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MGAA Brexit Briefing

London, 25 June 2018

CMS BELGIUM

MGAA Brexit Briefing | 25 June 2018

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Part I – Brexit and insurance intermediaries from a Belgian perspective

Post-Brexit strategy: who has chosen Brussels?



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Insurance intermediaries under Belgian law

The Agent

- *“An insurance intermediary who, by virtue of one or more agreements or powers of attorney, performs insurance mediation services on behalf of and for the account of one or more insurance undertakings.”*
- Obligation to place policies with specific insurer(s)
- Subagent: responsibility of agent

The Broker

- *“An insurance intermediary bringing together policyholders and insurance undertakings, or insurance undertakings and reinsurance undertakings, without being bound in the choice thereof.”*
- No obligation to place policies with specific insurer(s)

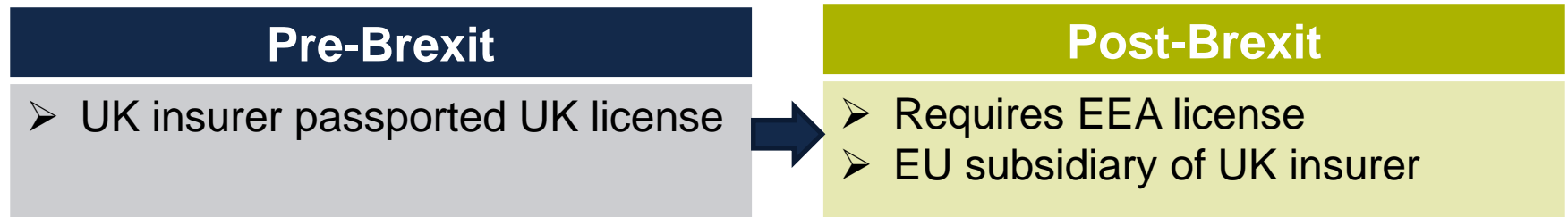
Insurance intermediaries under Belgian law

“Insurance mediation services” =

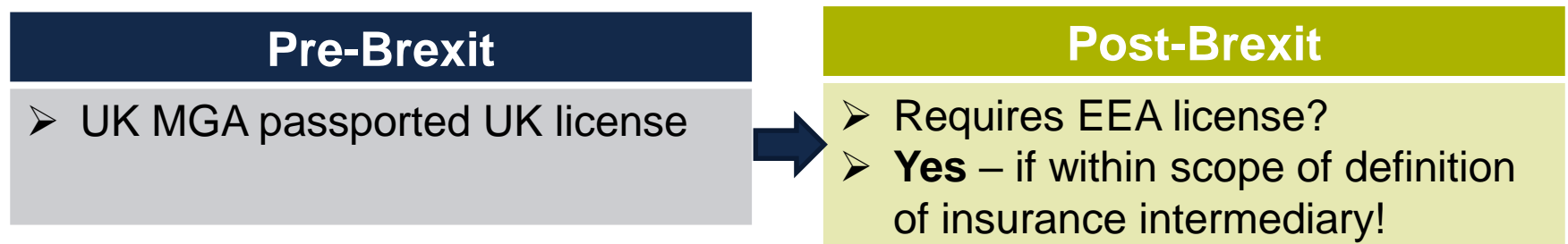
“The activities that consist in advising on insurance contracts, offering, proposing, carrying out preparatory work to conclude insurance contracts or concluding insurance contracts, or in assisting in the management and execution thereof.”

MGA's in Belgium/EEA pre- and post Brexit

Insurers



MGA's



Part II – Steps to undertake to acquire an insurance intermediary license in Belgium

Steps to be undertaken

- 1) Incorporation of new company in Belgium
- 2) Request licence for newly established company with FSMA

Alternatively: passport license other EEA country to Belgium

Incorporation of new company

	NV/SA	BVBA/SPRL	SE
Min. capital	61,500 EUR	18,550 EUR	120,000 EUR
Transfer of shares	Free	Limited	Free
Min. # shareholders	2	1 (but if only 1 jointly liable)	2
Min. # directors	2-3	1	One-tier or two-tier system
Special requirements			Social plan

- Revision of Belgian Code on Companies: “BV” to be main company form – Entry into force for new companies 1/1/2019

License request

- Procedure in Dutch or French, but meetings can take place in English
- Welcoming and flexible approach
- Application can be approved within 3-4 weeks from filing

