CLEVELAND & CO

External in-house counsel

INVESTMENT FUNDS GUIDE FOR 2018

April 2018

This Guide highlights the key 2017 legal developments that may impact the investment funds industry in 2018, and covers the following areas:

1. **Private funds**:
    a. LPA reforms;
    b. PSC Register;
    c. Local government pension schemes ("**LGPS**") opt-ups;
    d. EuVECA;
    e. Institutional Limited Partners Association ("**ILPA**"); and
    f. the annual Private Equity Reporting Group ("**PERG**") report.
2. **Listed funds**:
    a. updates to listing rules;
    b. LEI requirements;
    c. the prospectus regulation;
    d. AIM's designation as an SME growth market;
    e. ESMA Q&As on MAR;
    f. Revisions to the UK Corporate Governance Code (the "**Governance Code**");
    g. IA principles of remuneration; and
    h. new public register for shareholder votes.
3. **Regulation**:
    a. MiFID II;
    b. PRIIPs;
    c. new prudential regime;
    d. AIFMD;
    e. EMIR;
    f. EU Securitisation;
    g. EU Fourth Money Laundering Directive ("**MLD 4**"); and
    h. GDPR.
4. **Miscellaneous**:
    a. Brexit

Regulation	Key findings	Impact on firms

1. PRIVATE FUNDS

a) Limited Partnerships Act reforms

Key findings

In April 2017, the Legislative Reform (Private Fund Limitation Partnerships) Order (the **"Order"**) came into effect. The reforms have been introduced with a view to modernise the UK limited partnerships regime for private funds by way of amendments to the Limited Partnerships Act 1907 (the **"1907 Act"**).

The reforms apply only to a limited partnership that is 'designated' as a Private Fund Limited Partnership ("**PFLP"**). The 1907 Act continues to apply to all other English and Scottish limited partnerships.

A PFLP is a limited partnership that satisfied the following two conditions:

- it is constituted by an agreement in writing; and
- it is a 'collective investment scheme' within the meaning of section 235 of the UK Financial Services Markets Act 2000 ("**FSMA**") but ignoring any exemptions pursuant to section 235 (5) of the FSMA (for example, the 'group' exemption).

The Order makes significant changes to the 1907 Act and largely relates to:

- introducing a list of matters (the 'white list activities') that limited partners can participate in without jeopardising their limited liability status;
- no longer requiring a limited partner to contribute capital to a UK limited partnership; and
- changes in the requirements relating to winding-up, filing or advertising requirements.

Impact on firms

Most private investment funds, such as private equity and venture capital funds and their related vehicles such as co-investment vehicles and feeder funds, will fulfil the conditions of a PFLP.

However, the new regime is not mandatory. It is open to a limited partnership that satisfies the conditions to be a PFLP to choose not to apply to be designated as a PFLP. If they choose not to be designated as a PFLP, the pre-existing limited partnership law will continue to apply to it.

Regulation	Key findings	Impact on firms
b) PSC Register extended to include Scottish limited partnerships	In June 2017, the Information about People with Significant Control (Amendment) Regulations 2017 (the "**Regulations**") conformed the UK PSC regime to the requirements of MLD 4. The Scottish Partnerships (Register of People with Significant Control) Regulations 2017 also came into force and extends the PSC regime to Scottish limited partnerships and Scottish general partnerships in which the partners are all corporate bodies ('eligible Scottish partnerships').	Eligible Scottish partnerships are now required to: – identify their PSCs; and – register their PSC information at Companies House. They are not, however, required to maintain their own PSC register.
c) LGPS opt-ups	As a result of MiFID II, LGPS' are now categorised as retail clients. This is relevant to: – fund managers being able to market to LGPS; – determining whether the PRIIPs Regulations will apply; and – whether a key information document is needed to market to the LGPS.	For funds with LGPS as investors or which are being marketed to LGPS, the manager may wish to request that such LGPS opt-up to professional client status to avoid the more stringent rules associated with retail clients.
d) EuVECA Regulation	In November 2017, the revised EuVECA Regulation entered into force and will apply from 1 March 2018. The revised EuVECA Regulation: – enables EuSEF and EuVECA registered managers to market their funds across the EU; – widens the range of managers eligible to set up and manage EuVECA and EuSEF funds to include those assets under management of more than EUR500 million; – widens the range of firms that EuVECA funds can invest in to include unlisted companies with up to 499 employees; and – gives ESMA an oversight role to ensure funds are consistently registered and supervised.	The EuVECA Regulation applies to managers of alternative investment funds ("**AIFs**") that meet all of the following conditions: – their assets under management in total do not exceed the threshold in Article 3(2)(b) of the AIFMD (EUR500 million); – they are established in the EU; – they are subject to registration in their home member state in accordance with the AIFMD; and – they manage portfolios of qualifying venture capital funds (as defined in the EuVECA Regulation).

