From Theory to Practice

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Brexit is thrusting Luxembourg as a jurisdiction into the limelight. We should expect increased enforcement to follow.

If the Brexit vote has created some worries for UK asset managers wanting to sell their funds in the EU, spare a thought for Commission de Surveillance du Secteur Financier (CSSF) in Luxembourg. Luxembourg, along with Ireland, may be among the key jurisdictions managers look to if they end up requiring an EU presence to market and distribute products to European investors under the passporting regime.

If so, the CSSF is about to get a lot busier.

Making It Real

On one hand, the rules under which firms using Luxembourg to gain passporting rights are well established. The AIFMD regime has bedded in, and two broad operating models have emerged under which firms can meet the Directive's requirements for 'substance' – showing that their processes, procedures, staff and infrastructure in the EU constitute a tangible presence there.

Some non-EU firms have chosen to invest the time and money to establish a genuine operation in the country from which to serve EU citizens; others have chosen to engage a third-party management company with the necessary substance and regulatory licences – effectively a fully outsourced solution.

Both meet the regulatory requirements. The difficulty will be for those attempting something in-between. And this is where the regulator would be likely to intervene.

Laying Down the Law

There is little doubt we can expect it to do so with increasing regularity. The increase in the number and scale of firms expected to establish a presence in Luxembourg post-Brexit will only be manageable for the regulator through application of clear standards. And the regulator's – and jurisdiction's – credibility will only be maintained if those standards are properly enforced.

Enforcement is among the most powerful tools the regulator will have to both clarify its approach for firms and promote adherence to the standards it defines.

For firms deciding to locate their operations in Luxembourg, that means the question is no longer just one of costs and convenience, but also of robustness in the face of regulatory scrutiny. That's because it is no longer a question of if firms' choices in this regard will be tested, but when.