EVERSHEDS SUTHERLAND

LexisNexis

The Future of Law. Since 1818.

Helping you through changing times

Our European Brexit tracker for financial services institutions

Click to begin

Contacts

Introduction

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden

Helping you through changing times

Eversheds Sutherland's Financial Services team is one of the leading law practices focusing on asset management and financial services product development and regulation. Since June 2016, our lawyers and consultants have advised various institutions passporting into the UK from EU27 Member States and passporting from the UK into the EU27 on Brexit planning and Brexit related issues.

Our European Brexit tracker provides a quick overview of the current position in relation to UK funds and UK fund managers seeking to sell services into EU27 countries after the end of the Brexit transitional or implementation period ("TIP"), including what steps may be necessary to relocate to those countries and whether delegation of functions from those countries to the UK after Brexit may be possible.

We have updated this tracker several times during the Brexit negotiations to ensure that our clients have always had the latest information as it became available, however, this will be its last iteration. The position on Brexit for the provision of cross-border asset management services is now known, if complex and less advantageous than before. If the EU were to find the UK equivalent under MiFIR and MiFID, some small aspects of cross-border asset management firms would be eased, but the position would not fundamentally alter and given that equivalence decisions can be withdrawn on 30 days' notice without cause, no prudent asset management firm would seek to rely upon them. We remain of the opinion that those asset management firms wanting to trade in the UK and the EU require a fully authorised subsidiary in each jurisdiction.

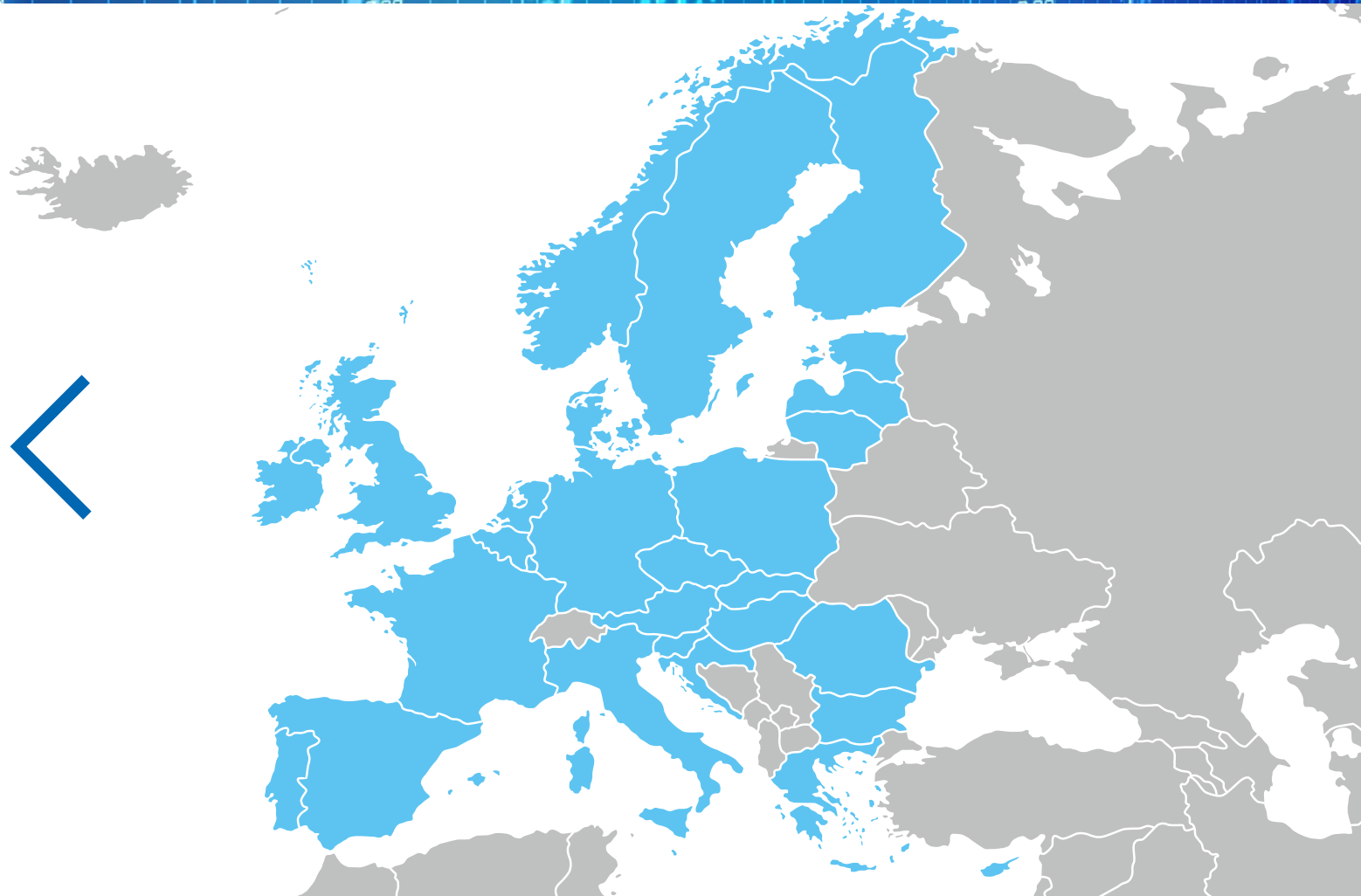
As we note above, the position, while now known, is complex and fact specific: the tracker is not a substitute for obtaining detailed, tailored legal advice and we would strongly encourage you to make contact with a member of our team if you would like to discuss the content of this tracker and how it may impact your business in more detail.

About Eversheds Sutherland

Eversheds Sutherland is one of the largest global law organisations in the world. With some 4,000 people, including more than 700 partners and 2,300 lawyers, located in over 30 countries worldwide, we are a go-to firm for Brexit legal advice and regularly advise businesses across multiple sectors on the implications of Brexit on their operations. Our international reach extends further through our network of excellent relationship firms, many which have contributed to this European Brexit tracker.

Contacts

Contents



Contacts

Austria

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Austria's Financial Market Authority (FMA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the FMA treat UK funds (UCITS funds and AIFs) which are currently passported in Austria under the UCITS/AIFM Directive after the end of the TIP?
As third country AIFs i.e. non-EEA AIFs.

Will UK funds (UCITS funds and AIFs) currently passported in Austria under the UCITS/AIFM Directive have to (re)register or make any notification with the FMA as a result of the end of the TIP to continue marketing in Austria?
Yes. The FMA has explicitly confirmed that UK funds currently registered in Austria must (re)register as third country AIFs in accordance with the Austrian AIFMG in order to continue marketing in Austria. Any further marketing of UK funds must cease at the end of the TIP until the (re)registration is confirmed by the FMA.

Will UK UCITS funds currently passported in Austria under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to FMA and provision of information to local investors after the end of the TIP?
UK UCITS will be treated as non-EEA AIFs and will lose the right to market shares in Austria at the end of the TIP. In order to continue marketing in Austria UK UCITS must be successfully registered as a third country AIF and comply with all local requirements under the Austrian AIFMG and AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in Austria.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Contacts

Austria (Cont)

If UK funds (UCITS funds and AIFs) currently passported in Austria under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
UK funds can be de-registered in Austria even if there are still Austrian investors invested in the fund.

Has the FMA introduced a streamlined process for setting up a management company or fund in Austria with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the FMA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No, but based on the MMoU it will be possible for Austrian UCITS management companies and AIFM to continue delegation of portfolio management to a UK firm in accordance with Sec. 18 AIFMG, provided the UK firm is authorised to provide portfolio management services under UK laws.

If a UK fund manager is currently providing services (e.g. MiFID services) in Austria, will these services be deemed to be carried out from the UK or from Austria after the end of the TIP?
From the UK.

Has the FMA put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Belgium

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Belgian Financial Services and Markets Authority (FSMA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will FSMA treat UK funds (UCITS funds and AIFs) which are currently passported in Belgium under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Belgium under the UCITS/AIFM Directive have to (re)register or make any notification with FSMA as a result of the end of the TIP to continue marketing in Belgium?
Existing UK UCITS will be considered as third-country AIFs and AIFMs. Those hoping to market an AIF into Belgium will have to comply with the local article 42 AIFMD authorisation procedure.

UK AIFMs who are managing and publicly marketing an AIF will be subject to local licensing provisions under the Belgian AIFM Act of 19 April 2014 (the "**AIFM Law**").

Third country investment firms intending to continue their activities after the end of the TIP must notify FSMA, setting out their plan for operating in Belgium.

UK investment firms will have three means of operating in Belgium after the end of the TIP:

1. Establishing a branch and obtaining a licence from FSMA. Brokerage firms require a licence from the Belgian National Bank (NBB).

2. Without establishing a branch, by providing services from the UK but only to eligible counterparties, professional clients and UK nationals resident in Belgium.

3. Establish a subsidiary in Belgium and obtain the relevant licence and authorisation. Alternately, setting up a subsidiary in another EEA state, obtaining the relevant licence and authorisation and then passporting into Belgium.

Belgian law permits FSMA to prohibit the provision of investment services in Belgium by third country firms based in a country which does not offer Belgian investment firms the same access to its market. The FCA's temporary permissions regime for inbound passporting EEA firms may be sufficient to meet this reciprocity condition for as long as such temporary arrangement is in force.

UK investment firms must notify FSMA in advance of their planned activities in Belgium and the categories of investors to whom they intend to provide those services.

Contacts

Belgium (Cont)

UK investment firms recognised by FSMA will be removed from the list of recognised firms if they do not take the necessary steps to comply with option (1), (2) or (3). Once removed from the list, the investment firms will no longer be able to offer investment services or activities in Belgium and to continue to do so will incur criminal and/or administrative penalties.

Will UK UCITS funds currently passported in Belgium under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to FSMA and provision of information to local investors after the end of the TIP?
Yes, UK UCITS will be treated as non-EEA (third country AIFs) funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions) in Belgium.

