

Brexit: an EU fund director bonanza

ESMA's recent Opinion to EU national regulators on UK manager relocations to counter Brexit is severe. But it is great news for EU fund directors. It should lead to an EU fund director boom, especially in Ireland and Luxembourg.

On May 31 ESMA has issued an Opinion to EU national regulators on UK manager relocations. ESMA set out 9 Principles for relocations and says will be setting up a body to co-ordinate this. The Opinion covers AIFMD, UCITS, MiFID I and MiFID II. It is addressed to national competent authorities (NCAs) of the 27 remaining EU Member States. ESMA states that it is 'a practical tool to support supervisory convergence in the context of increased requests from UK financial market participants seeking to relocate to the EU27'.

These Principles make it very clear that managers wishing to access European markets post Brexit will need to have real substance within the EU to be allowed to do that. The problem is that there are nowhere near enough people resident in Ireland and Luxembourg that have the skills and the capacity to take on the roles required locally to pass the substance test.

[Continued on page 11 >>](#)

The MLI requires boards to make the decisions

BEPS' Multilateral Instrument (MLI) came into effect on June 7. Articles 12 to 14 of the MLI include changes to Permanent Establishment rules which impact fund directors. Directors will have to show that they are making 'material modifications' to funds, according to the MLI.

The principle behind BEPS' rules on Permanent Establishment, Action Plan 7, is to align a company's economic activity with where it pays its taxes. It is intended to stop companies using low tax jurisdictions as a location to book profits. Companies will need real and demonstrable substance there in future.

Of importance to the alternative asset management industry, and particularly to fund directors and the jurisdictions in which they reside, is how tax authorities are going to interpret Articles 12 to 14 of the MLI. Those in the industry that The NED has spoken to about this believe the changes to Permanent Establishment rules means that funds will need to be able to show that their directors are real decision makers.

[Continued on page 13 >>](#)

Contents

Brexit: an EU fund director bonanza	1
The MLI requires boards to make the decisions	1
News	2
US alternative fund numbers grow but NAVs show slight decline	2
Cayman introduces beneficial ownership law	3
Strong growth at ManCo platforms	4
Depo derogation comes to an end	5
Heritage acquired by Estera	6
Risk governance: how much value does it add?	7
IFI Global event	15
Non Executive Fund Directors Database	17

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