Substance requirements

	Residing in Belgium?	Professional requirements
Min. 1 executive manager	No	<ul style="list-style-type: none">• Necessary suitability and professional reliability• Professional knowledge (management of a company)• Appropriate experience• Continuous training
Min. 1 “person in contact with the public (“PCP”)	Yes	<ul style="list-style-type: none">• Professional knowledge (insurance matters) – diploma or exams
Min. 1 “responsible for distribution” per every 10 PCPs	Yes	<ul style="list-style-type: none">• Necessary suitability and professional reliability• Professional knowledge (insurance matters) – diploma or exams• Continuous training

Substance requirements

- Branch back to UK **allowed**, but:
 - Actual substance is required – proportionate to the level of business
 - Local staff, UK employees travelling to Belgium, IT servers located in Belgium, events organised in Belgium, etc.
- Can be gradual process – 1 to 3 years

Capital requirements

- No regulatory capital requirements
- IDD not yet implemented in Belgium – only draft bill
- Current law already foresees in protective measures for consumers

Tax observations

- Insurance premium tax (some type of policies are exempted) on policies
- Insurance mediation services (and related services) are VAT exempt
- Income tax of 29,58% (20,40% for SME's on their taxable income up to 100.000 EUR)
 - As of 1 January 2020: 25% (20% for SME's on their taxable income up to 100.000 EUR)

Questions?



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CMS Luxembourg

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Part I – Overview of Brexit from a Luxembourg perspective

General Brexit environment in Luxembourg

The United Kingdom from a Luxembourg perspective:

- **1st** largest EU partner for **imports of services**
- **2nd** for **exports of services**
- **1st** EU investor in Luxembourg
- Represents **16%** of all net assets under management in Luxembourg
- **6th** in terms of bank representation

Luxembourg position on Brexit:

- called for a "smart divorce" that maintained close trade and investment links
- wish to offer solutions as a hub to address European markets

CSSF – The financial regulator's approach

- Welcoming and flexible approach
- Delegation or outsourcing back to the UK **allowed** under conditions:
 - minimum size of operations required (proportionality principle applied)
 - authorised management must be in Luxembourg
 - key functions and IT system must be in Luxembourg
 - there must be accounts accessible at all times by the regulator

Post-Brexit strategy: who has chosen Luxembourg?

Investment firms



BC Partners

Payment services



Post-Brexit strategy: who has chosen Luxembourg?

Banks



Julius Bär



J.P.Morgan



Post-Brexit strategy: who has chosen Luxembourg?

Asset managers

THE CARLYLE GROUP



JUPITER



NORTHERN
TRUST

ICG



M&G
INVESTMENTS



COLUMBIA
THREADNEEDLE
INVESTMENTS



SC
m | DIRECT

Post-Brexit strategy: who has chosen Luxembourg?

Insurance



Post-Brexit strategy: Why Luxembourg?

“Luxembourg offers substantial benefits in terms of financial services, blockchain technology and information security — a solid foundation for our expansion,”

Yu (Robert) Chen, founder and CEO, PingPong

“We chose Luxembourg because of its flexible commercial regime, it’s also a similar regime to the UK”

Andrew Devine, Head of Compliance, BC Partners

*“The **CEO of Standard Life, Keith Skeoch**, told that Luxembourg was one of the top contenders for asset management companies looking to relocate some of their operations post-Brexit”*

“the Grand-Duchy was the optimum jurisdiction for our new EU base due to its central geographical location, stable economic and political environments, and “professional approach of the Luxembourg regulator”.

David Brosnan, CEO, CNA Hardy

“I think Frankfurt is for us today number one, but will become number two. We’ve decided to move our hub--we’re maybe a bit ahead of the market, we already had our European hub in Frankfurt--but for strategic considerations, we’ve decided to move it to Luxembourg.”

Boris Collardi, CEO, Julius Bär

“We have ambitious plans for growing the business that we do within and from the EU, and Luxembourg best fits the design principles we set ourselves to best position our post-Brexit structure.

Nick Metcalf , President & Managing Director, Liberty Speciality Markets

Part II – Key questions to address for establishing an insurance intermediary in Luxembourg

1. Two status under Luxembourg law – a choice to be made

The Agent

- Natural or legal person engaged in insurance mediation for and on behalf of one or several insurance undertakings
- Acts under the entire responsibility of such insurance undertakings relative to their respective products

