ANTONIOU McCOLLUM &CO.

Passporting in the EU for banking, financial services and insurance undertakings

February 2018

State of play

Access to the EU's Single Market is increasingly becoming a priority for non-EU credit institutions, financial services providers and insurance undertakings.

Structuring an EU presence entails navigating through a number of options, each with different results from an operations, compliance, tax and supervision perspectives.

Non-EU credit institutions, financial services providers and insurance undertakings frequently opt to establish an EU-based entity, licensed to provide regulated services under EU law, which then passports its license across the EU.

Organisations may seek to invoke equivalence of their home country's supervisory regime with that of the EU, where such equivalence is recognised.

We discuss equivalence and passporting for banking, financial services and insurance undertakings below.

Equivalence

The EU recognises that certain regulatory or supervisory regimes of non-EU countries are equivalent to the respective EU regime.

Equivalence allows EU supervisors to rely on compliance and supervision of non-EU entities with equivalent rules in their home jurisdictions.

An equivalence decision may take the form of an implementing or delegated act, in accordance with what is envisaged in the corresponding equivalence provision in the basic act.

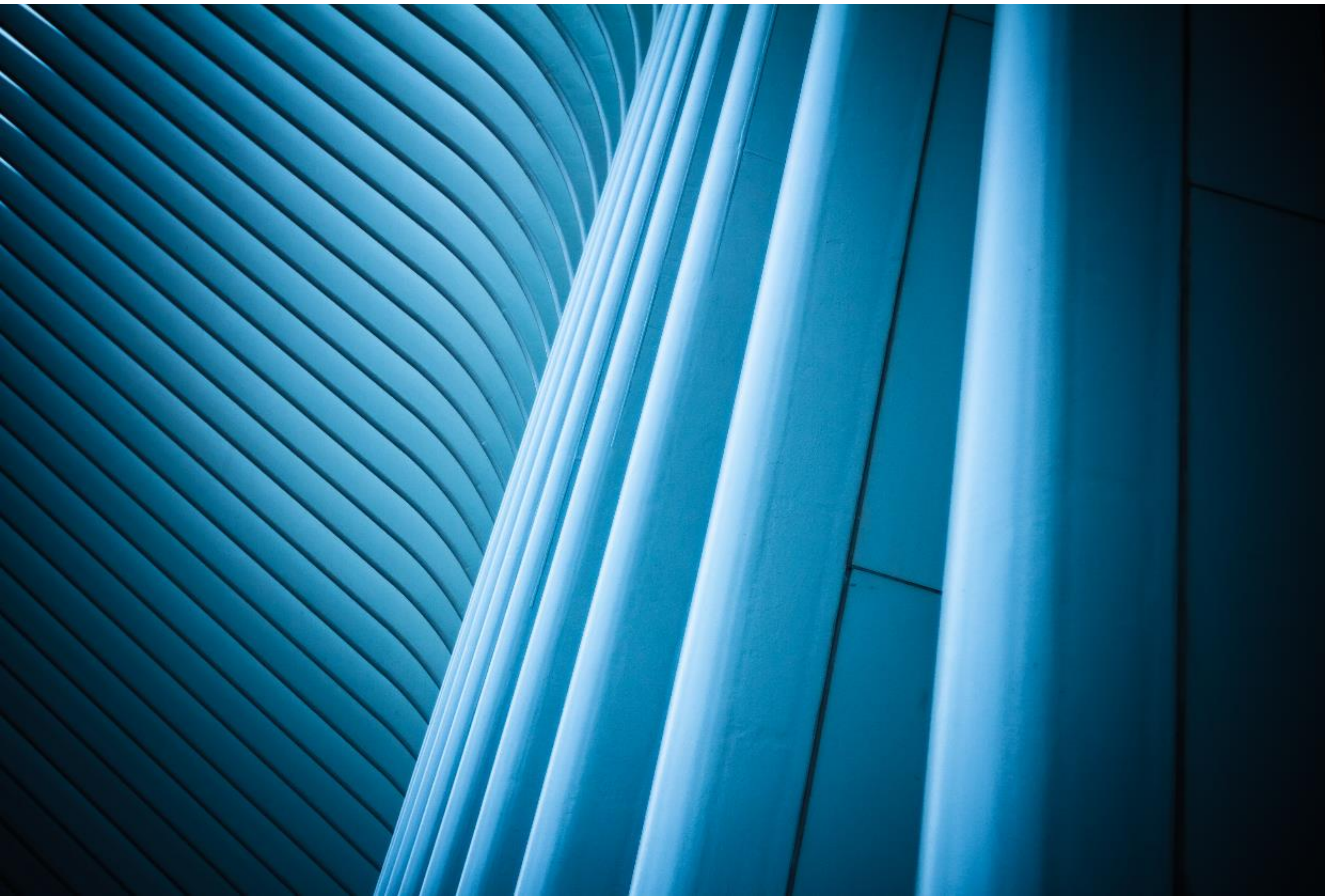
The equivalence decision may stipulate whether it is full or provisional and if it applies for an indefinite or a finite period.

Equivalence decisions are in place for the following industries:
- Financial services
- Insurance
- Banking

Passporting

Passporting refers to the 'single licence' concept which enables EU businesses to provide their services across the EU.

Passporting draws from the fundamental freedoms enshrined in primary EU law: the freedom of



establishment and the freedom of services.

Passporting can happen through one of two ways: establishing branches in other EEA countries or providing services across the EEA on a cross-border basis.

Entities that can passport their single licence across the EU include the following:

- Alternative investment fund managers (AIFMs)
- Credit intermediaries
- Credit institutions
- Electronic money institutions
- Insurers and reinsurers
- Insurance intermediaries
- Investment firms
- Payment institutions
- UCITS managers

Banking

The CRD IV Directive allows EEA credit institutions to carry out banking services in other EEA member states, through a branch or on a cross-border services basis. Credit institutions also have passport rights under MiFID II.

The following services, inter alia, can be passported:

- Taking deposits and other repayable funds
- Lending
- Financial leasing
- Payment services under the new Payment Services Directive and issuing and administering other means of payment
- Guarantees and commitments
- Trading for own account or for account of customers in money market instruments, foreign exchange, financial futures and options, transferable securities
- Participation in securities issues and the provision of services related to such issues
- Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the acquisition of undertakings
- Money broking
- Portfolio management and advice
- Safekeeping and administration of securities
- Credit reference services
- Safe custody services
- Issuing electronic money

Financial services

Investment firms authorised in an EEA member state can provide their services under MiFID II in other member states, either cross-border or through a branch.

It is possible to passport any investment service that falls within the scope of MiFID II, but it is not possible to passport an ancillary service unless that service is being offered in conjunction with an investment service.

Insurance

The Solvency II regime enables firms authorised in one EEA state to conduct business in another EEA state, under a single licence.

This business can be conducted either by establishing a branch or writing business on a 'freedom of services' basis from the home member state.

Some EU member states have adopted specific legal provisions to protect the general good, in so far as they do not unduly restrict the right of establishment or the freedom to provide services. These general good requirements differ amongst member states.

Contact us to discuss your precise requirements.

Antoniou McCollum & Co. LLC

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Antoniou McCollum & Co. LLC
36L Griva Digeni | 3rd floor | Lapithion
1066 Nicosia | Cyprus
T: +357 22 053333 | F: +357 22 053330
info@amc.law

Visit amc.law for more information on our firm and services.