

Luxembourg Update: Brexit Laws Published

Following on from our earlier legal updates^{1,2}, the laws of 8 April 2019 regarding measures to be taken in relation to the financial sector in the event of a withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (the "Brexit Laws") were published in the *Official Journal of Luxembourg* on 11 April 2019.

The Brexit Laws comprise two separate legislative texts: (i) law n° 237 of 11 April 2019, which enacted bill of law n° 7401 (the "First Brexit Law") and (ii) law n° 238 of 11 April 2019, which enacted bill of law n° 7426 (the "Second Brexit Law") and make various amendments to existing investment fund and financial sector legislation with the aim of ensuring the functioning and stability of the financial markets and protect clients and consumers of the financial sector from the date of Brexit.

Certain of these amendments will allow FCA regulated UK entities currently providing services to Luxembourg financial sector participants to continue to do so during a fixed transitional period. However, any transitional period foreseen by the Brexit Laws will be limited in time and scope.

In all other cases, i.e. where UK entities wish to conclude new contracts or commence new activities in Luxembourg post-Brexit, the

relevant UK entity will be required to either establish a branch in Luxembourg or provide services on a cross-border basis without establishing a branch in Luxembourg pursuant to Article 32-1 of the law of 5 April 1993 on the financial sector, as amended³.

The First Brexit Law will only take effect in the event of a hard Brexit. In contrast, the Second Brexit Law will take effect not only in the event of a hard Brexit but in any Brexit scenario. The CSSF indicated in a press release on 12 April 2019⁴ that, due to the ongoing political uncertainties surrounding Brexit, it will communicate with industry at a later date with respect to the actions to be taken by UK entities in order to benefit from the transitional periods provided by the Brexit Laws.

We expect the CSSF will require UK entities operating in Luxembourg under the freedom to provide services or through a branch to inform the CSSF of (i) their activity in Luxembourg and (ii) their post-Brexit plan. Any post-Brexit plan submitted to the CSSF should reflect one of three options open to UK entities at the Brexit date: (i) termination of the UK entity's activity in Luxembourg, (ii) application for a license in Luxembourg or (iii) transfer of the relevant activity to another EU Member State.

¹ <https://maples.com/Knowledge-Centre/Industry-Updates/2019/02/Luxembourg-Update-Publication-of-Draft-No-Deal-Brexit-Legislation>

² <https://maples.com/Knowledge-Centre/Industry-Updates/2019/03/Brexit-Bills-Passed-in-Luxembourg-Parliament>

³ <https://maples.com/Knowledge-Centre/Industry-Updates/2019/05/MiFID-II-CSSF-Issues-New-Circular-on-Third-Country-Firms-Access>

⁴ CSSF press release 19/18 of 12 April 2019

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