The Broker

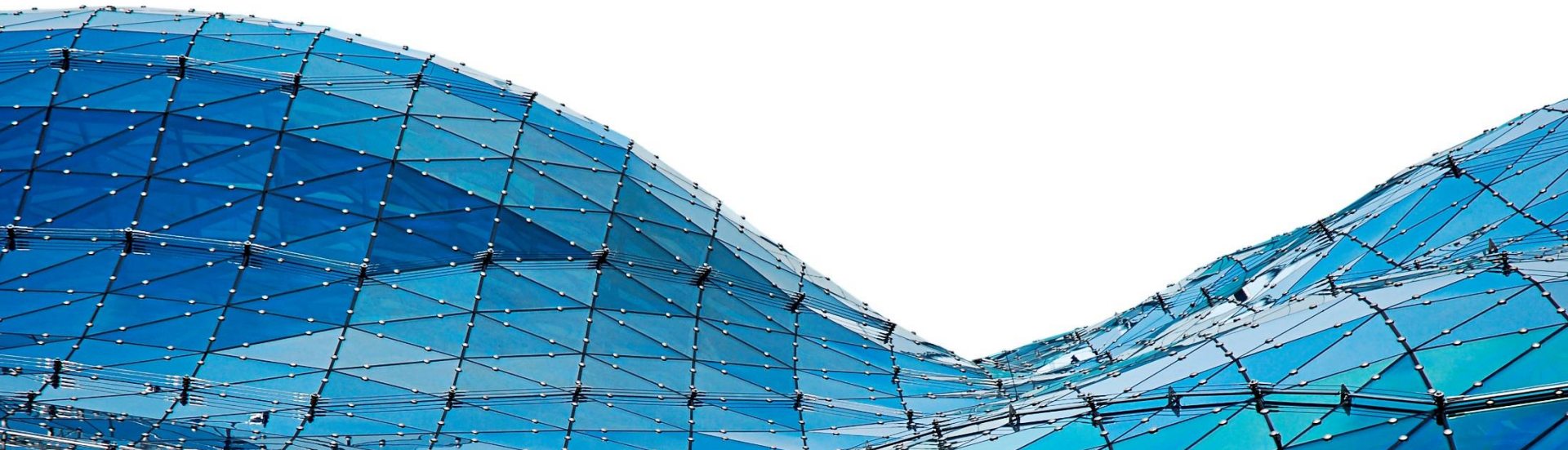
- Natural person established for his own account or a legal person acting as an intermediary between the policyholders it represents and authorised insurance undertakings in Luxembourg or abroad
- Broker should not be an affiliate or have a common shareholder with the insurance undertakings

2. What type of activities are permitted? Can policies of more than one insurer be distributed?

- Distribution of insurance products on behalf of several insurance undertakings if products do not compete with each other
- If insurance products compete with each other, a joint application must be submitted to the CAA
- A separate/additional application can only be made if the products subject to the distribution on behalf of several insurers do not belong to the same branch

3. Which legal forms ? What are the capital requirements?

- Choice amongst one of the forms provided for in the Luxembourg commercial companies law
- Capital requirements will depend on the chosen legal form



4. What are the accounting requirements?

- Simple accounting similar to those required for holding companies
- No additional regulatory requirements



5. Can the business team be based in the UK?

- Yes under certain conditions
- Specific attention to “approved manager” / management of the agent



6. What are the requirements for the “approved manager”?

- The agent must be effectively managed by a “*dirigeant agréé*”:
 - Being resident in Luxembourg
 - Considered by the CAA to have the requisite professional knowledge and integrity
 - Being materially involved in the decision-making process concerning the agent’s insurance intermediary activities

7. Other than the approved manager, are there any particular requirements for the qualifications of the team?

- No particular requirement provided that the decision process remains a prerogative of the *dirigeant agréé*



8. What is the extent of the regulatory oversight & scrutiny?

- The agent is subject to the oversight of the CAA with respect to:
 - its compliance with the laws and regulations applicable to insurance intermediary activities
 - providing information to the CAA
 - complying with the instructions of the CAA
 - ensuring the prudent and diligent management of its activities

9. What is the entity's exposure to regulatory sanction?

In case of breach of the Luxembourg insurance sector law:

- CAA can impose a fine of up to EUR 50,000
- or one the following alternative sanctions :
 - a warning
 - a reprimand
 - a prohibition on carrying out certain intermediary activities and
 - a temporary suspension of the intermediary or one or more of its executives



10. Who makes the application? Local presence required?

- Application to the CAA to be made by the insurer
- Key issue: an application can only be made if the insurer is authorised to provide insurance services in Luxembourg (hence, local presence required through e.g. a branch)



11. What information needs to be provided?

- Constitutive documents of the agent
- Structure chart
- Evidence regarding the experience of the “approved manager”
- Program of activity regarding the proposed operations
- Any other documentation the CAA considers relevant

12. How long does the process take?

- 6 to 8 weeks
- May however be longer if the person applying as “approved manager” must take an insurance test (occurring twice a year)



