

New Luxembourg Guidance Calls for Urgent Action from U.K. Alternative Fund Managers

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On Friday of last week (11 October 2019), the Luxembourg regulator, the CSSF, released [further guidance](#) for UK-regulated alternative investment fund managers (AIFMs) of Luxembourg-domiciled funds, including unregulated partnerships, in anticipation of a possible hard Brexit (that is, one that does not include a transitional or standstill period) on 31 October 2019. The guidance will require some UK AIFMs to take urgent action.

The guidance is directed both at those AIFMs that have already submitted a notification through the portal opened by the CSSF in August, and those that have not.

By way of background, the portal opened by the CSSF in August gave UK AIFMs the ability to enter a 12-month transitional regime following the date of a hard Brexit, allowing them to continue to manage Luxembourg-domiciled funds during that period, but also requiring the AIFM to agree to appoint a replacement EU-regulated AIFM before the end of the transitional period (or to liquidate the fund). The industry had strongly objected to that approach, which would have required many Luxembourg-domiciled funds to change their AIFM, possibly against the wishes of their investors. It would also have put existing UK AIFMs in a less favourable position than other non-EU managers, who are permitted to manage Luxembourg funds and were not affected by this change.

It is therefore welcome that the further guidance issued by the CSSF last week now allows some UK AIFMs to continue to act as the AIFM of a Luxembourg partnership if they make a notification before 31 October 2019 and meet certain conditions.

The guidance is in two parts. First, for AIFMs that have not already submitted a notification through the portal, the CSSF confirms that, in case of a hard Brexit, they will be treated as “third country” managers (with no transitional period). **However, the CSSF now says that those managers must, before 31 October, seek approval from the investors in the Luxembourg funds that they manage in order to continue to manage those funds.** This option is only available to those funds whose “direct and indirect” investors are professional investors under AIFMD or “well-informed investors”

under Luxembourg law.¹ It is not available to an AIFM of an AIF which includes any non-qualifying investors.

The CSSF goes on to say that such approval to continue as the AIFM needs to be obtained in accordance with the conditions in the fund's constitution (such as the limited partnership agreement) for amendment of the constitution or, in the absence of a provision in the constitution, in accordance with the requirement for consent to amend the constitution under Luxembourg law.

AIFMs must send to the CSSF, **before 31 October 2019**, confirmation that all direct and indirect investors qualify as professional investors and a copy of the resolution evidencing investor approval. If it is not possible for the AIFM to obtain confirmation in time (due to, for instance, notice periods for investor meetings), it can explain that to the CSSF, with a copy of the notice sent to investors requesting their approval.

The second part of the guidance deals with AIFMs that have already submitted a notification through the portal and had intended to use the transitional period. The CSSF states that these AIFMs can recall the notification and proceed as third country AIFMs in the way described above.

UK AIFMs that are currently fund-raising for a Luxembourg fund may wish to include a provision in their limited partnership agreement that clearly demonstrates that the investor consents to the continued appointment of the UK AIFM as a "third country" manager after Brexit.

These announcements have no impact on other non-EU managers (such as US managers) managing Luxembourg structures.

Although some important questions remain about these announcements, affected managers should take urgent action. If you believe that you are affected by these announcements and would like further advice and assistance, please do not hesitate to contact us.

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¹ "Well-informed investors" are institutional investors, professional investors, and investors who have confirmed in writing that they adhere to the "well-informed" investor status, and who either invest a minimum of EUR 125,000 in the AIF or have been assessed by a credit institution, investment firm or management company which certifies the investor's expertise, experience and knowledge in adequately appraising an investment in the AIF.



Patricia Volhard
Partner
pvolhard@debevoise.com



Simon Witney
Special Counsel
switney@debevoise.com



Jin-Hyuk Jang
International Counsel
jhjang@debevoise.com



John Young
International Counsel
jyoung@debevoise.com



Clarisse Hannotin
Associate
channotin@debevoise.com



Eric Olmesdahl
Associate
eolmesdahl@debevoise.com



Philip Orange
Professional Support Lawyer
porange@debevoise.com



Johanna Waber
Associate
jwaber@debevoise.com