

## **ROMANIA - BREXIT UPDATE**

The Brexit saga is continuing with no clear definitive solution in sight. But what is currently definitive is that the UK will leave the EU with "no deal" on 12 April unless an alternative route is found.

Following the Contingency Action Plan implemented by the European Commission, several Member States have taken steps in preparing a consolidated contingency plan at national level. While no similar contingency plan has been announced yet by the Romanian Government, certain Romanian authorities or institutions have issued public statements expressing their approach in their respective competence areas in relation to a potential impact of a no-deal Brexit.

### **FINANCIAL SERVICES SECTOR**

#### **Banking and payment services sector**

The National Bank of Romania ("**NBR**") issued a press release on 12 February 2019 in respect to a potential no-deal Brexit impact on the banking, payment and electronic money issuance services in Romania.

The NBR flagged that, in case of a no-deal Brexit, the EU legislation, including the one regarding banking and payment services, will cease to apply and UK will become a third country in relation to any of the EU Member States, including Romania. Moreover, the UK entities providing banking and payment services as well as electronic money issuance services in Romania, either directly or through their branches, will no longer benefit from the single EU passport regime, and will be treated as third-country entities.

Consequently, in absence of a license from the NBR, the activity of the Romanian branches of the above-mentioned UK entities, and the direct provision of services in Romania by these entities, will cease as of the date of UK's withdrawal.

NBR advised the users of services provided by these entities in Romania to contact the relevant service providers to check if they have a strategy for avoiding disruptions in the relationships with customers and ensuring the service continuity, or terminating the contractual relationships, as the case may be.

### **Non-banking financial markets**

Similarly, on 20 March 2019 the Financial Supervisory Authority (FSA) issued a warning that, in case of a no-deal Brexit, the trade relationship between the EU and the UK will only be governed by the provisions of multilateral trade agreements and on-spot agreements between the European authorities, national authorities and those from the UK.

Thus, the UK entities operating on non-banking financial markets will have the status of third-country entities and will no longer be authorized to carry out activities in other EU Member States on the basis of the EU passport regime.

These entities could operate on the Romanian territory only if they fulfil the licensing procedures applicable to third-country entities, and will be further supervised by the FSA in accordance with the Romanian legislation.

In order to avoid disturbances in the perspective of a no-deal Brexit, all entities operating on the non-banking financial market that will be affected by the UK's new statute, must take the necessary steps (including from an administrative point of view) to ensure that the services and consumer protection rights are still served.

In this context, FSA recommended that these entities should ensure timely provision of clear information to the clients whose contracts may be affected and should mention at least the following: (i) the impact of the withdrawal from the EU on the relevant contract; (ii) the actions which will be undertaken by the relevant entity in order to minimise the potential negative impact on risks; and (iii) the risks, the consumer's contractual rights and the contact addresses for additional information.

The FSA stated that these recommendations are in line with those provided by the European Supervisory Authorities, including the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

### **Global Depositary Receipts (GDRs)**

The FSA also enacted a new regulation (Regulation no. 4/2019) in order to clarify that the current legal regime applicable to the GDRs which have as underlying asset shares issued by Romanian companies will continue to apply to those GDRs which are already admitted to trading on a UK stock exchange.

The current legal regime will also continue to apply to those GDRs which (i) have Romanian shares as underlying asset, (ii) will be admitted to trading on a third-country market which is equivalent to the regulated markets, and (iii) will be issued and listed on the basis of a prospectus published and approved by the competent authority of that third country and whose content is similar to that provided under the EU regulations.

## **BRITISH CITIZENS LIVING IN ROMANIA**

The Ministry of Internal Affairs also issued a statement in respect to the regime of British citizens and their family members in case of a no-deal Brexit.

The Ministry adopted a favourable approach to the rights of the British citizens who are already living on the Romanian territory, their rights being temporarily extended until 31 December 2019. Moreover, in order to maintain the rights of the British citizens who have exercised the right of free movement to Romania before the date of UK's withdrawal from the EU, a normative act will be enacted to regulate the regime applicable to the UK citizens and their family members in case of a no-deal Brexit.

As regards the British citizens arriving in Romania after the date of the UK's withdrawal, they will be subject to the provisions of the Romanian legislation applicable to third-country citizens.

## KEY CONTACTS

**Daniel Badea**  
Managing Partner

**T** +40 21 6666 101  
**E** daniel.badea  
@cliffordchance.com

**Radu Ropota**  
Counsel

**T** +40 21 6666 135  
**E** madalina.rachieru  
@cliffordchance.com

**Madalina Rachieru**  
Partner

**T** +40 21 6666 120  
**E** Madalina.rachieru  
@cliffordchance.com

**Mihai Dolhescu**  
Lawyer

**T** +40 21 6666 281  
**E** mihai.dolhescu  
@cliffordchance.com

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.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance Badea SPRL, Excelsior Center, 28-30 Academiei Street, 12th Floor, Sector 1, Bucharest, 010016, Romania

© Clifford Chance 2019

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Doha • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.