Regulation	Key findings	Impact on firms
e) ILPA guidance on use of credit facilities	In June 2017, ILPA published guidance regarding the risk and potential impact on limited partners resulting from using short-term financing to bridge the time between a deal closing and the eventual calling of capital. The guidance includes recommendations for greater disclosures and clarity in limited partnership agreements around parameters for their use. The guidance will be incorporated into the forthcoming revised ILPA Principles by early 2018.	Specific recommendations include: – within limited partnership agreements, waterfall provisions should specify that the date used to calculate the general partner's preferred return hurdle aligns to when the credit facility is drawn, rather than when capital is ultimately called from the LPs; – managers using credit lines should disclose to their limited partners certain, specified information as part of quarterly reports; – managers are advised against using these facilities to cover fund distributions in anticipation of, but prior to, a portfolio company exit; and – limited partners sitting on advisory committees should consider adding a discussion item on the use of credit lines to LPAC meeting agendas, potentially to include an assessment of whether the terms of facilities in use are considered 'market'.
f) ILPA model Subscription Agreement	In December 2017, ILPA published a model subscription agreement for private equity funds in an effort to streamline fundraising, increase clarity and improve the efficiency of capital formation.	The document can be easily customised to meet the needs of fund managers and their investors and has been developed by legal counsels representing the private equity industry. The ILPA model form subscription agreement is available here.

Regulation	Key findings	Impact on firms
g) 10th Annual PERG Report	In December 2017, the 10th edition of the annual report by PERG, the body set-up to monitor the openness and transparency in the private equity industry and measure compliance with the Walker Guidelines, was published. Each year, a sample of approximately a third of portfolio companies that fall within the scope of the Guidelines are reviewed for compliance with the disclosure requirements. In 2017, compliance fell to 79%, against 86% the previous year, with PERG stating that non-compliance is driven by British Private Equity and Venture Capital Association ("**BVCA**") members.	To avoid non-compliance, private equity firms are encouraged to embed the 2014 revisions of the Walker Guidelines and to take note of the rise in reporting standards by FTSE 350 companies, as these are the benchmarks PERG uses for judging compliance.

2. LISTED FUNDS

I. LPDT AND AIM RULES

Regulation	Key findings	Impact on firms
a) Listing Rule changes for 2018 IPOs	In January 2018, a new version of the premium listing eligibility requirements came into force. A new concessionary route for property companies was introduced and is expected to eliminate the current practice of property fund IPOs being followed by a conversion to Chapter 6 at a later date.	In order to benefit from this route, the property company must either: – demonstrate that it has three years of development of its real estate assets represented by increases of the gross asset value of its real estate assets, evidenced by financial statements and supported by a property valuation report; or – demonstrate that 75% of the gross asset value of its real estate assets, as supported by a published property value report, are revenue generating at the point in time when the application for admission to a premium listing is made.
b) LEI Requirement for Official List and AIM companies	Since 1 October 2017, all Official List companies are required to have a legal entity identifier ("**LEI**"): a unique 20 digit alpha-numeric code which identifies companies participating in financial transactions.	The Disclosure and Transparency Rules require Official List companies to submit their LEI to the FCA whenever they make an announcement of regulated information, i.e. one including inside information. As a result of MiFID II, all AIM companies now need to have an LEI and should have obtained one by 30 November 2017. Under MiFID II, where an AIM company is a direct client of a MiFID investment firm and the MiFID firm has a transaction reporting obligation in relation to that client, it will need to identify the AIM company as buyer or seller in relation to the relevant transaction using an LEI code. If the AIM company does not have an LEI code, the MiFID firm will be unable to carry out any MiFID service for that company which would result in a