These funds may be marketed provided a third country AIFM notification form is completed and the offering does not constitute a public offer within the meaning of the AIFM Law.

The fund manager must inform investors of the new AIF status, the consequences for investors and the procedures and costs should investors wish to redeem their holdings.

Third country AIFs may only be marketed to the public in Belgium if:

(a) the fund complies with legal requirements applicable to foreign public AIFs;

(b) appropriate cooperation arrangements are in place between the FSMA and the UK supervisory authorities; and

(c) the fund is subject to a regime at least equivalent to that applicable to Belgian AIF managers offering public AIFs.

If UK funds (UCITS funds and AIFs) currently passported Belgium under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
If a UCITS with 150 or more unit-holders wishes to stop marketing units in Belgium it must:

give unit-holders the opportunity to have their units repurchased without charge or to exchange, without charge, their units for those of another open-ended UCI marketed in Belgium

retain a financial service provider and remain on the list of foreign law UCITS until it provides evidence that it has fewer than 150 unit-holders in Belgium

FSMA has not prescribed a process for deregistering an AIF, but almost all the same thresholds and requirements apply.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Has FSMA introduced a streamlined process for setting up a management company or fund in Belgium with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Contacts

Belgium (Cont)

Has FSMA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No, there has been no such guidance or delegation introduced.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EEA member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and FSMA.

If a UK fund manager is currently providing services (e.g. MiFID services) in Belgium, will these services be deemed to be carried out from the UK or from the Belgium after the end of the TIP?
If a UK fund manager provides financial services regulated by EU regulation, these will be deemed to be carried out from the UK after the end of the TIP.

Has FSMA put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Bulgaria

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Bulgarian Financial Supervision Commission (FSC)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the FSC treat UK funds (UCITS funds and AIFs) which are currently passported in Bulgaria under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

On 17 December 2019 the FSC published official Guidelines on the interpretation and application of the Bulgarian Law on the Activities of Collective Investment Schemes and Other Collective Investment Undertakings ("**LACISOCIU**") upon no-deal withdrawal of the United Kingdom from the European Union (the "**Guidelines**"). According to the Guidelines, after the end of the TIP, UK management companies which currently operate in Bulgaria under passporting rights will be treated as unlicensed third-party entities and will not be allowed to carry out fund management activities in Bulgaria territory. Management companies seeking to operate in Bulgaria should establish a local branch and obtain an licence.

Will UK funds (UCITS funds and AIFs) currently passported in Bulgaria under the UCITS/AIFM Directive have to (re)register or make any notification with the FSC as a result of the end of the TIP to continue marketing in Bulgaria?
UK management companies which have exercised their passport rights to operate in Bulgaria which provide portfolio management and/or investment advice to Bulgarian clients must draw up and submit to the FSC a plan for winding down their client relationships within 14 days of the end of the TIP. The plan must provide a procedure for informing Bulgarian clients that the management company has ceased to carry out activities and for the settlement of the client accounts within 30 days.
UK management companies which have previously exercised their passport rights in Bulgaria but no longer have any clients in Bulgaria must make a declaration to the FSC that they no longer have Bulgarian clients and therefore do not need to wind down any Bulgarian accounts.

The Guidelines refer to UCITS funds but not to AIFs. The position with respect to AIFs is not yet clear.

Contacts

Bulgaria (Cont)

Will UK UCITS funds currently passported in Bulgaria under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to the FSC and provision of information to local investors after the end of the TIP?
Yes, UK UCITS funds will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in Bulgaria.

If UK funds (UCITS funds and AIFs) currently passported in Bulgaria under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
Bulgarian legislation does not contain specific provisions requiring passported UCITS funds/AIFMs to move/redeem investors in order to de-register the fund, nor is there any existing regulatory practice on the subject.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Has the FSC introduced a streamlined process for setting up a management company or fund in Bulgaria with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the FSC published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
The FSC has not published any guidance on the matter.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company (which have been transposed in the national law in Article 106 and Article 222 of LACISOCIU). In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the FSC.

If a UK fund manager is currently providing services (e.g. MiFID services) in Bulgaria, will these services be deemed to be carried out from the UK or from Bulgaria after the end of the TIP?
From Bulgaria. A local licence may be required.

Has the FSC put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No. The FSC has not put in place any temporary permissions or recognitions regimes relating to financial services.

Information kindly provided by our relationship firm in Bulgaria, Djingov, Gouginski, Kyutchukov & Velichkov.

Contacts

Croatia

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Croatian Financial Services Supervisory Agency (FSSA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

How will the FSSA treat UK funds (UCITS funds and AIFs) that are currently passported in Croatia under the UCITS/AIFM Directive after Brexit?
Following Brexit, UK UCITS and UK AIFs will be regarded as non-EU funds in Croatia and lose their passporting rights.

Complying with the National Private Placement Regime (NPRR) would theoretically allow funds to continue to be marketed in Croatia. However, this is impossible in practice because the Republic of Croatia has not implemented Articles 36 and 42 of the Directive 2011/61/EU on AIFMs that govern NPRR. Consequently, Brexit will make it impossible to market UK AIFs and EU AIFs managed by UK AIFMs in Croatia.

Will UK funds (UCITS funds and AIFs) currently passported in Croatia under the UCITS/AIFM Directive have to (re)register or make any notification with the FSSA as a result of Brexit to continue marketing in Croatia?
As Croatia has not implemented any Brexit transitional regime in case of a no-deal Brexit, it will not be possible to offer units of AIFs from third countries (the UK), or units of AIFs managed by non-EU AIFMs (the UK) in Croatia without a passport. In addition, in the case of a no-deal Brexit, UK UCITS will be regarded as non-EU AIFs and their distribution will no longer be allowed without a passport.

If UK funds (UCITS funds and AIFs) currently passported in Croatia under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
Under applicable Croatian laws, fund de-registration is treated as a liquidation of the fund. Therefore, UK AIFs and UCITS wishing to de-register will have to undertake all the prescribed liquidation steps pursuant to the applicable FSSA Ordinance(s) on liquidation and dissolution of AIFs or UCITS funds respectively. Consequently, all investors would have to be redeemed in liquidation proceedings prior to formal de-registration.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found here.

Contacts

Croatia (Cont)

Has the FSSA introduced a streamlined process for setting up a management company or fund in Croatia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the FSSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- an approval of or a notification to the FSSA is required
- tasks including managing the UCITS fund assets or risk management may be delegated only to those third persons who have obtained a license from a competent authority and are subject to supervision in accordance with the provisions of the applicable law

If a UK fund manager is currently providing services (e.g. MiFID services) in Croatia, will these services be deemed to be carried out from the UK or from Croatia after Brexit?
From the UK, but a Croatian licence will be required.

In a no-deal Brexit, UK investment firms will be prohibited from providing investment services directly to Croatian professional and retail investors. Those wishing to continue providing services in Croatia must either establish a branch (and obtain a licence from FSSA in accordance with the Croatian Capital Market Act), or provide services exclusively in response to requests from clients (known as "reverse solicitation").

Firms operating solely under the principle of reverse solicitation will not be able to solicit potential clients or promote and advertise their investment services in Croatia.

Existing branches of UK investment firms will be required to cease their operations or obtain a licence from the FSSA as a third country (non-EU) investment firm branch. In order to provide investment services directly to professional investors in Croatia, investment firms from the UK must be registered with ESMA as third country (non-EU) entities.

Information kindly provided by our relationship firm in Croatia, Šavorić & Partners.

Contacts

Cyprus

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and Cyprus Securities and Exchange Commission (CySEC)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the CySEC treat UK funds (UCITS funds and AIFs) which are currently passported in Cyprus under the UCITS/AIFM Directive after the end of the TIP?
In the absence of any directives or guidelines by the CySEC, UK funds will be treated as third country funds, i.e. non-EEA funds. Both UCITS funds and AIFs will have to comply with Cyprus' private placement regime in order to market units, and where applicable manage funds (pending the implementation of the third-country regime under the AIFMD) in Cyprus.

Will UK funds (UCITS funds and AIFs) currently passported in Cyprus under the UCITS/AIFM Directive have to (re)register or make any notification with the CySEC as a result of the end of the TIP to continue marketing in Cyprus?
This is not clear yet.

Will UK UCITS funds currently passported in Cyprus under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to the CySEC and provision of information to local investors after the end of the TIP?
Yes, UK UCITS funds will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU (and related Level 2 provisions) in Cyprus.

If UK funds (UCITS funds and AIFs) currently passported in Cyprus under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
According to the CySEC's Directives (DI78-2012-11 and DI131-56-02) in order to be able to terminate the marketing of their units in Cyprus, UCITS funds and AIFs must give CySEC two months' written notice of termination setting out the date of and reasons for the termination of the marketing in Cyprus, the number of existing unit-holders in Cyprus and the measures taken to safeguard investors rights.

Directive 2019/1160 make various provisions regarding the de-registration of UCITS funds and AIFs currently passported under Directives 2009/65/EC and 2011/61/EU by amending

Contacts

Cyprus (Cont)

those Directives. These require that a blanket offer is made to repurchase or redeem, free of any charges or deductions, any UCITS/AIF units held by investors in the Member State from which the UCITS/AIF in question is being de-registered.

At present the amendments to Directives 2009/65/EC and 2011/61/EU introduced by Directive 2019/1160 have yet to be transposed into Cypriot domestic law. There are no additional domestic law provisions governing the de-registration of passported funds.

Has the CySEC introduced a streamlined process for setting up a management company or fund in Cyprus with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
At present, the CySEC has not introduced such a process.

Has the CySEC published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
There has been no specific guidance published by the CySEC regarding delegation from a local UCITS management company or AIFM back to a UK-based entity.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the CySEC.