13. What are the implications for passporting?

- The agent will rely on the passports of its insurance partner(s) in order to operate in other EU countries
- The insurer would first notify the CAA, who would then notify the other relevant EU regulators
- The agent can start its passported activities one month after such notification

14. Are there any material benefits in relation to the speed of on-boarding new insurance partners?

- A license is granted directly in relation to a determined insurer
- Every switch and/or additional insurer must submit a new – and joint, where applicable – application in order to apply for the license of the agent



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CMS Germany

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A. Germany – Country & Market

I. Economy

- Germany is 4th largest economy by nominal GDP in the world (\$ 3.65 trillion as of 2017) and largest economy in Europe
- Founding member of the European Union and the Eurozone
- Top 10 exports are vehicles, machinery, chemical goods, electronic products, electrical equipment, pharmaceuticals, transport equipment, basic metals, food products, and rubber and plastics
- Of the world's 2000 largest publicly listed companies measured by revenue, 53 are headquartered in Germany
- Top 10 being Allianz, Daimler, Volkswagen, Siemens, BMW, Deutsche Telekom, Bayer, BASF, Munich Re and SAP
- However, 99 percent of all German companies belong to the German "Mittelstand" (i.e. small and medium-sized enterprises)

II. Insurance Market

Figures Gesamtverband der Deutschen Versicherungswirtschaft ("**GDV**", *German Insurance Association*)

- 5th largest market for primary insurance in 2016 (after USA, Japan, China, UK, France) – US Dollar 215.0 billion
- 3rd largest market for non-life primary insurance in 2016 (after USA, China) – US Dollar 120.4 billion
- 2nd largest market for reinsurance in 2015 (after USA, 23,3% share in world premium income)
- Employed and self-employed in the insurance industry in 2017 – 513.015

III. Map

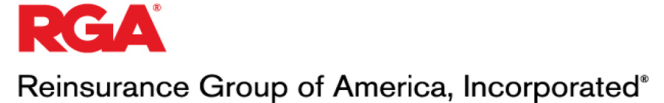


IV. Cologne – A German Insurance Capital

- 73 (German) headquarters of insurance companies
- 25,000 Employees in the insurance sector 2016



International Insurance Companies in Cologne



International Insurance Companies in Cologne



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B. Regulation

I. Classification of MGAs under German Law

Insurance intermediary = umbrella term for both insurance agents ("*Versicherungsvertreter*") and insurance brokers ("*Versicherungsmakler*") (Sec. 59 para. 1 Insurance Act – "**VVG**")

Insurance Agent	Insurance Broker
Acts as intermediary on behalf of one or several insurers (Agent of the Insurer)	Acts as intermediary on behalf of the policyholder (Agent of the Insured)
Can receive binding authority from insurer	binding authority (?)
Can receive claims settlement authority from insurer	Can <u>not</u> receive claims settlement authority from insurer (decided by the German Federal Supreme Court of Justice (" BGH ") in 2016 with regard to the German Legal Services Act (" RDG "))

I. Classification of MGAs under German Law

- *"Classed as intermediaries for regulatory purposes, MGAs actually provide professional underwriting services **on behalf of insurers**. MGAs can also offer specialist underwriting knowledge as well as very cost effective distribution platforms for their insurance partners. At the same time, they provide brokers with a better service and a wider range of product and insurer options."* (see MGAA-Website)
- Since MGAs represent the insurer, it lies next to classify MGAs as **insurance agents** under German Law

II. Authorisation by IHK and registration in the German insurance intermediaries register

- Insurance agents themselves are not specifically regulated under financial services law as such (job description as well as rights and duties follow from the German Insurance Contract Act, "**VVG**")
- But: requirement to be licensed and registered with the competent local Chamber of Industry and Commerce (*Industrie- und Handelskammer*, "**IHK**") (Sec. 34 d para. 1 Industrial Code – "**GewO**")
- No minimum capital requirement
- IHK registration process requires forms to be downloaded from the IHK website, completed and returned in hard copy format
- This should be accompanied by:
 - an excerpt of the commercial register
 - proof of orderly financial circumstances, including excerpts from the debtors files, attestation from bankruptcy court and certificate from the tax authorities

II. Authorisation by IHK and registration in the German insurance intermediaries register

- proof of expertise and proof of certain professional qualifications for key senior management authorised to represent the company
 - personal documents for all natural persons authorised to manage the company
 - proof that there is sufficient professional indemnity insurance in place
- No need to meet with IHK
 - Confirmation generally takes about two weeks from the date of submission
 - Registration in the insurance intermediaries register kept by the Association of German Chambers of Commerce and Industry (*Deutscher Industrie- und Handelskammertag*, "**DIHK**")