Regulation	Key findings	Impact on firms
		transaction report needing to be filed. Although ESMA has provided a last minute six month reprieve to deal with a backlog of applications, all companies should obtain an LEI without delay.
c) Prospectus Regulation: publication in the Official Journal	In July 2017, the new Prospectus, which repeals and replaces the existing Prospectus Directive, came into force. A number of provisions relating to the exemptions to the requirement to publish a prospectus came into force, including: – **the 10% 'tap issue' exemption:** where shares being admitted to trading represent, over a 12 month period, less than 10% of the number of shares of the same class already admitted to trading on the same regulated market, has been increased to 20%; and – **the exemption where shares are converted or exchanged:** where the shares result from the conversion or exchange of other transferable securities or from the exercise of rights conferred by other transferable securities, provided that the shares are of the same class as shares already admitted to trading on the same regulated market) has been limited, with some exceptions, so that it only applies when the resulting shares represent, over a period of 12 months, less than 20% of the number of shares of the same class already admitted to trading on the same regulated market. The de minimis threshold (where a prospectus is not required regardless of the type of offer) is being increased from €100,000 to €1 million. From 21 July 2018, the consideration exemption threshold for offers to the public (where the offer has a total consideration of less than €5 million) is being increased to €8 million, although member states	It is up to institutional investors to decide whether they wish to vote for a 20% disapplication of pre-emption rights.

Regulation	Key findings	Impact on firms
	can elect to set a smaller of threshold of between €1 million and €8 million.	
d) AIM's designation as an SME Growth Market	To comply with the rules for SME Growth Markets, the AIM Rules now require that any prospectuses, annual or half yearly reports or notifications of inside information for the purposes of MAR, which are published from 3 January 2018 will be required to remain on an issuer's website for 5 years. The provisions of Rule 18 (Insider Lists) will apply and provide a very limited exemption from the insider list requirement. This exemption is subject to the following conditions: – the issuer taking all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information; and – the issuer being able to provide the competent authority, upon request, with an insider list.	Given the limited nature of this exemption, and that issuers will still be under an obligation to provide an insider list on request, AIM investment companies should not be changing their practices.

II. MARKET ABUSE REGULATION

Regulation	Key findings	Impact on firms
a) ESMA MAR Q&A	In October 2017, the City of London Law Society ("**CLLS**") published a revised Q&A on MAR in line with ESMA's view, which covers the position where the director of company 'A' is also a 'person discharging managerial responsibilities' ("**PDMR"**) in another company, B. B will be a 'person closely associated' ("**PCA")** to the PDMR in company A (the "**director**") for the purposes of EU MAR if any one of the following applies: – the managerial responsibilities of B are discharged by the director (or a PCA to the director); or – B is directly or indirectly controlled by the director (or a PCA to the director); or – B is set up for the benefit of the director (or a PCA to the director); or – the economic interests of B are substantially equivalent to those of the director (or a PCA to the director). If B carries out a transaction in the financial instruments of A at a time when it is a PCA to the director under any of the above, and the transaction either itself or when aggregated with previous transactions has reached the threshold of EUR5,000, then B must notify A and the Competent authority of that transaction as required by Article 19(1). A PCA includes: • the PDMR's spouse, or a partner considered to be equivalent to a spouse under national law; • a dependent child of the PDMR; • a relative of the PDMR who has shared the same household for at least one year on the date of the transaction concerned; and • a legal person, trust or partnership, the managerial responsibilities of which are discharged by the PDMR, or	To avoid making B a PCA, the director should not vote on, participate in any discussion in relation to, or otherwise influence any decision of B to carry out a transaction in financial instruments of A. It will be sufficient for these purposes for the director to recuse themselves from any board meeting discussing or relating to A, unless on the specific facts of the case the director otherwise exerted an influence on B's decision. A should not include B on its list of PCAs, and the director should not notify B in writing of its obligations as a PCA to a PDMR in A under Article 19(5) of the Market Abuse Regulations, unless and until B carries out a transaction in the financial instruments of A and the director participated in or influenced B's decision to do so.