If a UK fund manager is currently providing services (e.g. MiFID services) in Cyprus, will these services be deemed to be carried out from the UK or from Cyprus after the end of the TIP?
After the end of the TIP, and in the absence of any future express provision to the contrary, a UK fund manager offering such services in future would be deemed to be providing them from the UK. If the UK fund manager were offering such services through an EU authorised subsidiary or branch located in Cyprus, then they would likely be deemed to be carried out from Cyprus.

Has the CySEC put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
On 22 December 2020, CySEC announced the establishment of a temporary permissions regime ('**TPR**') for UK firms providing MiFID II services in Cyprus. Those UK financial services which gave notice of intention to participate in the TPR before the end of the TIP on 31 December 2020 do not have to have a physical presence in Cyprus in order to provide investment services and investment activities solely to professional clients and eligible counterparties based in Cyprus during the TPR. The TPR runs until 31 December 2021. At the end of the TPR, UK firms in the TPR will only be able to continue to provide such investment services if they have established a branch or subsidiary in Cyprus and obtained the relevant authorisations.

Information kindly provided by our relationship firm in Cyprus, Chrysostomides.

Contacts

Czech Republic

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Czech National Bank (CNB)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

How will the CNB treat UK funds (UCITS funds and AIFs) that are currently passported in Czech Republic under the UCITS/AIFM Directive after Brexit?
The Czech Brexit Act, permits all types of UK-based financial services providers with existing passporting rights to run off contracts and services provided before Brexit until 31 December 2020. The CNB will supervise these providers as if the Czech Republic were their home Member State. They will not be allowed to enter into new contracts or to amend the content of existing contracts. According to the CNB's note, UK-based financial services providers are expected to duly contact their Czech clients, setting out the legal consequences of a no-deal Brexit on rights and obligations arising from existing contracts, including a proposed plan of action which aims to settle claims and debts arising from those contracts. The CNB expects UK providers to maintain adequate records clearly demonstrating their fulfilment of these obligations.

Will UK funds (UCITS funds and AIFs) currently passported in the Czech Republic under the UCITS/AIFM Directive have to (re)register or make any notification with the CNB as a result of Brexit to continue marketing in the Czech Republic?
Following a no-deal Brexit, existing UK funds will need to re-register as a non-EU funds with the CNB in order to market in the Czech Republic.

If UK funds (UCITS funds and AIFs) currently passported in the Czech Republic under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/ redeem all investors in order to de-register?
The CNB will de-register UK funds automatically as they will cease to meet legal requirements for passporting after a no-deal Brexit. Accordingly, UK funds will probably not need to move/ redeem all investors for de-registration to take place. Affected funds may be required to notify their Czech investors and enable voluntary redemption.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found here.

Has the CNB introduced a streamlined process for setting up a management company or fund in Czech Republic with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Contacts

Czech Republic
(Cont)

Has the CNB published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Czech Republic, will these services be deemed to be carried out from the UK or from Czech Republic after Brexit?
Under the Czech Brexit Act these services will be deemed to be provided from another EU Member State. However, the CNB will supervise providers as though they were established in the Czech Republic.

Information kindly provided by our relationship firm in the Czech Republic, Balcar, Polanský & Spol.

Contacts

Denmark

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Danish Financial Supervisory Authority (FSA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

How will the Danish FSA treat UK funds (UCITS funds and AIFs) that are currently passported in Denmark under the UCITS/ AIFM Directive after Brexit?
If the UK leaves the EU without a withdrawal agreement the UK will be deemed a third country with respect to EU Member States, including Denmark. The automatic right for financial undertakings in the UK to set up and do business in the Member States, as a result of the EU's single market, will lapse.

It means that UK funds will be treated as third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Denmark under the UCITS/AIFM Directive have to (re)register or make any notification with the FSA as a result of Brexit to continue marketing in Denmark?
UK funds will not be able to offer financial services in Denmark without securing new permission from the Danish authorities.

UK investment firms planning to continue offering financial services in Denmark after a no-deal Brexit have a number of choices:

- UK funds can apply for permission to set up a financial undertaking in Denmark;
- UK funds can set up a financial undertaking in another EU member state and then invoke the right to set up a Danish subsidiary or offer cross-border services into Denmark; or
- undertakings offering investment services and activities can apply for permission to continue providing cross-border activities directly from the UK under Danish third country rules (as set out in section 33 of the Danish Financial Business Act)

Firms hoping to rely on Danish third country rules should note that such permission only grants the right to carry out cross-border investment services and activities in Denmark for approved counterparties or professional customers. Furthermore, the permission does not extend to activities carried out in Member States other than Denmark.

Contacts

Denmark (Cont)

In the case of a "no-deal Brexit", permission to operate on a third country basis will only be granted under the following circumstances:

- The UK becomes a third country as defined under MiFID II, Article 4(1), no. 57;
- The EU has not entered into an agreement to create a financial area with the UK;
- The Commission has not adopted an equivalence decision for the United Kingdom in accordance with MiFIR, Article 47(1), or such a decision ceases to be valid;
- UK financial regulation and supervision of investment firms remains essentially equivalent to EU and Danish regulation and supervision
- any investment services and activities, ancillary services or instruments applied for by the UK firm are covered by the applicant's license and comply with both MiFID II and the Danish Financial Business Act;
- there have been no changes to EU or Danish third country regime regulations that might affect the firm's application; and
- the Danish FCA and the corresponding competent authority/ authorities in the United Kingdom have signed the same relevant agreement concerning consultation and cooperation and the exchange of information (e.g. IOSCO, MMoU)

Owing to the extraordinary circumstances surrounding Brexit, any license granted by the Danish FCA under the conditions outlined above will only be valid for a 12 month period.

Information kindly provided by our relationship firm in Denmark, NJORD.

Contacts

Denmark (Cont)

If UK funds (UCITS funds and AIFs) currently passported in Denmark under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
If an alternative investment fund manager ceases to market their alternative investment fund (and its sub-funds) in Denmark, the manager must notify all Danish investors and the Danish FSA, setting a date of cessation. Notifications must be made no later than 14 days after the decision was taken. The same will apply if an investment undertaking (or a compartment of such) ceases to market its units investment fund in Denmark. The process will apply whether marketing is directed at professional or retail investors.

As a result, the redemption of all units will not be necessary if a UK fund wishes to cease marketing its units/shares in Denmark.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found here.

Has the Danish FSA introduced a streamlined process for setting up a management company or fund in Denmark with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the Danish FSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Denmark, will these services be deemed to be carried out from the UK or from Denmark after Brexit?
The position is not yet clear, but it is likely that such services will be deemed to be carried out from the UK, since the UK fund manager will use its UK license when providing these services.

Contacts

Estonia

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Estonian Financial Supervision Authority (FSA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

How will the FSA treat UK funds (UCITS funds and AIFs) that are currently passported in Estonia under the UCITS/AIFM Directive after Brexit?
The position is not yet clear.

Will UK funds (UCITS funds and AIFs) currently passported in Estonia under the UCITS/AIFM Directive have to (re)register or make any notification with the FSA as a result of Brexit to continue marketing in Estonia?
The position is not yet clear.

Has the FSA introduced a streamlined process for setting up a management company or fund in Estonia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the FSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- Art. 364 and 365 of the Investment Fund Act would apply
- a written delegation agreement would be required

As of today, the FSA and the FCA are both members of the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding concerning consultation and cooperation and the exchange of information.

If a UK fund manager is currently providing services (e.g. MiFID services) in Estonia, will these services be deemed to be carried out from the UK or from Estonia after Brexit?
The position is not yet clear.

Contacts

Finland

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Finnish Financial Supervisory Authority (FIN-FSA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

How will the FIN-FSA treat UK funds (UCITS funds and AIFs) that are currently passported in Finland under the UCITS/AIFM Directive after Brexit?
The FIN-FSA has made no official announcement on the issue. However, the regulator has unofficially indicated that in case of no-deal Brexit, UK funds will be treated as third-country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Finland under the UCITS/AIFM Directive have to (re)register or make any notification with the FIN-FSA as a result of Brexit to continue marketing in Finland?
FIN-FSA has indicated that it would not allow funds to register under AIFMD Article 42 before the Exit day (31 January 2020). Funds that wish to continue operating in Finland after Brexit can now file for notification.

If UK funds (UCITS funds and AIFs) currently passported in Finland under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
There is no need to move or redeem investors if marketing is discontinued in Finland. However, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found here.

Has the FIN-FSA introduced a streamlined process for setting up a management company or fund in Finland with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
The FIN-FSA has made no official announcement on the issue. However, the regulator has unofficially indicated that UK funds will be treated as third-country funds, i.e. non-EEA funds.

Contacts

Finland (Cont)

Has the FIN-FSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Finland, will these services be deemed to be carried out from the UK or from Finland after Brexit?

The position is not yet clear, but probably from the UK.

The Finnish regulator's MiFID position is that the grandfathering of passported services/activities will only occur if the UK MiFID entity applies for a cross-border authorisation by the date the withdrawal takes effect. There will be no transition period. For more information, please consult the dedicated FIN-FSA webpage.

Contacts

France

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the French Financial Market Authority (Autorité des marches Financiers – AMF) ?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the AMF treat UK funds (UCITS funds and AIFs) which are currently passported in France under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in France under the UCITS/AIFM Directive have to (re)register or make any notification with the AMF as a result of the end of the TIP to continue marketing in France?
The UCITS Directive and its implementing provisions under French law do not provide for non-EEA funds to be marketed as UCITS funds. Accordingly, UCITS funds established in the UK will no longer qualify as UCITS funds after Brexit and existing UK UCITS will be considered as third-country AIFs.

ESMA has not yet activated the third country fund managers regime under AIFMD which would allow fund managers to market AIFs in Member States where they have obtained an appropriate licence.

Marketing "without passport" to professional and non-professional customers is available on a country by country basis. In France, prior AMF authorisation is required.

AIFMs will also be able to use reverse solicitation or set up a subsidiary in a Member State to manage and market UCITS funds and AIFs in the EU.

