

BREXIT – ITALIAN LAW DECREE NO. 22 OF 25 MARCH 2019 ON THE FINANCIAL MARKETS AND UK REGULATED ENTITIES

The Italian Government has recently issued Law Decree no. 22/2019 (the “**Decree**”). The Decree is aimed at, *inter alia*, ensuring the security, financial stability and integrity of financial markets in the event of the United Kingdom's withdrawal from the EU without an agreement with the European Council (so called “**Hard Brexit**”).

The Decree sets forth a transitional period of 18 months (the “**Transitional Period**”) along with a number of transitional measures, which are generally differentiated depending on the nature of the business exercised in Italy, on the relevant regime (whether in freedom to provide services or under the freedom of establishment – hereinafter, “**FOS**” and “**FOE**”) at the date of effectiveness of Hard Brexit, as well as, in certain cases, on the type of clients *vis-à-vis* whom the activity is carried out.

The application of said transitional measures requires in certain cases a prior notice (the “**Notice**”) to be served to the competent Italian supervisory Authority (to be identified on a case by case basis for each operator), no later than 3 (three) days before Hard Brexit becomes effective, in accordance with the procedures laid down by each of said competent authorities⁽¹⁾.

The Decree shall be converted into law by the Italian Parliament within 60 (sixty) days of its publication. Before such date, there may be further amendments introduced by the Italian Parliament and, if not approved, the Decree will be retroactively ineffective.

For ease of reference, please also find below a brief summary of the main provisions governing the Transitional Period.

Banking Activity: UK Banks are allowed to continue carrying out their activities by serving the Notice to the Bank of Italy. Such measure shall not extend to banks collecting savings in FOS, whose activity will be limited to the management of relationships existing before the date of withdrawal, with no possibility to enter into new contracts, or to renew existing ones.

Investment services and activities: Italian branches of UK banks and investment firms may continue to carry out their activities by serving the Notice, respectively, to the Bank of Italy and CONSOB. With respect, instead, to UK banks and investment firms transacting MiFID services on a FOS basis, the Decree provides that they can continue to carry out their activities *vis-à-vis* eligible counterparties and professional clients (*i.e.*, starting from the date of withdrawal, they will no longer be entitled to carry out their activities *vis-à-vis* retail clients and professional clients on request).

⁽¹⁾ For UK banks, e-money institutions, payment institutions and asset managers reference is made to the templates provided by the Bank of Italy and available at the following link: <http://www.bancaditalia.it/compiti/stabilita-finanziaria/informazioni-brexit/brexit-fulfillment/index.html>.
For UK investment firms reference is made to the templates provided by CONSOB and available at the following link: http://www.consob.it/web/area-pubblica/bollettino/documenti/bollettino2019/c20190326_7.htm.

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E-money institutions: branches of e-money institutions may continue to operate by serving the Notice to the Bank of Italy. UK e-money institutions operating in FOS (or through agents or associated entities) shall instead cease their activities and may only manage the termination of existing relationships.

Should the UK banks, investment firms and branches of e-money institutions (as identified above) intend to carry on their activities in Italy beyond the Transitional Period, they shall be required to submit – within 6 (six) months – a specific application to the competent supervisory Authorities aimed at (i) being authorized to perform such activities in Italy or (ii) establishing an Italian entity.

Other entities: UK payment institutions, asset managers and investment collective schemes shall cease their activities. In order to avoid any detrimental impact for the clients, these entities will be allowed to carry out any activities required to terminate existing relationships in an orderly manner (and in any event within maximum 6 (six) months from Hard Brexit).

Insurance companies: UK insurance companies operating in Italy either in FOS or FOE will be cancelled from the EU list of insurance companies held by IVASS. In order to guarantee the continuity of services for policyholders, insured persons and persons entitled to insurance benefits, the UK insurance companies shall continue to operate during the Transitional Period with respect to the management of existing contracts and coverages in force at the date of withdrawal, without entering into new contracts or renewing existing contracts.

Furthermore, UK insurance companies are required to submit to IVASS a plan illustrating the relevant measures to be adopted in order to ensure the regular and proper execution of existing contracts and coverages within 90 (ninety) days from the date of entry into force of the Decree. In turn, policyholders may withdraw from existing contracts having a duration exceeding one year without any additional cost, by giving written notice to the company or by exercising other forms of termination of the contract (tacit renewal clauses lose their effect). The policyholder's withdrawal shall take effect from the expiry of the first policy year following the date of withdrawal from the relevant contract. UK insurance companies and insurance shall inform policyholders, insured persons and other persons entitled to insurance benefits with respect to the operating regime applicable, within 15 (fifteen) days from the date of entry into force of the Decree.

Insurance and reinsurance intermediaries: UK intermediaries operating in Italy either in FOS or FOE will be cancelled from the relevant register held by IVASS. In order to avoid any detrimental impact for any contractual party, insured persons and persons entitled to insurance benefits, the UK intermediaries will be allowed to carry out any activities required to terminate existing relationships in an orderly manner (and in any event within maximum 6 (six) months from Hard Brexit), without entering into new contracts or renewing existing contracts. UK intermediaries shall inform any contractual party, insured persons and persons entitled to insurance benefits regarding the operating regime applicable, within 15 (fifteen) days from the date of entry into force of the Decree.

Other measures: the Decree includes a number of further measures aimed at, *inter alia*: (i) ensuring protection of local customers and avoid market disruption as a consequence of Hard Brexit, (ii) governing the activity of the Italian entities/individuals in the UK during the Transitional Period, (iii) governing residence permits in Italy and citizenship, and (iv)

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extending the Italian regime governing the granting of State guarantees as part of securitization transactions whose underlying assets are non-performing loans (the latter discipline is not related with Brexit regime).

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The Regulatory Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of your interest.

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