

CZECH "BREXIT ACT" AND FINANCIAL SERVICES

The Czech Government has prepared a Bill that will temporarily regulate relations between the Czech Republic and the UK in case the UK leaves the EU without a withdrawal agreement having been signed. It is expected to be approved by the Czech Parliament by the end of February.

The Bill deals with areas that affect UK citizens such as residency, working permits, certifications and pensions as well as with areas that affect UK businesses such as those providing financial services in the Czech Republic.

The Bill permits the UK financial services providers to carry out activities necessary to settle their existing receivables and debts. That applies to all types of the financial services providers with existing passporting rights including credit institutions, investment firms, payment services providers and insurance companies. The financial services providers would not have to take any action to take advantage of the proposed regime.

In particular, the Bill provides that the UK financial services providers shall retain the right to carry out such activities in the Czech Republic that are necessary to settle their receivables and debts arising from the financial services provided before the exit of the UK from the EU. It is the same regime that would apply to a Czech financial services provider after its license has been withdrawn.

The Bill provides that solely for that purpose, the UK financial services providers will be regarded as being providers from another EU Member State. That should mean that they will have the same rights and obligations as they had prior to the exit of the UK from the EU and that the applicable Czech regulatory obligations should continue to apply as if the Czech Republic was a host Member State.

However, the Czech National Bank will supervise the UK financial services providers as if they were established in the Czech Republic. Therefore, the extent of the supervisory powers of the Czech National Bank will increase and will be similar as if the Czech Republic was a home Member State, in particular as regards the administrative sanctions that may be imposed by the Czech National Bank for breach of regulatory obligations.

Key issues

- Applies in case of no deal Brexit scenario and until 31 December 2020 at the latest
- Applies to all types of UK financial services providers with existing passporting rights including credit institutions, investment firms, payment services providers and insurance companies
- The financial services providers will only be able to settle their receivables and debts arising from the services provided prior to Brexit
- The regulatory obligations should remain the same as if the Czech Republic was a host Member State
- The supervisory powers of the Czech National Bank will be extended as if the Czech Republic was a home Member State

Unfortunately, the rules provided for in the Bill are very general and leave the scope of permitted conduct and regulatory rules applicable to such conduct uncertain. The legislative report accompanying the Bill is not particularly helpful as it states that, in practice, the UK financial services providers will not be allowed to establish new obligations or change existing obligations but will be able to carry out such activities aimed at exercising receivables and performing debts in relation to existing clients. It is yet to be seen how this regime will be applied by the Czech National Bank and to what extent lifecycle events will be permitted.

In addition, the Brexit Act (if the Bill is approved and becomes effective) will cease to have effect on the earlier of (i) effectiveness of the deal between the EU and the UK, and (ii) 31 December 2020 (with exceptions). The regulatory regime after the expiry of the effectiveness of the Brexit Act in case no deal is reached before 31 December 2020 thus remains even more uncertain.

The Bill has been already approved by the Chamber of Deputies of the Czech Parliament. The Senate of the Czech Parliament has scheduled to vote on the Bill on 27 February 2019. Nevertheless, the approval of the Bill in its current wording is expected. Once approved by the Parliament, the Bill still has to be signed by the Czech President.

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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Clifford Chance, Jungmannova Plaza,
Jungmannova 24, 110 00 Prague 1, Czech Republic

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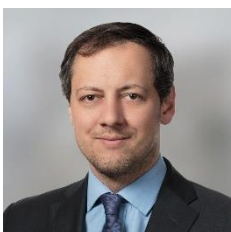
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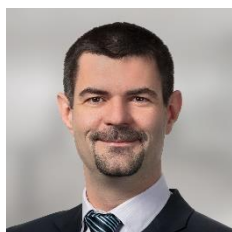
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CONTACTS



Vladimír Rýlich
Senior lawyer
Banking & Finance

T +420 222 555 210
M +420 731 471 436
E vladimir.rylich@cliffordchance.com



Miloš Felgr
Partner
Banking & Finance

T +420 222 555 209
M +420 731 471 429
E milos.felgr@cliffordchance.com



Marian Husár
Senior lawyer
Banking & Finance

T +420 222 555 271
M +420 739 525 427
E marian.husar@cliffordchance.com