Will UK UCITS funds currently passported in France under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to AMF and provision of information to local investors after the end of the TIP?
Yes, UK UCITS will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions) in France.

Contacts

France (Cont)

If UK funds (UCITS funds and AIFs) currently passported in France under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
No specific regulation applicable to the de-registration of UK funds (UCITS funds/AIFs) in the context of Brexit has been adopted. By analogy with the rules applicable in the event of a license withdrawal under Article L. 532-10 of French monetary and financial Code, if a UK fund decides to de-register, it is likely that the AMF will impose a transitional period during which the manager must take all necessary steps to protect the interests of investors while the fund is dissolved.

Has the AMF introduced a streamlined process for setting up a management company or fund in France with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
In 2016 the AMF implemented a fast track pre-approval process (named "2WeekTicket Program") for UK managers and/or UK funds, however, this procedure has since been withdrawn.

Has the AMF published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
There is no specific guidance in respect of delegation of portfolio management in the context of Brexit however the AMF supports ESMA's opinion relating to supervisory convergence in the area of investment management in the context of the UK's withdrawal from the EU, issued on 13 July 2017.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the AMF.

The AMF has published general guidance around delegation which must be followed when delegating from a French UCITS management company or AIFM back to a UK based entity. In particular, a certificate attesting that the delegate is duly authorised to manage collective investments or to provide portfolio management services to third parties in the UK will be required and the scope of the delegated activities must not significantly exceed the scope of activities which are not delegated (taking into account, among other things, the amount of assets under management, the number of managers, the risk management organisation, the number of funds, the turnover under delegation and the turnover managed directly and the organisation of the areas of expertise within the group). The management company must retain staff with the necessary expertise to properly supervise the delegated tasks/roles.

Contacts

France (Cont)

If a UK fund manager is currently providing services (e.g. MiFID services) in France, will these services be deemed to be carried out from the UK or from France after the end of the TIP?
Services provided by a UK fund manager (e.g. MiFID services) to customers located in France will generally be deemed to be carried out in France, save where these are carried out on the basis of reverse solicitation. However, reverse solicitation is interpreted strictly and any communication (press releases, advertising on Internet, brochures, phone calls or face-to-face meetings) will be scrutinised to determine if the client or potential client has been subject to any solicitation, promotion or advertisement of the fund manager's services. Only the services specifically requested by the customer can be provided by the UK fund manager.

Except where reverse solicitation applies, the MiFID and MiFIR third-country regime and the implementing provisions under French law are applicable to UK fund managers.

Has the AMF put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
The AMF has adopted various transitional measures.

In respect of eligible assets for equity savings plans (PEA) and equity savings plans intended for the financing of SMEs and mid-tier enterprises (PME-ETI PEA) the transitional measures provide for a nine-month transition period until 30 September 2021, during which the following continue to be eligible assets for PEA and PME-ETI PEA:

- securities issued by UK companies acquired before 31 December 2020
- securities issued by UK companies which fell within the PEA limit of 75% of PEA assets being invested in collective investment undertakings (CIUs), provided that these CIUs were eligible assets as at 31 December 2020; and
- units or shares of UK UCITS acquired before 31 December 2020

In respect of retail private equity investment funds (FCPR), retail venture capital funds (FCPI) and retail local investment funds (FIP) the AMF has adopted temporary measures intended to help market participants to restructure illiquid asset portfolios without undue haste and in the best interests of their investors, while giving investors the time to make considered changes to their investments.

Contacts

Germany

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the BaFin treat UK funds (UCITS funds and AIFs) which are currently passported in Germany under the UCITS/AIFM Directive after the end of the TIP?

As third country funds, i.e. non-EEA AIFs.

To smooth the process of UK firms accessing the bilateral third country marketing notification procedure, the BaFin announced that it will permit UK funds to submit third country marketing notifications prior to the end of the TIP in order to enable continuity of distribution to the benefit of German investors (read more here).

Will UK funds (UCITS funds and AIFs) currently passported in Germany under the UCITS/AIFM Directive have to (re)register or make any notification with the BaFin as a result of the end of the TIP to continue marketing in Germany?

BaFin has confirmed that following a no-deal Brexit all UK funds currently passported in Germany will have to (re-)register with BaFin as third-country AIFs to continue operating in Germany. These funds will be subject to the specific legal requirements that come with third-country status. To prevent marketing disruption BaFin is accepting notification applications from UK fund managers prior to the end of the TIP. These notifications will be considered in spite of ongoing uncertainty surrounding the final outcome of Brexit negotiations.

Contacts

Germany (Cont)

Will UK UCITS funds currently passported in Germany under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to BaFin and provision of information to local investors after the end of the TIP?
Yes, UK UCITS will be treated as non-EEA AIFs and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions) in Germany.

If UK funds (UCITS funds and AIFs) currently passported in Germany under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The UK funds can be de-registered in Germany even if there are still German investors left in the fund.

Has the BaFin introduced a streamlined process for setting up a management company or fund in Germany with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the BaFin published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
The following BaFin documents must be complied with:

- The FAQ on the delegation of AIFMs subject to section 36 KAGB
- BaFin-circular 01/2017 (WA) - Minimum Requirements for the Risk Management of Capital Management Companies (KAMaRisk) (German language)

Following the conclusion of the MMoU between BaFin and the FCA it will be possible to continue outsourcing portfolio management and risk management to a UK based entity in accordance with section 36 KAGB, provided the UK company is authorised to provide the respective financial services.

If a UK fund manager is currently providing services (e.g. MiFID services) in Germany, will these services be deemed to be carried out from the UK or from Germany after the end of the TIP?
From the UK.

Has the BaFin put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Greece

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Hellenic Capital Market Commission (HCMC)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

How will the HCMC treat UK funds (UCITS funds and AIFs) that are currently passported in Greece under the UCITS/AIFM Directive after Brexit?
The HCMC has not yet made any announcement and the position is not clear.

Will UK funds (UCITS funds and AIFs) currently passported in Greece under the UCITS/AIFM Directive have to (re)register or make any notification with the HCMC as a result of Brexit to continue marketing in Greece?
Law 4652/2020, "Emergency arrangements for the United Kingdom's withdrawal from the European Union", entered into force on 22 January 2020. In accordance with Law 4652/2020 fund management companies (UCITS, AIFs) licensed and authorised by the respective UK regulatory authorities to provide their services on a cross border basis or through a branch (European passport) in Greece, may continue to provide such services for existing clients only until 31 December 2020, provided that such clients have their registered seat or conduct any business activity that is taxable in Greece. This date may be extended or shortened following a Ministerial Decision by the Minister of Finance which is issued following a recommendation by HCMC.

If UK funds (UCITS funds and AIFs) currently passported in Greece under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
EU UCITS may request deregistration from the HCMC only if the number of investors is less than or equal to 100. However, the approval of the HCMC is not required when foreign UCITS cease to exist because of liquidation or restructuring. In such cases, UCITS are only required to notify the HCMC upon deregistration. UK funds will be obliged to terminate their activities in Greece after Brexit, so the exemption for liquidation/restructuring is likely to apply.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found here.

Has the HCMC introduced a streamlined process for setting up a management company or fund in Greece with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Contacts

Greece (Cont)

Has the HCMC published any guidance around delegation, including delegation of portfolio management, from a local management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- delegation of portfolio management or risk management to non-EEA entities by a local AIFM is possible if such entities are authorised or registered for the purpose of asset management and are subject to supervision or where that condition cannot be met a prior approval by the HCMC is required
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Greece, will these services be deemed to be carried out from the UK or from Greece after Brexit?
Yes, such services will be in principle deemed to be carried out from Greece and a license from the HCMC will be required.

Information kindly provided by our relationship firm in Greece, Zepos & Yannopoulos.

Contacts

Hungary

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Magyar Nemzeti Bank (MNB)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the MNB treat UK funds (UCITS funds and AIFs) which are currently passported in Hungary under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Hungary under the UCITS/AIFM Directive have to (re)register or make any notification with the MNB as a result of the end of the TIP to continue marketing in Hungary?
The MNB's position remains unclear.

Will UK UCITS funds currently passported in Hungary under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to MNB and provision of information to local investors after the end of the TIP?
Yes. UK UCITS will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in Hungary.

If UK funds (UCITS funds and AIFs) currently passported in Hungary under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
The position is unclear. It seems likely that a fund will terminate only if all investors redeem their investment units.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Contacts

Hungary (Cont)

Has the MNB introduced a streamlined process for setting up a management company or fund in Hungary with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the MNB published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the MNB.

If a UK fund manager is currently providing services (e.g. MiFID services) in Hungary, will these services be deemed to be carried out from the UK or from Hungary after the end of the TIP?
This is likely to be a cross-border service from the UK.

Has the MNB put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Ireland

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Central Bank of Ireland (CBI)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the CBI treat UK funds (UCITS funds and AIFs) which are currently passported in Ireland under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Ireland under the UCITS/AIFM Directive have to (re)register or make any notification with the CBI as a result of the end of the TIP to continue marketing in Ireland?
The CBI requires UK UCITS and AIFs which intend to continue or intend to commence providing services in Ireland to ensure that they hold the appropriate authorisations. Given that both UK UCITS and AIFs will be treated as non-EEA funds they will lose their ability to market into Ireland and may have to cease marketing immediately. There is no clear process by which this will be handled but firms should have arrangements in place to ensure that they are not in breach of the relevant marketing requirements.

Will UK UCITS funds currently passported in Ireland under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to the CBI and provision of information to local investors after the end of the TIP?
Yes, UK UCITS will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions) in Ireland.

If UK funds (UCITS funds and AIFs) currently passported in Ireland under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
It is likely that deregistration will be permitted. However, there is currently no relevant guidance on this point.

Has the CBI introduced a streamlined process for setting up a management company or fund in Ireland with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
Prior to the end of the TIP: Yes. UK investment managers appointed to Irish funds can avail themselves of the CBI's fast-track approval process available to EU investment managers.