Regulation	Key findings	Impact on firms
	which is directly or indirectly controlled by such a person, or which is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such a person. The CLLS Q&A states that B will not be a PCA to the director unless and until B carries out a transaction in A's financial instruments. If B does carry out a transaction in the financial instrument of A, B will only be treated as a PCA if the director took part in or influenced the decision of B to carry out that transaction.	

III. CORPORATE GOVERNANCE

a) Consultation for revisions to the Code	In December 2017, the Financial Reporting Council ("**FRC**") published its proposals for a revised Code. This is the biggest shake-up of the Code in recent years, and the changes will affect all companies on the premium segment of the Official List and others who have voluntarily agreed to comply with the Code. The FRC aims to publish a final version of the Code by early summer 2018 and the new Code will apply to accounting periods beginning on or after 1 January 2018. The proposals include revised guidance on the independence and tenure of non-executive directors. Currently, the Code provides that the board may determine a director to be independent notwithstanding the existence of certain relationships or circumstances, including where the director has served on the board for more than nine years. This presumption of independence will be removed and the revised Code will state that non-executive directors, including the chair,	The FRC notes that many companies and investors use the nine year criterion for independence as a 'de facto' tenure period, and confirms that this is the right approach. The FRC does not expect either an independent director or chair to be on a board for more than nine years in total, including where a non-executive goes on to become the chair. This will be particularly controversial for those chairmen who have not yet served nine years in their current role but previously held non-executive positions which would bring them within the nine year rule.

Regulation	Key findings	Impact on firms
	should not be considered independent for the purposes of board and committee composition, if any of the specified factors (including the nine year rule) are relevant.	
b) Investment Association updates its principles of remuneration	In November 2017, the IA wrote to the chairmen of remuneration committees of FTSE 350 companies to outline key changes to The Investment Association Principles of Remuneration for 2018. The changes for 2018 are mostly incremental and only relevant to internally managed funds.	The main rule change is a requirement for long term incentives and bonuses paid as shares to have a minimum 5 year vesting and post-vesting hold period (in total).
c) New public Register of Shareholder Votes	The IA has created a new Public Register of shareholder votes. The Public Register comprises FTSE All-Share companies who received votes of 20% or more against any resolution or who withdrew any resolution in 2017 and, going forward, will be updated on an ongoing basis.	The IA will give companies who will be included on the register the opportunity to provide an explanation of how they have addressed shareholder concerns since the shareholder vote.

3. REGULATION

a) MiFID II	The recast EU Markets in Financial Instruments Directive ("**MiFID II") and Markets in Financial Instruments Regulation ("**MiFIR**") took effect on 3 January 2018. Although managers of collective investment undertakings (such as AIFMs, UCITS managers and operators of residual collective investment schemes ("**CISs**") are not directly within scope of the	In practice, this means that the ban and research rules will not apply to private equity fund managers. By now, fund managers should have identified those elements of MiFID II which will impact them (either directly or indirectly) and have well-

