

NKF Client News

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Bridging the Gap – Switzerland's approach to Brexit

"We are in a theatre where we don't know when the play begins, when it ends and what the plot is" – this extremely poignant analogy was made by Lord Garnier QC, the former UK Solicitor General and quoted in one of The Law Society's special features on Brexit¹.

The theatre is not only the UK and the EU-27 but also the rest of the world who will all, to a greater or lesser extent, be affected by Brexit, especially, in the case of a no-deal Brexit. So too will Switzerland.

The play may begin as early as 30 March 2019 if the British Parliament does not approve the UK-EU withdrawal agreement or does not do so on time and if no extension to the withdrawal date is agreed. If the withdrawal agreement is approved, a transition period will commence which will to a large extent preserve the status quo until at least 31 December 2020 (with the possibility of a one-time two-year extension).

The so-called "meaningful vote" in the House of Commons is currently scheduled to take place on 12 March 2019. A lot hangs in the balance. Individuals and companies alike are faced with a considerable amount of legal uncertainty.

Thanks to the "Mind the gap" strategy adopted by the Swiss Federal Council as early as October 2016², Swiss companies and individuals have a somewhat better idea than their counterparts in the EU what the plot of a no-deal Brexit will look like. Luckily for Switzerland, as it is not a member of the European Union, it was not prevented from implementing its own contingency plan.

And so, between December last year and February this year Switzerland and the United Kingdom entered into bilateral agreements in a number of areas, namely:

- air transport - Air Transport Agreement signed 17 December 2018³;
- transport by road - Road Transport Agreement signed 25 January 2019⁴;
- direct insurance (with the exception of life insurance) - Direct Insurance Agreement signed on 25 January 2009⁵;
- trade - Trade Agreement signed 11 February 2019⁶; and
- citizens' rights - Agreement on Citizens' Rights signed on 25 February 2019⁷.

In case of a no-deal Brexit and without an extension to the withdrawal date, these bilateral agreements between Switzerland and the UK will enter into force on 30 March 2019.

¹ See https://www.lawgazette.co.uk/analysis/features/special-focus-brexit-standing-alone/5069449.article?utm_source=dispatch&utm_medium=email&utm_campaign=%20GAZ141016

² See <https://www.eda.admin.ch/missions/mission-eu-brussels/en/home/key-issues/brexit.html>

³ Not yet publicly available.

⁴ Not yet publicly available.

⁵ Not yet publicly available.

⁶ Text available under <https://www.eda.admin.ch/dea/en/home/verhandlungen-offene-themen/offene-themen/brexit.html>

⁷ Text available under <https://www.gov.uk/government/publications/swiss-citizens-rights-agreement-and-explainer>

In addition, on 21 February 2019, FINMA, the Swiss Financial Market Supervisory Authority, announced that it would provisionally recognise important parts of the UK derivatives regulations.⁸

While Switzerland's "Mind the gap" strategy and the bilateral agreements concluded with the United Kingdom go some way towards alleviating the legal uncertainty that would be caused by a no-deal Brexit, there are still a number of important areas which are either not covered by or expressly excluded from the scope of the bilateral agreements and will, therefore, require careful consideration. Among these are:

- future rights of UK nationals to live and work in Switzerland (and vice versa);
- enforcement of English court judgments by Swiss courts (and vice versa) – as the Lugano Convention will no longer apply to the UK and judgements will, therefore, have to be enforced under the (more cumbersome) private international law rules;
- import of British goods into Switzerland by land – as they will necessarily pass via the territory of an EU member state, the EU may require prior notification and security checks;
- import and export of machinery, medical devices, electrical equipment, construction plant and equipment and construction products;
- import and export of certain agricultural goods such as organics, animals and animal products, animal feed and seeds; and
- customs safety and security.

In conclusion, while individuals and companies in Switzerland may have a somewhat better idea of what the plot of a no-deal Brexit will look like based on the bilateral agreements already in place between Switzerland and the UK, there is still quite a bit of uncertainty and some way to go to bridge the legal and regulatory gap inevitably created by Brexit. This will require not only continued bilateral efforts on the part of the respective governments but also consistent monitoring, pro-active involvement and careful planning by the companies and individuals whose business and private lives are directly or indirectly affected by the changes brought about by Brexit.

⁸ FINMA Guidance 01/2019: BREXIT: Recognition of UK derivatives regulations, 21 February 2019

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