Contacts

Ireland (Cont)

After the end of the TIP: No. The CBI has unequivocally stated that there will be no fast-track process for UK entities. All UK entities seeking to authorisation in Ireland will be treated as new applicants and will be subject to the same scrutiny as any other application for authorisation (or otherwise) to the CBI.

Has the CBI published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
Please refer to the CBI Brexit FAQs.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and CONSOB.

Any delegation must be in line with general regulatory requirements and client consent may be necessary to hold assets outside the EEA.

The process for Irish Domiciled Funds and local UCITS management companies or AIFMs to delegate portfolio management to non-EEA countries is a well-established and straightforward process in Ireland.

If a UK fund manager is currently providing services (e.g. MiFID services) in Ireland, will these services be deemed to be carried out from the UK or from Ireland after the end of the TIP?
Investment services being provided from the UK post-Brexit will be treated in the same way as such services being provided from any other third country. Certain exemptions, such as 'safe harbour', should be considered in respect of MIFID services.

Has the CBI put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Italy

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Commissione Nazionale per le Società e la Borsa (CONSOB)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will CONSOB treat UK funds (UCITS funds and AIFs) which are currently passported in Italy under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Italy under the UCITS/AIFM Directive have to (re)register or make any notification with CONSOB as a result of the end of the TIP to continue marketing in Italy?
It is not possible for UK funds to continue marketing in Italy after the end of the TIP.

Italy does not have a national private placement regime ("NPPR") under Art. 42 AIFM Directive 2011/61/EU and has no plans to introduce one.

Will UK UCITS funds currently passported in Italy under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to CONSOB and provision of information to local investors after the end of the TIP?
CONSOB has not issued any guidance on this issue and there is currently no formal de-registration procedure for non-EEA funds.

If UK funds (UCITS funds and AIFs) currently passported in Italy under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
In Italy, de-registration amounts to a liquidation (or a merger). In this respect, UK funds should have been liquidated (or merged) in an orderly manner before the end of the TIP.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Has CONSOB introduced a streamlined process for setting up a management company or fund in Italy with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Contacts

Italy (Cont)

Has CONSOB published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No guidance has been published by CONSOB on this point.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and CONSOB.

If a UK fund manager is currently providing services (e.g. MiFID services) in Italy, will these services be deemed to be carried out from the UK or from Italy after the end of the TIP?
The Bank of Italy set out the regime applicable to asset management companies operating in Italy in a communication dated 30 April 2020 (which it confirmed on 15 December 2020), which states that asset management companies "cannot be licensed to operate as third-country firms, and are therefore required by law to cease operations by the end of the transition period". Such firms are required to either transfer their activity to an intermediary authorised to operate in Italy (which could be an intermediary licensed in Italy or an EU intermediary "passported" into Italy) or carry out an orderly exit. They must notify their closure plans to the Bank of Italy as soon as possible. They must also notify the relevant UK supervisory authorities of the cessation of their Italian business.

Has CONSOB put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
Yes.

By 31 December 2020 decree law (which will be formalised as statute law in due course), CONSOB introduced a transitional regime which permits those UK financial services firms and banks which applied for authorisation by CONSOB or the Bank of Italy prior to the end of the TIP to continue to operate in Italy pending obtaining authorisation, subject to certain limitations.

During this grace period – from 1 January 2021 until the earlier of obtaining authorisation or 30 June 2021 - these intermediaries are not permitted to enter into new contracts or modify existing ones. UK investment service providers must ensure clients have adequate information on the effects of Brexit.

Should a UK financial services firm be declined for authorisation or not obtain authorisation during the grace period they will have three months to wind down their activities and return funds to their clients.

The clients of UK financial intermediaries which operate in Italy through the establishment of branches will be protected both by the Italian compensation scheme and by the Italian alternative dispute resolution system ("**ACF**").

Contacts

Latvia

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Latvian Financial and Capital Market Commission (FCMC)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

How will the FCMC treat UK funds (UCITS funds and AIFs) that are currently passported in Latvia under the UCITS/AIFM Directive after Brexit?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Latvia under the UCITS/AIFM Directive have to (re)register or make any notification with the FCMC as a result of Brexit to continue marketing in Latvia?
The position is not yet clear.

Has the FCMC introduced a streamlined process for setting up a management company or fund in Latvia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the FCMC published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- delegation from a local UCITS management company is allowed only to another investment management company licenced in Latvia or to a provider of management services that has received a licence in another EU member state
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Latvia, will these services be deemed to be carried out from the UK or from Latvia after Brexit?
The position is not yet clear.

Contacts

Lithuania

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Bank of Lithuania?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the Bank of Lithuania treat UK funds (UCITS funds and AIFs) which are currently passported in Lithuania under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Lithuania under the UCITS/AIFM Directive have to (re)register or make any notification with the Bank of Lithuania as a result of the end of the TIP to continue marketing in Lithuania?
UK funds which meet Lithuanian UCITS requirements will only be able to market in Lithuania by following the provisions laid down in Article 124 of the Law on Collective Investment Undertakings, namely: notifying the Bank of Lithuania and providing all applicable reports, documents and other specified information. Units in UK funds which meet Lithuanian UCITS requirements may be marketed to professional investors in Lithuania provided the manager complies with Article 51 or 54 of the Law on Alternative Investment Fund Managers.

UK funds which meet the Lithuanian requirements of a 'specialised' Collective Investment Undertaking ("CIU")' or a 'CIU intended for informed investors' will only be able to market in Lithuania by meeting the requirements set out in Article 43 of AIFMD. The management company will need to be licenced in an EU Member State and then provide the Bank of Lithuania with all applicable verifications and documents, as well as any other specified information.

Will UK UCITS funds currently passported in Lithuania under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to Bank of Lithuania and provision of information to local investors after the end of the TIP?
Yes, UK UCITS will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions) in Lithuania.

If UK funds (UCITS funds and AIFs) currently passported in Lithuania under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
The position is not yet clear.

Contacts

Lithuania (Cont)

Has the Bank of Lithuania introduced a streamlined process for setting up a management company or fund in Lithuania with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the Bank of Lithuania published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the Bank of Lithuania.

If a UK fund manager is currently providing services (e.g. MiFID services) in Lithuania, will these services be deemed to be carried out from the UK or from Lithuania after the end of the TIP?
Companies established in the UK will be considered third country companies and services provided by those companies will be deemed to be carried out from the UK. In order to continue to provide financial services in the EU, UK financial institutions will need to offer these services through entities established in the EU.

Has the Bank of Lithuania put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Luxembourg

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Luxembourg Financial Supervisory Authority (CSSF)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the CSSF treat UK funds (UCITS funds and AIFs) which are currently passported in Luxembourg under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Luxembourg under the UCITS/AIFM Directive have to (re) register or make any notification with the CSSF as a result of the end of the TIP to continue marketing in Luxembourg?
Yes. On 7 December 2020 the CSSF issued a press release listing requirements for UK funds which passported in Luxembourg before the end of the TIP. UK Funds will automatically become third country AIFs and will be required to:

- submit notification to withdraw from cross-border distribution into Luxembourg; and
- submit a new notification or request for authorisation under the procedure applicable to the set-up of a fund manager.

Will UK UCITS funds currently passported in Luxembourg under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to the CSSF and provision of information to local investors after the end of the TIP?
All UK UCITS funds currently passported in Luxembourg under the UCITS Directive will be required to withdraw form cross-border distribution into Luxembourg. In order to continue marketing in Luxembourg UK UCITS will need to re-register under the procedures applicable to the set-up of a fund manager. UK UCITS will be treated as non-EEA AIFs and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions) in Luxembourg.

Contacts

Luxembourg (Cont)

If UK funds (UCITS funds and AIFs) currently passported in Luxembourg under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
UK funds currently passported under the UCITS and the AIFM Directives and which do not intend to continue active marketing in Luxembourg after the end of the TIP are able to deregister even if investors are left in the fund. However, if funds notified for marketing in Luxembourg under Article 31 or 32 of the AIFMD prior to the end of the TIP are to continue active marketing after the end of the TIP then they must be re-registered with the CSSF and will be subject to the relevant reporting obligations as long as Luxembourg investors remain in the fund.

Has the CSSF introduced a streamlined process for setting up a management company or fund in Luxembourg with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the CSSF published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
In a press release dated 7 December 2020, the CSSF confirmed that Luxembourg law permits delegation of risk and portfolio management functions outside of the EU to UK entities which are:

- authorised or registered for the purpose of asset management in the UK;
- subject to prudential supervision by the FCA.

In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EEA member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and CSSF.

If a UK fund manager is currently providing services (e.g. MiFID services) in Luxembourg, will these services be deemed to be carried out from the UK or from Luxembourg after the end of the TIP?
CSSF circular 20/743 provides that, except in respect of reverse solicitation, investment services provided by a third-country firm is deemed to be provided in Luxembourg if one of the following conditions is met: (i) the third-country firm has a branch in Luxembourg, (ii) the service is provided to a retail client established or resident in Luxembourg, (iii) the place of "characteristic performance" of the service is in Luxembourg.

It is the third-country firm's responsibility to analyse whether the investment service is provided in Luxembourg or not. If the service is provided in Luxembourg, the third-country firm must have the appropriate Luxembourg authorisation.

Has the CSSF put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Malta

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Malta Financial Services Authority (MFSA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

The MFSA and FCA also signed a bilateral agreement dated 1 February 2019.

How will the MFSA treat UK funds (UCITS funds and AIFs) which are currently passported in Malta under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Malta under the UCITS/AIFM Directive have to (re)register or make any notification with the MFSA as a result of the end of the TIP to continue marketing in Malta?
UK Funds (UCITS funds and AIFS) will be permitted to market into Malta under the National Private Placement Regime. Those UK Funds currently passporting under article 36 AIFMD will need to notify MFSA that they intend to continue marketing under article 42 AIFMD.

