

ATOZ ALERT



BREXIT: Luxembourg takes additional steps to mitigate Brexit effects

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Yesterday, a second draft law was released aiming at mitigating Brexit effects for the investment fund sector. It follows the first draft law on Brexit, which introduced among others a grand-fathering period of up to 21 months during which UK management companies of Luxembourg undertakings for collective investment in transferable securities (**UCITS**) and UK alternative investment fund managers (**AIFMs**) would be able to respectively continue managing Luxembourg UCITS funds and continue managing/providing services to Luxembourg AIFs in case of “hard” Brexit.

The second draft law released yesterday aims at modifying the law of 17 December 2010 on undertakings for collective investment (**UCIs**), as amended (the **UCI Law**) and the law of 13 February 2007 on specialised investment funds (**SIFs**), as amended (the **SIF Law**) to mitigate the following two additional Brexit effects:

UK UCITS becoming AIFs

Irrespective of the final outcome of Brexit (“soft” or “hard” Brexit), UK UCITS within the meaning of the EU UCITS Directive will become alternative investment funds (**AIFs**) after UK’s departure from the EU.

The draft law sets out that UK UCITS authorised for placement to retail investors in Luxembourg will benefit from a transitory period of 12 months enabling them to keep on marketing their shares to retail investors during that period. After the end of the transitory period, marketing will only be authorised according to the marketing rules applicable to third countries (if applicable) under the alternative investment fund managers Directive (**AIFMD**) or based on national private placement rules.

The 12 month transitory period will be introduced by means of a new article to be included into chapter 25 (*Transitional provisions*) of the UCI Law.

The draft law reminds that if a UK UCITS is currently managed by an EU (non-UK) UCITS management company, such UCITS management company will only be able to benefit from the transitory period if it has an AIFM licence since, again, UK UCITS will be considered as AIFs after Brexit.

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Potential breach of the investment policy/restrictions by UCITS, Part II UCIs and SIFs

After the departure of the UK from the EU, Luxembourg UCITS, Part II UCIs and SIFs investment policies, restrictions and risk spreading requirements set out in their funds' documents or provided by law may be breached as a result of Brexit (e.g. exposure to securities issued by EU Member States).

The draft law introduces also a transitory period of 12 months during which UCITS, Part II UCIs as well as SIFs will be able to regularise their situation. Such transitory period will be granted only to the extent that the irregularities result from positions taken before Brexit. Corrective measures will have to be taken as soon as possible, taking into account the best interest of investors.

The transitory period will be introduced by means of a new article to be included in each of chapter 25 (*Transitional provisions*) of the UCI Law as well as chapter 14 (*Transitional and repealing provisions*) of the SIF Law.

This draft law is again a new potential addition to the Luxembourg legal framework in view of Brexit and demonstrates once again the willingness of the Luxembourg government and administrations to soften Brexit's effect on the national market and ensure its stability while protecting the interests of investors.

Can we help? Do you have further questions?



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