

BREXIT AND INSURANCE: LUXEMBOURG INSURANCE REGULATOR ANALYSES IMPLICATIONS FOR DEPOSITS OF ASSETS REPRESENTING PROVISIONS IN THE UK

The Luxembourg insurance sector regulator Commissariat aux Assurances (CAA) issued this April an information notice on the implications of Brexit on the application of CAA Circular Letter 16/9. This circular letter deals with the deposit of securities and liquidities used as assets representing technical provisions by Luxembourg insurance companies in the United Kingdom (UK). This client briefing provides an overview of the impact analysis the CAA sets out in its notice and the action points and structuring considerations resulting therefrom for Luxembourg insurance companies.

The information notice 20/2 issued by the CAA on 2 April 2020 explores the consequences of a No-deal Brexit on the application of the provisions of CAA circular letter 16/9 on the deposit of securities and liquidities used as assets representing technical provisions by Luxembourg direct insurance companies in the United Kingdom (UK) and its dependent territories. A No-deal Brexit means here a Brexit without a deal on financial services as of the end of the transition period on 31 December 2020 under the UK/EU agreement on the withdrawal of the UK from the EU on 1 January 2021.

The UK or in its dependent territories are to be treated as third countries from 1 January 2021 in a No-deal Brexit scenario. As such, the deposit of assets representing technical provisions in those countries and territories will have to comply, as from that date, with the provisions applicable to deposits in non-EEA countries set out in this circular letter.

The first of the consequences of a No-deal Brexit mentioned in the CAA notice is that insurance undertakings will no longer be permitted to place deposits of such assets with branches of credit institutions located in the UK or any of its dependent territories, irrespective of whether the head office of the credit institution is located in the EEA or not. Deposits of such assets with credit institutions having their head office in the UK or any of its dependent territories must only be placed with the head office and only under certain other conditions.

The CAA however considers that the eligibility conditions foreseen in Circular Letter 16/9 are all satisfied until further notice for the banks concerned

Key issues

- No-deal Brexit impact on UK deposits of assets representing technical provisions by Luxembourg insurance companies
- Requirement for placing such assets with the head office of a UK bank and for being able to establish a legitimate reason for the deposit outside the EEA
- Such assets must not be held with UK branches of EEA or non-EEA credit institutions
- Obligation to shift assets held in the UK without legitimate reason back into the EEA
- CAA to contact all concerned insurance companies to ensure a correct application of circular letter 16/9

according to the CAA data base of deposit agreements and that no changes to the deposit agreements will have to be made.

The only new element triggered by a No-deal Brexit would be however that insurance undertakings would have to prove the existence of a legitimate reason for making a deposit outside the EEA. The circular letter 16/9 cites by way of example the following as possible legitimate reasons:

- for all insurance classes, the obligation to comply with a deposit obligation resulting from the application of a foreign law; and
- for life insurance, that depositing the assets with a non-EEA credit institution is an essential requirement (*condition essentielle*) for the conclusion of the contract for which the assets representing technical provisions are deposited. If this condition is met, certain steps with the client need to be accomplished (notably steps in order to meet the conditions for non-EEA credit institution deposits foreseen in circular letter 16/9, section 1.b) on the date of a No-deal Brexit) and only assets composing dedicated or specialised funds may be deposited outside the EEA.

Where insurance undertakings cannot establish a legitimate reason, the assets currently deposited with a UK bank or a bank domiciled in one of its dependent territories would have to be transferred to a bank located on EEA territory.

In order to ensure the proper application of the provisions of circular letter 16/9, the CAA will contact the relevant insurance undertakings individually. According to the CAA notice this concerns 9 Luxembourg life insurance undertakings that have deposits with 20 banks established in the UK, Jersey, Guernsey and Gibraltar.

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