Marketing to retail investors under the National Private Placement Regime is only allowed with specific authorisation from the MFSA.

The MFSA started accepting applications for marketing under the National Private Placement Regime on 18 November 2020. UK Funds are encouraged to make their applications as soon as possible in order to give the MFSA a chance to process them prior to the end of the TIP.

Contacts

Malta (Cont)

Will UK UCITS funds currently passported in Malta under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to the MFSA and provision of information to local investors after the end of the TIP?
Yes.

UK UCITS funds will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in Malta.

If UK funds (UCITS funds and AIFs) currently passported in Malta under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
Should a UK fund currently passported in Malta wish to de-register prior to 31 December 2020, it can retain its Maltese investors, but it will need to inform the MFSA, through the withdrawal notice issued by the FCA, what arrangements it will have in place to service Maltese investors, and further confirm that these will not change as a result of the de-registration.

UK Funds are being encouraged to prioritise these applications in order to allow the FCA time for processing and avoid delays.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Has the MFSA introduced a streamlined process for setting up a management company or fund in Malta with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the MFSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based-entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the MFSA.

Contacts

Malta (Cont)

If a UK fund manager is currently providing services (e.g. MiFID services) in Malta, will these services be deemed to be carried out from the UK or from Malta after the end of the TIP?
It will very much depend on the nature and frequency of the service being provided. A service provided on a one-off basis may be deemed to be carried out from the UK. If the services are initiated by and at the request of a Maltese client, the provision of services may be deemed not to have been delivered in Malta (reverse solicitation). Otherwise services carried out in or from Malta will need to adhere to local regulations on licensing.

Has the MFSA put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Netherlands

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Dutch Authority for the Financial Markets (AFM)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

Additionally, the UK's FCA and the Dutch Authority for the Financial Markets ("**AFM**") have agreed to work more closely together to protect and enhance the integrity and stability of both countries' financial systems. On 3 June 2019 the FCA and the AFM signed a joint agreement to formalise this partnership. Alongside information sharing the FCA and AFM will also share best practice approaches, explore the scope for secondments between the regulators and expert training opportunities. The agreement will apply during and after the transitional period, and will accompany the MMoU between the FCA and EU regulators, announced in February 2019. See the AFM press release "FCA and AFM agree on closer partnership".

How will the AFM treat UK funds (UCITS funds and AIFs) that are currently passported in the Netherlands under the UCITS/AIFM Directive after the end of TIP?
It is still unclear what will happen after the transitional period and this is subject to negotiations on the future relationship between the EU and UK. If the negotiations do not result in a new agreement, UK firms will only be able to offer funds in AIF's to professional investors in the Netherlands or manage Dutch AIF's under the national private placement regime (Article 42 AIFMD).

The AFM has not yet published any specific guidance on how it will deal with UK funds that are currently passported in the Netherlands under the UCITS/AIFM Directive after Brexit. However, it seems that UK funds will be treated as non-EEA funds as the AFM has recommended that UK-based financial institutions relocate (a part of) their activities and apply for a Dutch licence in a timely fashion, so that they will be allowed to continue their operations in the EU after the end of the transitional period. For further guidance, please see the AFM's webpage "The AFM and Brexit".

Contacts

Netherlands (Cont)

Will UK funds (UCITS funds and AIFs) currently passported in Netherlands under the UCITS/AIFM Directive have to (re) register or make any notification with the AFM as a result of the end of TIP to continue marketing in Netherlands?
This will depend upon the terms of the agreement between the UK and the EU.

Will UK UCITS funds currently passported in the Netherlands under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to the AFM and provision of information to local investors after the end of the TIP?
If the negotiations on the future relationship between the EU and UK do not result in a new agreement, UK firms will only be able to offer UCITS funds to professional investors in the Netherlands under the national private placement regime (Article 42 AIFMD). UCITS funds will be treated as non-EEA funds and will have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in the Netherlands.

If UK funds (UCITS funds and AIFs) currently passported in Netherlands under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/ redeem all investors in order to de-register?
If a fund wishes to de-register the fund and discontinue their activities, the investors must be informed. Investors should either be moved into another investment fund with the appropriate authorisation or redeemed prior to de-registration the fund.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Has the AFM introduced a streamlined process for setting up a management company or fund in the Netherlands with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
There is no specific process for UK managers or UK funds.

Has the AFM published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the AFM.

Contacts

Netherlands (Cont)

If a UK fund manager is currently providing services (e.g. MiFID services) in the Netherlands, will these services be deemed to be carried out from the UK or from the Netherlands after the end of the TIP?
A UK fund manager who provides services (e.g. MiFID services) from the UK to the Netherlands or offers AIFs or UCITS funds in the Netherlands, other than through a branch office or local agents in the Netherlands, will be considered to be carrying out these services from the UK and will only be permitted to do so in respect of professional or retail clients based in the Netherlands on the basis of reverse solicitation. Reverse solicitation can only be relied upon in very exceptional circumstances, which will need to be assessed on an case by case basis and must meet the conditions as set out in ESMA's Q&As.

If a UK fund manager who is providing services (e.g. MiFID services) in the Netherlands wants to carry out services in the Netherlands after the transitional period, the fund manager must obtain the appropriate authorisation.

Has the AFM put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Norway

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Financial Supervisory Authority of Norway (NFSA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the NFSA treat UK funds (UCITS funds and AIFs) which are currently passported in Norway under the UCITS/AIFM Directives after the end of the TIP?
As third country funds, i.e. non-EEA. All subject to Article 42.

Will UK funds (UCITS funds and AIFs) currently passported in Norway under the UCITS/AIFM Directive have to (re)register or make any notification with the NFSA as a result of the end of the TIP to continue marketing in Norway?
Yes, but UCITS are subject to a simplified procedure under Article 42.

At year end 2020 all passported UK funds were automatically deregistered, and so cannot undertake any further marketing in Norway unless and until a new Article 42 license is obtained.

A UK fund which was operating in Norway under a passport and which applied for an Article 42 license prior to 6 December 2020 can continue to market in Norway pending the outcome of its license application.

Will UK UCITS funds currently passported in Norway under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to NFSA and provision of information to local investors after the end of the TIP?
Yes. UK UCITS will be treated as non-EEA AIFs and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in Norway.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Contacts

Norway (Cont)

If UK funds (UCITS funds and AIFs) currently passported in Norway under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
All such UK funds will automatically be deregistered, even if they have Norwegian investors.

On deregistration marketing must stop, however rolling information requirements to investors under the articles of the funds and FCA requirements will continue to apply.

Has the NFSA introduced a streamlined process for setting up a management company or fund in Norway with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the NFSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
The HFSA has not published any guidance around delegation related to Brexit, however it did update its general outsourcing guideline on 2 October 2020.

Delegation of portfolio management is unlikely to be approved, but an advisory role for an overseas portfolio manager is generally acceptable.

All outsourcing must be notified to the NFSA 60 days prior to the date it becomes effective, save in respect of the outsourcing of general services.

If a UK fund manager is currently providing services (e.g. MiFID services) in Norway, will these services be deemed to be carried out from the UK or from Norway after the end of the TIP?
From the UK.

Has the NFSA put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
MiFID services provided to professional investors and qualified counterparties by passporting into Norway prior to the end of the TIP are permitted to continue under temporary Brexit regulations until 31 December 2022.

There are simplified procedures for UK UCITS and UK AIFMs with non-EEA AIFs currently passporting to Norway which want to apply for an Article 42 marketing license. If those applications were made prior to 6 December 2020, they can continue marketing pending the outcome of the Article 42 application.

UK insurers passporting into Norway are permitted to renew existing polices with Norwegian customer after the end of TIP but cannot contract with new customers.

Identification of British individuals for the purposes of transaction reporting under Article 26 MiFIR, must now be made using a passport number rather than UK National Insurance Number.

Information kindly provided by our relationship firm in Norway, Haavind.

Contacts

Poland

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Polish Financial Supervision Authority (KNF)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the KNF treat UK funds (UCITS funds and AIFs) that are currently passported in Poland under the UCITS/AIFM Directive after Brexit?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Poland under the UCITS/AIFM Directive have to (re)register or make any notification with the KNF as a result of Brexit to continue marketing in Poland?
Currently, the only way UK funds will be able to operate in Poland after Brexit is by opening a management company and fund in Poland licenced by the KNF.

In theory certain AIFs from non-EEA countries can obtain very limited licenses for operation in Poland but this is unlikely to be sufficient for UK AIFs in practice.

If UK funds (UCITS funds and AIFs) currently passported in Poland under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The Polish regulator has not issued any guidance on this issue and there is currently no formal deregistration procedure for foreign UCITS funds or AIFs.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found here.

Has the KNF introduced a streamlined process for setting up a management company or fund in Poland with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Contacts

Poland (Cont)

Has the KNF published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- a licence or permission from the KNF is required for any delegation

If a UK fund manager is currently providing services (e.g. MiFID services) in Poland, will these services be deemed to be carried out from the UK or from Poland after Brexit?
The answer will depend upon the factual circumstances.

Providing fund management activity in Poland will require a KNF licence. The provision of fund management services from the UK into Poland is permitted only in compliance with outsourcing regulations.

Contacts

Portugal

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Portugal´s Comissão do Mercado dos Valores Mobiliários (CMVM)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the CMVM treat UK funds (UCITS funds and AIFs) which are currently passported in Portugal under the UCITS/AIFM Directive after the end of the TIP?
UK funds which opt in to the Portuguese transitional regime will be treated as EEA funds.

Those UK funds which do not opt in to the transitional regime will be treated as third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Portugal under the UCITS/AIFM Directive have to (re)register or make any notification with the CMVM as a result of the end of the TIP to continue marketing in Portugal?
UK Funds which were passported in Portugal under the UCITS/AIFM Directive prior to the end of the TIP which notify the CMVN in accordance with Annex III of the Decree-Law no. 106-/2020 within three months of the end of the TIP (by 31 March 2021) may continue to be marketed in Portugal.