Regulation	Key findings	Impact on firms
	MiFID regime when acting in that capacity, the new rules will nonetheless still have an impact on them because: – AIFMs or UCITS managers also undertake certain permitted MiFID 'top-up' activities and therefore are directly subject to certain MiFID-based rules when doing so; – counterparties with whom AIFMs are dealing (e.g. brokers, trading venue operators or third party distributors of fund interests) are themselves subject to MiFID rules and in order to comply with those requirements, they require (whether by contract or as a matter of practice) the AIFM to adhere to certain new standards; and – the FCA has chosen to 'gold plate' the application of certain MiFID requirements by extending these to AIFMs e.g. the FCA's rules contained in the PROD handbook. In terms of 'gold-plating', PS 17/14 confirmed that the FCA: – will not extend the application of transaction reporting requirements to AIFMs (even when they are undertaking MiFID 'top-up' activities); – will apply the best execution requirements (including data publication reports) to UCITs managers, but will not apply them to AIFMs or residual CIS operators; – will not apply the requirements relating to telephone taping and recording of electronic communications to AIFMs, provided that the relevant transactions do not relate to instruments which are admitted to trading, traded or subject to a request for admission to trading on a trading venue (or related instruments whose price or value depends on, or has an effect on, the value of such instruments); – will apply, with appropriate modifications, the ban on receiving inducements and the associated research rules on investment research to AIFMs when executing orders or placing them for execution, subject to an exemption in relation to AIFs or CISs whose core investment policy:	advanced implementation plans for any elements that they have not managed to implement in full by 3 January 2018. It is also likely that MiFID counterparties with whom AIFMs regularly interact will (if they have not already) be making contact to discuss the new requirements, including any changes in the terms of agreements or additional required data from 2018 onwards.

Regulation	Key findings	Impact on firms
	○ does not generally involve investing in financial instruments that can be registered in a financial instruments account opened in the books of a depositary or physically delivered to a depositary; or ○ generally involves investing in issuers or non-listed companies in order to acquire control; ○ will apply the product governance requirements as guidance, but not binding rules, to fund managers (but note that fund managers may be required to comply with certain product governance requirements as a matter of practice if they are deemed to be co-manufacturing with an in-scope firm and/or interests in their funds are distributed by MiFID firms); and ○ will apply the new retail client categorisation and opt-up criteria in respect of local authorities to both MiFID and non-MiFID business.	
b) PRIIPs Regulation	The Regulation on Packaged Retail and Insurance-Based Investment Products ("**PRIIPs")** took effect on 1 January 2018. A PRIIP includes investments in relation to which the amount repayable to the investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the investor. In practice, this will therefore include shares or units in all types of funds, including AIFs, non-AIF CISs and UCITS funds, although UCITS funds benefit from transitional relief until 31 December 2019.	As 'manufacturers' under the PRIIPs Regulation, fund managers (or, in the case of listed investment companies, potentially the fund itself) will be required to prepare the PRIIPs key information document ("**KID**") if interests in the relevant fund are made available to retail investors (as defined under MiFID II) on or after 1 January 2018. This includes where a fund was established prior to 1 January 2018, but continues to be made available to retail investors on or after that date. The KID must comply with the detailed technical standards set out in Commission Delegated Regulation 2017/653 ("**PRIIPs RTS"**). The PRIIPs manufacturer will be liable if a retail investor can demonstrate loss

Regulation	Key findings	Impact on firms
		as a result of relying on a misleading or inaccurate KID. Firms that advise on or sell PRIIPs to retail investors are required to provide the relevant KID to such investors in good time before they are bound to enter into the transaction. This will include firms (such as adviser-arrangers) that may be involved in distributing fund interests to retail investors, but may also catch fund managers themselves to the extent that they are directly involved in distribution. Firms that do not make PRIIPs available to retail investors (for example, because they do not sell products to retail investors and include appropriate restrictions on the subsequent distribution of products that they do sell) will fall outside the scope of the PRIIPs Regulation. However, MiFID firms should be aware of ESMA's view that under the MiFID II costs and charges disclosure regime, where the relevant product is a PRIIP, the detailed methodology applicable for calculating the costs of that product should be as set out in the PRIIPs RTS, even if that product is not being distributed to retail investors and a PRIIPs Kid is not required. This means that MiFID firms that deal in PRIIPs on behalf of their professional clients (for example, by buying and selling interests in investment funds) will need to gather the relevant data and apply the PRIIPs methodology in order to make costs disclosures to those clients. In turn, this may mean that PRIIPs manufacturers, such as fund managers, may be asked to provide additional granular information

