

Mandatory notifications in the context of Brexit for UK AIFMs managing Luxembourg AIFs.

In our [newsletter](#) dated 16 July 2019, we drew your attention to two CSSF press releases ([19/33](#) and [19/34](#)) in which the Luxembourg regulator of the financial sector informed UK entities (i.e. UK firms authorised under CRD[i], MiFID[ii], PSD[iii] or EMD[iv] and UK undertakings for collective investment and their managers) that notifications were required to be made no later than 15 September 2019 to benefit from a temporary transitional regime following the occurrence of a hard Brexit.

Further to these press releases, the CSSF has now published a new communication ([press release 19/48](#)) regarding the situation of UK alternative investment fund managers (“**UK AIFMs**”). Such communication targets UK AIFMs which currently manage Luxembourg alternative investment funds (“**AIFs**”) and which (i) either have not submitted a notification[v] to benefit from the transitional regime or (ii) have submitted a notification but would like to recall such notification.

1. UK AIFMs having not submitted a notification

Investor approval

The CSSF states that UK AIFMs who have not submitted a Brexit notification to the CSSF and who want to continue to be the AIFM of a Luxembourg AIF will be required to seek (before 31/10/2019) the approval of the investors (and as the case may be, bondholders) of the AIFs they manage to remain third-country AIFMs for the eligible AIFs after the occurrence of a hard Brexit.

This possibility will be limited to the AIFs whose direct or indirect investors qualify as “professional investors” under article 3 of the Alternative Investment Fund Managers Directive or “well-informed investors” under the relevant Luxembourg fund laws.

Conditions of the investor approval

The investors’ approval will have to be obtained in accordance with the requirements prescribed for the amendments of AIFs’ constitutive

documents or, absent such provisions, in accordance with the conditions prescribed for the amendments of the articles or the limited partnership agreement in the law of 10 August 1915 on commercial companies.

CSSF filing

The CSSF expects to receive by email at brexitopc@cssf.lu, prior to 31 October 2019, a confirmation from the UK AIFM that all direct and indirect investors in the relevant AIF are professional or well-informed investors and further (i) either a copy of the resolution(s) evidencing the investors' approval or (ii) a copy of the relevant convening notice together with an explanation why the deadline could not be held.

2. *UK AIFMs having previously submitted a notification but wishing to recall*

The CSSF further clarifies that UK AIFMs which previously submitted a notification to benefit from the temporary regime but wish to recall the latter may still do so by formal recall notification to the CSSF before 31 October 2019, in which event the above requirements for remaining third country managers shall apply mutatis mutandis.

Consequences

UK AIFMs in the above circumstances which do not comply with the above may, after a hard Brexit occurring on 31 October 2019, be considered in breach of applicable requirements on the Luxembourg territory. The CSSF reserves the right to possibly publish a list of non-compliant UK AIFMs.

Should you have any questions regarding the above, please contact your usual Linklaters LLP contact

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