If UK funds do not opt to participate the transitional regime, after the end of the TIP they can only be marketed in Portugal with the prior authorisation of the CMVN and either by a third country management entity or solely to professional investors.

Will UK UCITS funds currently passported in Portugal under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to CMVM and provision of information to local investors after the end of the TIP?
Yes. UK UCITS funds will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in Portugal.

If UK funds (UCITS funds and AIFs) currently passported in Portugal under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
If UK funds (UCITS funds and AIFs) currently passported in Portugal under the UCITS/AIFM Directive wish to de-register the fund and have still investors left in the fund, they should notify the Portuguese sub-distributors. The Portuguese sub-distributors will notify the CMVM of their intention to de-register.

Contacts

Portugal (Cont)

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Has the CMVM introduced a streamlined process for setting up a management company or fund in Portugal with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
The CMVM has created the following guide: "Welcoming Collective Investment Management Companies". While not specifically stated to be targeted at UK firms, the service described in this guide includes:

- English language CMVM guidance and support for applications for authorisation
- authorisation within 3 months of application
- a single point of contact
- CMVN presumption of the sufficiency of application documents relating to suitability and conduct of business approved by other NCAs, subject to provision of translations

Has the CMVM published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the CMVM.

If a UK fund manager is currently providing services (e.g. MiFID services) in Portugal, will these services be deemed to be carried out from the UK or from Portugal after the end of the TIP?
It is not yet clear.

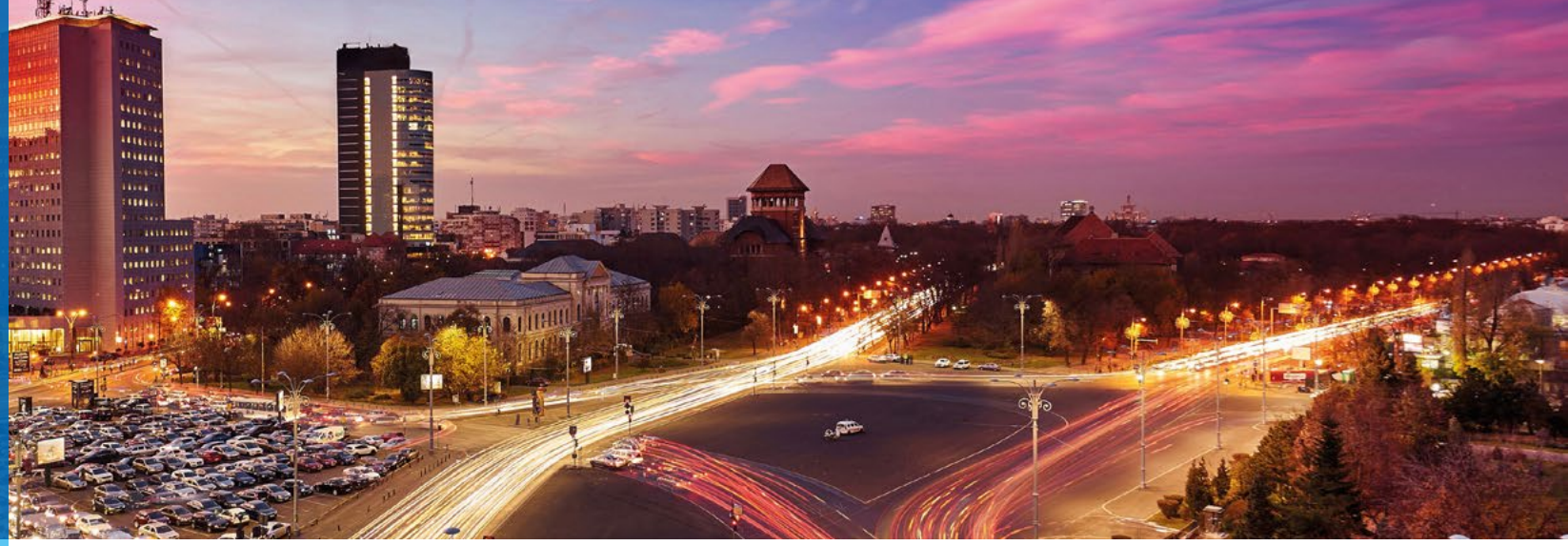
Has the CMVM put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
Yes.

UK Funds which were passported in Portugal under the UCITS/AIFM Directive prior to the end of the TIP which notify the CMVN in accordance with Annex III of the Decree-Law no. 106-/2020 within three months of the end of the TIP (by 31 March 2021) may continue to be marketed in Portugal.

Information kindly provided by our relationship firm in Portugal, Machado, Sarmento.

Contacts

Romania



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Romanian Financial Supervisory Authority (ASF)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the ASF treat UK funds (UCITS funds and AIFs) that are currently passported in Romania under the UCITS/AIFM Directive after Brexit?
The ASF has published a "Statement with regard to UK AIFMs regime after the Brexit transition period" in which it notes that after the end of the Brexit transitional period, UK AIFMs and AIFs will be subject to the provisions and requirements regarding third country entities under the AIFMD Directive (2011/61/EU).

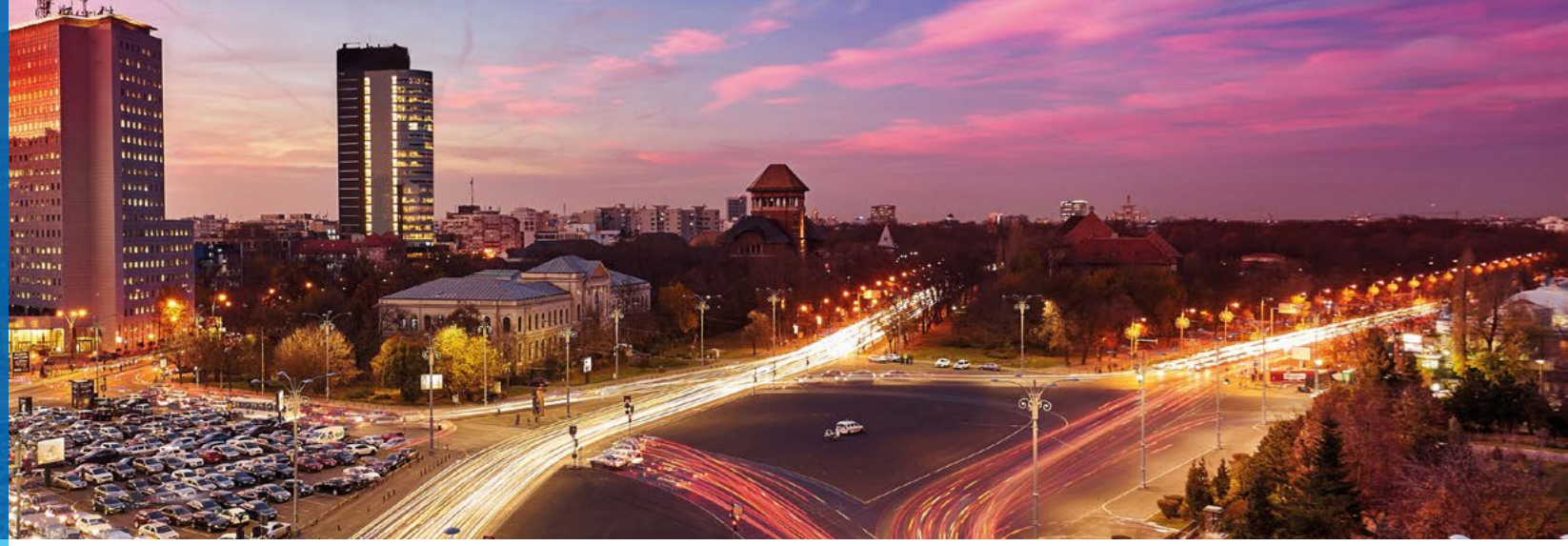
Will UK funds (UCITS funds and AIFs) currently passported in Romania under the UCITS/AIFM Directive have to (re)register or make any notification with the FSA as a result of Brexit to continue marketing in Romania?
No guidance has been published by ASF and the position is not yet clear.

Will UK UCITS funds currently passported in Romania under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to Romania and provision of information to local investors after the end of the TIP?
Yes. UK UCITS funds will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in Romania.

If UK funds (UCITS funds and AIFs) currently passported in Romania under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
No guidance has been published by ASF and the position is not yet clear.

Contacts

Romania (Cont)



Has the ASF introduced a streamlined process for setting up a management company or fund in Romania with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the ASF published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. At present there is such cooperation agreement in place between the FCA and the ASF.

If a UK fund manager is currently providing services (e.g. MiFID services) in Romania, will these services be deemed to be carried out from the UK or from Romania after Brexit?
No guidance has been published by ASF and the position is not yet clear.

Has the ASF put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No.

Contacts

Slovakia

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the National Bank of Slovakia (NBS)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

How will the NBS treat UK funds (UCITS funds and AIFs) that are currently passported in Slovakia under the UCITS/AIFM Directive after Brexit?
In the event of a no-deal Brexit, UK-based financial services providers currently operating in Slovakia based on either freedom of establishment or freedom to provide services will no longer be allowed to do so unless they establish either a branch in Slovakia or another EEA state from which they can passport into Slovakia.

Will UK funds (UCITS funds and AIFs) currently passported in Slovakia under the UCITS/AIFM Directive have to (re)register or make any notification with the NBS as a result of Brexit to continue marketing in Slovakia?
The NBS's April press release confirmed that all financial market participants which are incorporated in the UK and operate in Slovakia on the basis of the freedom of establishment, or the freedom to provide services (passporting), will not be authorised to operate in Slovakia after a no-deal Brexit. Existing UK funds will need to register as non-EU funds with the NBS to market in Slovakia.