Regulation	Key findings	Impact on firms
		to facilitate the application of the PRIIPs cost methodology, even though their funds are not made available to retail investors and they do not have to prepare a PRIIPs KID.
c) **EBA opinion on new prudential regime for investment firms**	On 29 September 2017, the European Banking Authority ("**EBA**") published an opinion addressed to the European Commission containing the EBA's proposals for a new prudential regime for MiFID investment firms. If these proposals are introduced as law, they would result in significant changes to the regulatory capital rules applicable to MiFID firms, as well as impacting other areas such as pay regulation and disclosure requirements for such firms.	Fund management groups with MiFID firms within their structures would therefore be affected by the new rules.
d) AIFMD	On 5 October 2017, ESMA published an updated set of Q&As in relation to the application of the AIFMD. The remuneration disclosure requirements in relation to AIF annual reports also apply to the staff of a delegate to whom an AIFM has delegated portfolio or risk management. The AIFM may obtain the relevant information in one of two ways: – if the delegate is subject to regulatory rules which require remuneration disclosures in relation to its staff undertaking portfolio and/or risk management that are equally as effective as the AIFMD disclosure requirements, the AIFM may use the information disclosed by the delegate for those purposes. ESMA has not expressly defined the concept of 'equal effectiveness' in this context, although the language used in the response appears to envisage that the delegate will be subject to the specific AIFMD rules; or – through appropriate contractual arrangements with the delegate which allow the AIFM to receive and disclose in its	ESMA confirmed that information on remuneration disclosures in the AIF annual report should be included in the report itself, rather than by way of a link or cross-reference to external material. The revised Q&As also give further guidance on how AIFMs should report their use of securities financing transactions ("**SFT**") on behalf of the AIF. In particular, ESMA has confirmed that the information should be reported as a snapshot as at the reporting date, except in relation to data on the reuse of collateral and data on the return and cost for each type of SFT.

Regulation	Key findings	Impact on firms
	annual report the necessary information about remuneration of identified staff within the delegate in connection with the delegated portfolio.	
e) **EMIR**	In May 2017, the European Commission published a proposal for a regulation to amend the existing European Market Infrastructure Regulation ("**EMIR**"). A number of the proposed amendments are likely to be welcomed, including increased proportionality in relation to the EMIR clearing requirements.	However, certain amendments may be less well received, including the proposal to broaden the definition of a 'financial counterparty' in a manner that is likely to capture non-EU AIFs managed by non-EU AIFMs. In turn, this could mean that many such AIFs, when trading with in-scope EU counterparties, would be required to comply with the expensive EMIR clearing and margining requirements for the first time, whereas as non-financial counterparties, are currently exempt from doing so unless they exceed one of the specified clearing thresholds.
f) **EU Securitisation Regulation**	On 28 December 2017, the official text of the Securitisation Regulation (Regulation (EU) 2017/2402) was published in the EU Official Journal. The Securitisation Regulation aims to: – harmonise due diligence, risk retention and transparency requirements for parties involved in securitisations, including originators, sponsors, original lenders and investors; and – establish the regulatory framework for so-called 'simple, transparent and standardised' ("**STS**") securitisations. In particular, it will: – impose a direct risk retention requirement for at least 5% on	Both the Securitisation Regulation and the regulation amending the CRR will apply from 1 January 2019, although certain grandfathering and transitional arrangements apply. Fund managers that are involved in establishing and/or structuring securitisations will need to assess the implications of the new legislation carefully in order to ensure that future securitisations have an efficient regulatory capital structure and comply with the increased disclosure requirements. Where a fund manager invests in securitisations on behalf of the funds it manages, it will need to take into account the