III. Indirect supervision of BaFin

- According to German Insurance Supervision Act ("**VAG**"), there is no direct ongoing supervision of insurance intermediaries not by by the Federal Financial Supervisory Authority ("**BaFin**") or any other authority
- The BaFin only supervises insurance companies and financial institutions, and requires insurance companies to work with (fit & proper) registered intermediaries (Sec. 48 ff. VAG on the cooperation with insurance intermediaries) → indirect supervision

III. Indirect supervision of BaFin

- This system of indirect supervision applies even if the EU/EEA insurer itself is not based in Germany
- Principle of home country supervision
- But: BaFin can apply Sec. 48 ff. VAG (cooperation with insurance intermediaries) for the supervision of foreign EU/EEA-based insurer (see Sec. 62 para. 1 VAG) as a requirement lying in the general good

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C. Corporate Issues

Possible legal forms for insurance intermediaries

I. GmbH (Limited Liability Company)

- Most widespread form of corporation in Germany due to far-reaching autonomy afforded to its shareholders and flexibility
- Name of the GmbH emphasizes the fact that the owners of the entity are not personally liable for the company's debts (limited liability)
- Comparable to a Limited Company ("**Ltd.**") under the laws of England and Wales, Scotland
- Minimum registered share capital: 25,000 EUR

II. AG (Stock Corporation)

- Limited by share ownership
- Strict demands re organisation, accounting and legal housekeeping
- Two tier board system
- Comparable to a Public Limited Company ("**PLC**") under the laws of England and Wales, Scotland
- Minimum registered share capital: 50,000 EUR

III. SE (European Company)

- Public company registered in accordance with the corporate law of the EU
- Can more easily transfer to or merge with companies in other member states
- Minimum registered share capital: 120,000 EUR

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D. Employment

Overview of important aspects

- Germany average in Europe as to costs, time and general difficulty to terminate an employment relation
- Employment lawsuits: high rates of settlements before and during trial
- Low strike rate
- Relative high involvement of work councils in daily matters, but usually only established in larger business units

E. Tax

What are the most important taxes for insurance intermediaries?

Most important taxes

- Corporate Income Tax ("*Körperschaftsteuer*")
 - Tax rate of 15 % for any profits
 - Solidarity surcharge of 5.5 %

- Trade Tax ("*Gewerbesteuer*")
 - Levied by the German municipalities where the business is conducted
 - Tax rate ranges between 7 % and 17.5 % depending on local multiplier applicable

Most important taxes

- Value-Added Tax ("*Umsatzsteuer*")
 - Tax rate of 19 %
 - But: full exemption for services related to insurance activities (see Sec. 4 para. 10 VAT-Code, *Umsatzsteuergesetz* ("**UStG**"))

- Insurance Premium Tax ("*Versicherungsteuer*")
 - Standard tax rate of 19 %
 - But: differs from the type of risk covered by the insurer and various exemptions

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F. Aspects to consider

General advantages of Germany as business location in Germany

- Central location in EU
- Good infrastructure
- High development, power of innovation
- Quality, reliability, reputation of regulation and organisation
- High stability of the law
- Qualified personnel
- Stable economy and large market

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MGAA: DUTCH ISSUES

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Doing business in the Netherlands

- 1) Incorporation of new company (BV: limited liability)
- 2) Apply for a licence with AFM;
- 3) OR: provide services on the basis of a EU passport from other EU jurisdiction

Issues

CORPORATE

- Incorporation of a company in few days/ EUR 3,000-5,000
- 1 or more directors
- no employment contracts needed for directors
- Who does the client contacts?

REGULATORY

- Application process more than 4 weeks
- In Dutch !
- Strict vetting process
- Qualifications and experience may be combined through combination of directors and employees
- Required format of Power

Regulatory issues

- Procedure in Dutch, meetings can take place in English
- Strict approach; welcoming to those who have their work in order
- Competence puzzle: experience and qualifications may be shared by more than one person, but
 - What are the safeguards against exits?
 - Does a qualified employee enough discretion against an unqualified superior?
- Flexible employment contracts for the first 3 years, but AFM monitors continuity
- Required format for power of attorney for the MGA (additional and internal binders still valid)

Scope and Substance

- Scope of services without a Dutch license from outside EEA
- *Any activity aimed at the mediation of insurance or the management and execution of a policy*
- Dutch position is not clear versus post Brexit UK firms;
- Substance is required:
 - both financially and “people on the ground”;
 - AFM warned against mail box operations
- Proportionate to the business and the required client contacts and the decision making process (automated or tailor made work)
- Decision makers do not have to be in the NL at the time
- Grey area: AFM assesses on the basis of all relevant facts and circumstances of the situation