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Brexit Update – Luxembourg's Transitional Regime For UK Firms In 'Hard Brexit' Scenario

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In early August 2019, the Luxembourg regulator, the Commission de Surveillance du Secteur Financier (the "**CSSF**"), confirmed in a press release that it had opened an online portal to allow UK firms currently using a financial services passport to operate in Luxembourg to benefit from a one year Luxembourg transitional regime in the event that the UK leaves the European Union ("EU") on 31 October 2019 without a withdrawal agreement having been agreed (a "Hard Brexit"). The CSSF online portal remains open until 15 September 2019.

Hard Brexit, Luxembourg Transitional Regime and the Online Portal

Many UK firms currently carry on cross-border services in Luxembourg in reliance on an EU financial services passport (e.g., under the Alternative Investment Fund Managers Directive ("AIFMD") or the Markets in Financial Instruments Directive ("MIFID")). In the event of a Hard Brexit on 31 October 2019, the UK would become a "third-country" (i.e., a country which is not a member of the European Economic Area ("EEA")). Consequently, UK firms would no longer be able to provide services in other EEA Member States under the financial services passports. For example, a UK alternative investment fund manager ("AIFM") would no longer be able to market its EEA alternative investment fund ("AIF") in other EEA Member States under the AIFMD marketing passport in the event of a Hard Brexit.

To avoid such a high-edge scenario, Luxembourg has introduced a transitional regime which would allow UK firms operating in Luxembourg under the financial services passport to continue to do so for a one year transitional period. So a UK AIFM that currently markets its AIF in Luxembourg under the AIFMD marketing passport would be able to continue to do so under the transitional regime. It should be noted that this transitional relief would only apply for Luxembourg; it is not EEA wide. If a UK AIFM wished to continue to market its AIF in other EEA Member States, it must consider what the Hard Brexit position would be in each Member State.

To benefit from the Luxembourg transitional regime, UK firms are required to notify the CSSF via a dedicated online portal on the CSSF website by 15 September 2019. Upon receipt of the notification, the CSSF will confirm whether or not the UK firm is granted the transitional relief.

As part of the notification process, UK firms are required to explain what they plan to do at the end of the transitional period, e.g., cease operating in Luxembourg or apply for authorisation from the CSSF.

Next Steps

Before notifying on the portal, UK firms should consider, in consultation with their legal counsel, if they are currently providing services in Luxembourg under one of the financial services passports and whether they would need to rely on the transitional regime in order to continue to provide such services in Luxembourg after a Hard Brexit. For example, depending on the fact pattern, it may be possible for the services to be provided into Luxembourg on a reverse solicitation basis, and under this scenario it may not be necessary to notify under the transitional regime. In the case of AIF marketing, a UK AIFM may decide that it is comfortable marketing in Luxembourg under the national private placement regime notification process which is available to non-EEA AIFMs. For UK firms which decide to notify for the Luxembourg transitional regime, the deadline for doing so is 15 September 2019.

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