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Luxembourg tackles UCITS cross-border marketing issues/investment concerns in the context of Brexit

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The Luxembourg government has introduced a new bill of law (bill of law 7426 (the Bill)) establishing transitional measures for investment funds in the context of the withdrawal of the United Kingdom (UK) from the European Union (EU).

The Bill is set to modify the law of 17 December 2010 on undertakings for collective investment (the UCI law) and the law of 13 February 2007 on specialised investment funds (the SIF law).

It introduces a transitional period of 12 months after the withdrawal date for undertakings for collective investment in transferable securities (UCITS), undertakings for collective investment regulated by part II of the UCI law (part II UCIs) and specialised investment funds (SIFs) to adjust (to the extent required) their investment policies, and contains specific provisions in relation thereto for UCITS established in the UK and currently marketed in Luxembourg.

Unlike bill of law 7401[1] (see our previous briefing here), the Bill will apply whether or not the withdrawal agreement between the EU and UK is ratified by the UK parliament. Following the withdrawal of the UK from the EU (Brexit), the UK will have the status of a third country, which may potentially have an impact on the investment policies of certain funds, whose assets may no longer fulfil applicable eligibility requirements.

As a result, UCITS, part II UCIs, and SIFs established in Luxembourg whose investment policies are no longer complied with as a result of Brexit will need to perform the adjustment as soon as possible (in any event within a maximum period of 12 months to rectify any non-compliance resulting from Brexit). It is worth noting that the 12 month grace period envisaged in the Bill only applies to investment policies which predate Brexit and will therefore not be afforded to non-compliant investment policies that are implemented post-Brexit.

Furthermore, in order to ensure the continuity of UCITS marketed in Luxembourg and thus safeguard the interests of Luxembourg investors, the Bill provides that any UCITS which, at the time of Brexit, are authorised by the UK authority in accordance with Directive 2009/65/EC[2] and are managed by a UK UCITS management company authorised under the same directive, and which market their shares to retail investors in Luxembourg, will be able to continue to do so for a maximum of 12 months following Brexit.

Should the management company of such UCITS be authorised by the competent authority of a Member State other than the UK, units in said UCITS may continue to be marketed to retail investors in Luxembourg during the same period, but only if the management company is also authorised as a manager of alternative investment funds (since UCITS authorised by the UK authority will qualify as third-country alternative investment funds (AIFs) at the time of Brexit).

During the 12-month period, entities that may be affected by or fall within the scope of the Bill, should consider taking all necessary steps with the *Commission de Surveillance du Secteur Financier* to rectify any noncompliance in status which may arise as a result of Brexit.

For any additional information, please contact Ogier in Luxembourg.

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[1] Bill of law on measures to be taken in relation to the financial sector in case of withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.

[2] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

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