutual Recognition of Funds (MRF) agreements with particular jurisdictions. In addition, UK laws should be modified to attract institutions with available capital to have a base in the UK. With investors building a presence in the UK, the asset managers (and the associated infrastructure) will follow, creating an efficient environment for the marketing, establishment and operation of funds. As suggestions, the UK's current financial promotion and fund marketing regime for private funds could be simplified, for instance by allowing marketing to ultra-high net worth individuals and family offices. The presumptions in MiFID II that local and public authorities (and their pension funds) are 'retail investors' should be reversed. A new category of 'sophisticated investor' would also provide much needed flexibility and better represent the diversity of investors. This would not damage investor protection, since there would still be the requirement to ensure that the investor had appropriate knowledge and experience to understand the risks involved before they invested.
3. **Attracting foreign managers.** If fund management businesses that are already regulated in other jurisdictions (where there is a level of equivalence to the UK's regulatory regime) wish to establish operations or branches in the UK, there should be a fast-track approval process to carry on the relevant regulated activities in the UK, taking account of those managers' existing regulatory approvals.
4. **A range of flexible fund and corporate structures.** The UK's strategy paper acknowledges that a stable and attractive tax regime is needed, both to prevent double taxation and ensure that tax exempt investors are not disadvantaged by investing through a fund structure. But more could be done to make the UK an attractive domicile for funds. The UK should target having a range of available fund and corporate vehicles that can be used across all investment structures to invest in strategies that provide a tax efficient result for investors. The UK should establish a tax exempt corporate fund structure so that it can compete with equivalent EU domiciled vehicles, including those in Ireland and Luxembourg. It should also consider whether specific regulations applicable to securitisation and loan origination funds should be provided (it's likely that alternative debt and credit funds will continue to perform an increasing role in the financial markets).
5. **VAT.** The UK's departure from the EU will have significant VAT implications for UK businesses and will require a fundamental review of how VAT should operate going forwards. In the context of the fund management industry, certain UK based funds (particularly those structured as limited partnerships) are currently at a disadvantage to their counterparts in Luxembourg, Ireland and the Netherlands. The UK should broaden

the scope of the exemption for the management of special investment funds to cover limited partnerships, including those used for real estate funds and private equity funds. This will put the UK on a level playing field with other EU member states and, in addition, widening the exemption may assist with various asset classes being brought back onshore.



**Sam Kay**  
**Head of Investment Funds**  
[samuel.kay@traverssmith.com](mailto:samuel.kay@traverssmith.com)

Sam heads up the Investment Funds Group and specialises in fund formation work for a wide range of private funds. He has 20 years' experience working on investment funds projects and he has been a partner at Travers Smith since 2008.

He also works on secondaries transactions, carried interest arrangements and co-investment schemes, advising institutional investors on their participation in funds and internal restructurings such as LLP conversions, succession planning and management spin-outs.

Sam is recognised for Investment Funds work by Chambers and Partners, IFLR1000 and Who's Who Legal for Private Funds.