Regulation	Key findings	Impact on firms
	the originator, sponsor or original lender (rather than the existing direct approach, whereby regulated investors suffer a penal capital charge if they invest in securitisations where the risk retention requirements have not been met, which creates market pressure for the originator, sponsor or original lender to comply); – introduce new due diligence requirements for regulated investors; – make originators, sponsors and securitisation special purpose entities ("**SSPEs**") subject to new transparency rules requiring them to make additional information available about the securitisation structure and the underlying exposures; – introduce a new regime for 'securitisation repositories' to hold data on securitisations; – introduce new restrictions on the sale of securitisation positions to retail clients; – ban re-securitisations, except in relation to those which are used for 'legitimate purposes' which have been approved by regulators; and – introduce a new regime for STS securitisations, which will qualify for more favourable regulatory treatment. In parallel, the text of a regulation amending the existing CRR to introduce revised regulatory capital rules applicable to positions in securitisations (Regulation (EU) 2017/2401) was also published in the Official Journal on 28 December 2017. This will introduce new rules relating to securitisation exposures which are designed to be more risk sensitive and which will introduce more favourable regulatory capital treatment for STS securitisations.	new due diligence requirements and the potentially increased information available to it.

Regulation	Key findings	Impact on firms
g) MLD 4	The Fourth Anti-Money Laundering Directive (“**MLD4”)** was required to be transposed into national law by EU Member States by 26 June 2017. In the UK, the relevant requirements were given effect from that date through the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“**MLRs 2017**”).	Firms should have reviewed their anti-money laundering and customer due diligence (“**CDD”**) procedures to ensure that these are compliant with the new requirements in the MLRs 2017 and take into account the Risk Factor Guidelines, the JMLSG guidance and the FCA guidance on Politically Exposed Persons. This will involve: – revisions to the firm’s CDD document; – revisions to the firm’s internal policies; and – additional staff training.
h) GDPR	The General Data Protection Regulation (2016/679) (“**GDPR**”) will take direct effect on 25 May 2018 repealing the Data Protection Directive (95/46/EC), which was implemented in the UK by the Data Protection Act 1998. The GDPR is likely to remain a part of English law regardless of Brexit. The GDPR will significantly extend the application of the EU data protection regime, catching GPs and fund managers outside the EEA.	The GDPR will apply to data controllers (the person who determines the purposes and manner in which personal data is processed) established in the EU, but it will also apply to data processors (a person who processes personal data on behalf of the data controller). Day one compliance is required. Funds and their administrators should now consider the issues and changes they will need to make and use the next few months to put them into effect, e.g. in terms of their procedures, systems and technology, in order to be ready. In many cases, funds will need to update their policies to reflect compliance with the GDPR.

4. MISCELLENOUS

Regulation	Key findings	Impact on firms
a) Brexit	In the UK, the European Union Withdrawal Bill (the "**EU Withdrawal Bill**") will repeal the European Communities Act 1972, which provides that EU law has effect in the UK and must be followed by the courts, and gives wide powers to ministers to amend UK law to make it consistent with the requirement of EU law. In November 2017, the European Commission published a Notice to Stakeholders warning that EU company law will no longer apply in the UK following Brexit. Michel Barnier (chief negotiator for the European Commission on the Brexit negotiations) gave a speech considering the impact of Brexit on financial services. Mr Barnier stated that the legal consequences of Brexit would be that UK financial services providers will lose their EU passport. However, he also stated that the EU would 'have the possibility to judge some UK rules as equivalent', based on a proportional and risk-based approach, and in those areas where EU legislation foresees equivalence.	Following the Brexit vote in 2016, there are signs within the investment funds industry that it will be fund vehicles, rather than UK based managers, which will migrate. Funds, investors and their advisers need to plan ahead for the post-Brexit world as best as they can. From a legal perspective, a potential migration could be considered and agreed now and included in key documentation as an option within the manager's control (for private funds, such an option could be included in a limited partnership agreement; for listed funds, this could be included in the investment management agreement).

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