PROPOSED CHANGES TO THE PASSPORTING REGIME FOR MIFID FIRMS PROVIDING SERVICES IN THE CZECH REPUBLIC

The Czech parliament is currently debating a draft Bill amending the Czech Capital Markets Act that regulates, among other things, provision of investment services by MiFID investment firms in the Czech Republic under MiFID passport. Under the draft Bill, this regulation would change in a way that MiFID investment firms from another EEA Member State wishing to provide services covered by MiFID passport in the Czech Republic under the freedom to provide services would be able to do so only on a temporary or occasional basis.

The Czech Act on Banks already provides that the services covered by the CRD IV passport can be provided in the Czech Republic under the freedom to provide services so long as the services do not have the character of a "permanent business activity". If the services are carried out as a permanent business activity, the relevant bank passported into the Czech Republic pursuant to the CRD IV is required to use a branch passport and provide the services through a Czech branch. According to the legislative report accompanying the draft Bill, the purpose of the proposed amendment is to align the passporting regime applicable to EEA banks under the Czech Act on Banks and EEA investment firms under the Czech Capital Markets Act.

The term "permanent business activity" is not defined in the Czech Act on Banks. In its 2015 opinion "On the necessity of establishment of branch for provision of financial services", the Czech National Bank refers to EU law (namely the Treaty on Functioning of the European Union) and the related case law of the European Court of Justice in particular when interpreting the term "permanent business activity". In the opinion, the Czech National Bank further states that MiFID investment firms are allowed to provide services covered by the MiFID passport without a branch even if the services had a character of a permanent business activity, because the Czech Capital Markets Act does not contain such requirement and MiFID firms thus enjoy greater freedom of services than provided by the Treaty.

Key issues

- A draft Bill is being discussed in the Czech parliament amending the Czech Capital Markets Act in a way that MiFID investment firms wishing to provide services to clients in the Czech Republic under MiFID passport would be required to use a branch passport and provide MiFID services through a Czech branch unless the services are provided on a temporary or occasional basis.

- The Czech Act on Banks already provides for the same requirement in respect of EEA banks providing services to clients in the Czech Republic under the CRD IV passport.

- The purpose of the proposed amendment is to align the passporting regime applicable to EEA banks and EEA investment firms.

- A number of EEA banks currently provide cross-border banking services into the Czech Republic without having a local branch and we would expect this to be the position also for EEA investment firms.

- In order for the amendment to become effective, the draft Bill has to be approved by the Parliament, signed by the President and published in the collection of laws which will most likely be at the beginning of 2020.

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PROPOSED CHANGES TO THE
PASSPORTING REGIME FOR MIFID FIRMS
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REPUBLIC.

If the draft Bill is approved and becomes effective, MiFID investment firms providing services to clients in the Czech Republic would be required to use a branch passport and provide MiFID services through a Czech branch unless the services are provided on a temporary or occasional basis. The legislative report to the draft Bill states that the amendment follows the provision of Article 57 the Treaty on Functioning of the European Union that is the legal basis of the free movement of services within the EEA. Consequently, the Czech passporting regime applicable to EEA banks and investment firms should be the same and should not materially differ from the passporting regime in other EEA Member States.

As a result, even if the draft Bill is adopted, EEA investment firms will continue to have the right to choose to provide services covered by MiFID passport on a cross border basis or through a branch. Only if the activities would be carried out on a stable and continuous basis could the firms be required to provide the services through a Czech branch. A number of EEA banks currently provide cross-border banking services into the Czech Republic without having a local branch and we would expect this to be the position also for EEA investment firms.

In order for the amendments to become effective, the draft Bill has to be approved by the Parliament, signed by the President and published in the collection of laws which will most likely be at the beginning of 2020.

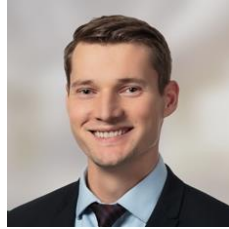**C L I F F O R D**

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CONTACTS

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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