If UK funds (UCITS funds and AIFs) currently passported in the Czech Republic under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/ redeem all investors in order to de-register?
UK funds will be automatically deregistered in the event of a no-deal Brexit. The NBS has not specified what will happen to current investors. However, the NBS has announced that in general all applicable ESMA rules will apply. This harmonisation aims to "ensure the uninterrupted provision of services to the investors in the Slovak financial market".

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found here.

Has the NBS introduced a streamlined process for setting up a management company or fund in Slovakia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Contacts

Slovakia (Cont)

Has the NBS published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- the NBS must be informed in writing of any delegation

If a UK fund manager is currently providing services (e.g. MiFID services) in Slovakia, will these services be deemed to be carried out from the UK or from Slovakia after Brexit?
Deemed to be carried out from the UK.

Information kindly provided by our relationship firm in Slovakia, Balcar, Polanský & Spol.

Contacts

Slovenia

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Slovenian Securities Market Agency (SMA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the SMA treat UK funds (UCITS funds and AIFs) which are currently passported in Slovenia under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Slovenia under the UCITS/AIFM Directive have to (re)register or make any notification with the SMA as a result of the end of the TIP to continue marketing in Slovenia?
After the end of the TIP, UK funds will be treated as third country (i.e. non-EEA) funds. They will have to apply to the SMA for authorisation.

The SMA has indicated that all UK UCITS funds will be considered as third country AIFs following the end of the TIP. Third country AIFs are not allowed to market in Slovenia and so UK UCITS funds will be deregistered. On 4 January 2021, the SMA announced that the deregistration of UK funds had been implemented and UK funds have been removed from the list of funds having valid notification for performing services on the Slovenian market.

Will UK UCITS funds currently passported in Slovenia under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to the SMA and provision of information to local investors after the end of the TIP?
The SMA has indicated that all UK UCITS will be considered as third country AIFs following the end of the TIP. Third country AIFs are not allowed to market in Slovenia and so UK UCITS will be deregistered. On 4 January 2021, the SMA announced that the deregistration of UK funds had been implemented and UK funds have been removed from the list of funds having valid notification for performing services on the Slovenian market.

Contacts

Slovenia (Cont)

If UK funds (UCITS funds and AIFs) currently passported in Slovenia under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
The SMA has stated that de-registration is possible and that the existence of investors currently plays no role in de-registration procedures. It is also worth mentioning that in its "Guidance Notice on marketing of units of AIFs to non-professional investors in the Republic of Slovenia" the SMA explicitly states that when an AIF ceases to market units in the Republic of Slovenia, or when an umbrella AIF ceases to market some compartments, the AIF manager must inform the SMA in writing and by e-mail. The SMA does not set out any further conditions.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Has the SMA introduced a streamlined process for setting up a management company or fund in Slovenia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

Has the SMA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the SMA.

If a UK fund manager is currently providing services (e.g. MiFID services) in Slovenia, will these services be deemed to be carried out from the UK or from Slovenia after the end of the TIP?
They will be deemed to be carried out from the UK. SMA authorisation will be required to provide services into Slovenia from a third country.

Has the SMA put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No. The SMA has not put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP.

Information kindly provided by our relationship firm in Slovenia, Rojs, Peljhan, Prelesnik and Partners.

Contacts

Spain

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Comision Nacional del Mercado de Valores (CNMV)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the CNMV treat UK funds (UCITS funds and AIFs) which are currently passported in Spain under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

UK regulated funds will additionally become subject to Spain's third country authorisation regime and will need to obtain a new licence in certain circumstances.

Will UK funds (UCITS funds and AIFs) currently passported in Spain under the UCITS/AIFM Directive have to (re)register or make any notification with the CNMV as a result of the end of the TIP to continue marketing in Spain?
The CNMV has explained that once the UK leaves the EU, entities may continue to operate in Spain, subject to prior authorisation, either indirectly, by setting up a subsidiary in Spain, or under the third country (i.e. non-EEA) regime. If funds are operating under a third country regime, the corresponding CNMV authorisation must be secured. The nature of this authorisation will depend on whether the provision of investment services in Spain is through a branch or under the freedom to provide services.

It should be noted that entities operating under third country authorisation will need to open a branch if they intend to provide investment and ancillary services in Spain to retail and professional clients.

Will UK UCITS funds currently passported in Spain under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to Spain and provision of information to local investors after the end of the TIP?
Yes. UK UCITS funds will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in Spain.

Contacts

Spain (Cont)

If UK funds (UCITS funds and AIFs) currently passported in Spain under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
The position is unclear. Neither the Spanish Stock Market nor the legislator have foreseen or implemented any measures regarding the de-registration of UK funds. The current political situation – and the upcoming elections in particular – have delayed legislative activity for the foreseeable future.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Has the CNMV introduced a streamlined process for setting up a management company or fund in Spain with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
Yes. The CNMV is determined to make Spain the most appealing destination for investment firms considering a move from the UK to another EU country. Its Welcome Programme, permits UK-based firms currently supervised by the FCA and PRA planning to relocate their business to Spain to opt for a streamlined authorisation process:

- standardised English language application forms with detailed instructions on the CNMV website
- electronic submission of application forms
- a pre-authorisation period of two weeks followed by formal authorisation within 2 months
- re-use of existing documents whenever possible, with a CNMV presumption that pre-existing English language documents that have already been filed with and approved by the FCA or PRA (or another competent authority in the EU) are in order

Has the CNMV published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the CNMV.

The delegating firm retains ultimate responsibility for the delegated activity and reasonable control over delegated functions must be established. The CNMV must have access to sufficient information to provide adequate supervision of the delegated activities.

Contacts

Spain (Cont)

If a UK fund manager is currently providing services (e.g. MiFID services) in Spain, will these services be deemed to be carried out from the UK or from Spain after the end of the TIP?
This will depend upon the circumstances. If services are deemed to be carried out in Spain, a licence from the CNMV will be required.

Has the CNMV put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
Yes.

Under the Royal Decree Law 38/2020 of 29 December (the "Royal Decree Law") financial services contracts entered into prior to the end of the TIP between UK financial services firms and persons resident in Spain remain valid and UK firms can continue to service those contracts until 31 December 2021 without any additional authorisation from the CNMV provided that they do not:

- enter into new contracts;
- substantially amend the contracts;
- involve the provision of new services or alter the essential obligations of the parties; or
- the servicing of the contracts involves regulated activities.

The Royal Decree Law also provides for a transitional period until 30 June 2021 during which UK firms can take the steps required to terminate or assign contracts entered into prior to the end of the TIP, including those which they cannot service under the Royal Decree Law to entities duly authorised to provide financial services in Spain.

Contacts

Sweden

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Swedish Financial Supervisory Authority (the FSA)?
Yes.

The FCA has entered into a multilateral memorandum of understanding ("**MMoU**") with the European Securities and Markets Authority ("**ESMA**") and a series of bilateral memoranda of understanding ("**MoUs**") with each of the EU/EEA securities regulators all of which came into force at the end of the Brexit transitional or implementation period ("**TIP**") on 31 December 2020.

The MMoU and MoUs cover supervisory cooperation, enforcement and information exchange between the EU/EEA securities regulators and the FCA. The MMoU and MoUs allow the regulators to share information relating to (amongst other things) market surveillance, investment services and asset management activities.

How will the FSA treat UK funds (UCITS funds and AIFs) which are currently passported in Sweden under the UCITS/AIFM Directive after the end of the TIP?
As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Sweden under the UCITS/AIFM Directive have to (re)register or make any notification with the FSA as a result of the end of the TIP to continue marketing in Sweden?
UK funds will be treated as third country funds and will have to (re)register accordingly. UK UCITS funds must be re-registered as third country AIFs.

On 15 January 2021, the FSA announced that it will update its registers to ensure that they contain accurate information. This means that the FSA will remove from the registers authorised firms or the parts of an authorised firm's business that should no longer be listed due to the UK's withdrawal from the EU.

Will UK UCITS funds currently passported in Sweden under the UCITS Directive that do not wish to de-register the fund, be subject to a different regime in terms of regulatory reporting to FSA and provision of information to local investors after the end of the TIP?
Yes. UK UCITS funds will be treated as non-EEA funds and will therefore have to comply with AIFMD transparency and disclosure requirements as set out in Articles 22, 23 and 24 of the AIFM Directive 2011/61/EU and related Level 2 provisions in Sweden.

If UK funds (UCITS funds and AIFs) currently passported in Sweden under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?
They will be able to de-register the fund even if there are investors left in the fund.

The applicable regulation of the fund's home state will govern the process of moving/redeeming existing investors left in the fund.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based".

Contacts

Sweden (Cont)

Has the FSA introduced a streamlined process for setting up a management company or fund in Sweden with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?
No.

All AIFMs are treated in accordance with the principle of equal treatment.

Has the FSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK-based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?
No.

Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 apply to an AIFM and Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU apply to a UCITS management company. In order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the FSA.

If a UK fund manager is currently providing services (e.g. MiFID services) in Sweden, will these services be deemed to be carried out from the UK or from Sweden after the end of the TIP?
UK funds will most likely be dealt with under existing Swedish regulations for non-EEA AIFMs. If a UK fund is considered to have a branch in Sweden, then an FSA licence will be required.

Has the FSA put in place any temporary permissions or recognitions regimes to manage or alleviate the end of the single market in financial services and passporting between the UK and the EU at the end of the TIP?
No. There are no such temporary solutions in place.

Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Polish Financial Supervision Authority (KNF)?
Based on the Brexit agreement between the UK and EU, and the Polish Act implementing a transition period which came into force on 1 February 2020, the UK will be treated as a member state until 31 December 2020.

Contacts

Contacts

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden

For further information, please contact:

Lindi Rudman
Legal Director
T: +44 20 7919 0837
lindirudman@eversheds-sutherland.com

Thomas Pritchard
Principal Associate PSL
T: +44 20 7919 4679
thomaspritchard@eversheds-sutherland.com

eversheds-sutherland.com

DTUK003166_12/20