

Newsalert

Finance and Regulated Entities Department
Brexit: transitional provisions for financial intermediaries operating in Italy

Introduction

The Law Decree no. 183/2020 (the "Decree") has entered into force on 31 December 2020 and contains, *inter alia*, transitional provisions for UK financial intermediaries operating in Italy after the end of the transitional period set out in the Agreement on the withdrawal of the United Kingdom from the European Union.

In particular, the Decree provides specific rules for the management of existing contractual relationships and disclosure obligations for intermediaries operating in Italy, which have filed an authorisation with the relevant Regulators as of 31 December 2020 in order to ensure continuity in the provision of banking, financial and insurance services and investors' protection.

Intermediaries that do not intend to or cannot continue their activity after this date - shall have to terminate their existing relationships and return to their clients the relevant funds, assets and financial instruments, according to the instructions received from the client.

The Decree also contains a provision postponing the date until which third country banks and investment firms will be able to avail themselves of their current authorisation, even in absence of an equivalence decision by the European Commission or a cooperation agreement with the third country institution's competent authority, from 3 January 2021 to 30 June 2021. At a first analysis, it seems that this extension does not apply to UK intermediaries as this rule seems to address the case of intermediaries that were already belonging to a third country as of January 2018.

The Decree enters into force the day following the date of publication and shall be converted into law within the following sixty days.

Furthermore, on 2 January 2021, as a complement to the Decree, Consob and Bank of Italy – the Italian competent Authorities for the financial and banking markets – issued a notice for UK intermediaries in their respective area of competence, aimed at informing them about the new transitional regime and at detailing some consequences of the application of the Decree. For your convenience, please find below the links to the English version of the notices:

- [Bank of Italy's notice](#);
- [Consob's notice](#).

A similar statement will likely be issued shortly also by IVASS, the Italian insurance supervisory Authority.

Set out below is a more detailed analysis of the various provisions and, where relevant, of the supervisory Authorities' notices.

I Banks, investment firms and electronic money institutions

The Decree provides that UK banks, investment firms and electronic money institutions having applied for authorisation – either as a third country firm or for the establishment of an Italian intermediary – are allowed to continue to manage the existing relationships after the end of the transitional period, until they obtain the authorisation but, in any case, no longer than six months after the end of the transitional period, that is 30 June 2020. This latter “hard” deadline will entail that it will be important to try to speed up the process by timely fulfilling all the (usual) requests of clarifications and supplemental documentations addressed by Regulators.

With regards to OTC derivative contracts, UK intermediaries are allowed to continue to manage such contracts even where the management activity involves – subject to certain limits - the modification of these contracts or the conclusion of new contracts. It does not appear easy to fully gauge the actual implications of this provision on existing OTC derivatives entered into by intermediaries which have not filed for the authorisation, as this case does not appear to be immediately addressed by the new rules described herein. However, in light of the provisions of the Decree, as they are being interpreted by Regulators, a careful analysis of these positions appears necessary.

With specific regard to UK banks and investment firms providing investment services under the freedom to provide services regime, this transitional relief for existing relationships is not available for contracts entered into with clients other than eligible counterparties and per se professional clients on a cross border basis, in line with the EU provision stating that third-country banks or investment firms are not allowed to provide investment services on a cross-border basis in favor of retail clients and professional clients upon request.

After the end of the transitional period, until they obtain the authorisation (and, in any case, no longer than six months after the end of the transitional period), UK intermediaries shall operate according to the rules applicable to third country intermediaries operating in Italy, which – in general terms – are largely similar to the rules applicable to Italian intermediaries. Accordingly, the regime applicable to the UK intermediaries' activity will be subject to significant changes after 31 December 2020, especially as to firms previously operating under the freedom to provide services regime and, thus, applying the home-country rules in many areas.

As a consequence, the Authorities have specified a couple of obligations to be complied with by the certain UK intermediaries within the next weeks. In particular:

- a) UK banks operating through a branch shall: *(i)* within 40 days from the end of the transitional period (*i.e.* from 1 January 2021), send a communication to their clients informing them that their deposits are now protected by the Italian deposit guarantee scheme; and *(ii)* within 3 months from 1 January 2021, contact the Italian deposit guarantee scheme in order to formalize their participation and pay the relevant contribution. However, the coverage of the scheme is valid starting from 1 January 2021;
- b) UK investment firms operating through a branch shall *(i)* within 30 days from the end of the transitional period, adhere to the Italian compensation system (Fondo Nazionale di Garanzia) and pay the relevant contribution; and *(ii)* within 40 days from the end of the transitional period, send a communication to their clients informing them that they are now covered by the Italian compensation system.

In both cases, the communication to be transmitted to the clients shall be in clear and plain language and shall contain an indication about whom they can contact to request further information or clarifications.

If the authorisation is denied, the UK intermediary shall cease its activity in Italy without causing any damage to the clients. However, it would be possible to carry out the transactions which are necessary to ensure an orderly closure of the existing relationships, to the extent that they are performed as soon as possible and in any case within three months from the denial of the authorisation, in compliance with the notice period for the termination of the contracts.

As to loan agreements, the Decree clarifies that the termination of the activity of the UK intermediary – even if it is due to the denial of authorisation – shall not entail any change in the timing and method of payments of the capital and interests by the Italian borrower, without prejudice for the right of the latter to request the early termination of the agreement.

II Measures for UK insurers

UK insurance undertakings operating in Italy after the end of the transitional period under the freedom to provide regime or under the right of establishment are removed from the Italian IVASS Register. However, they are allowed to continue to manage the existing contracts, without entering in new contracts or renewing the existing ones, until the relevant expiry date or any other date indicated by the undertaking in the plan required to be submitted to IVASS (see below).

IVASS shall inform the public of the temporary continuation of such operations.

As mentioned above, the Decree establishes for these companies the following disclosure requirements to IVASS and to existing policyholders, insured persons and beneficiaries:

- a) within 15 days from the end of the transitional period, UK insurance companies must inform the policyholders, also through a communication on their website, about the regime applicable to their activity;
- b) within 90 days from the end of the transitional period, must file with IVASS an action plan describing the measures adopted to guarantee the execution of the existing contracts, including the payment of claims;
- c) on an annual basis, file with IVASS a report on the execution of the plan under b).

Starting from the end of the transitional period, Italian policyholders of insurance contracts issued by UK insurance undertakings are allowed to withdraw from their policies having a duration longer than 1 year without any penalty. Tacit renewal clauses will no longer be effective as of that date.

The activity of UK insurance undertakings concerning the management of the existing contracts will continue to be subject to same rules currently applicable to the latter.

Contacts

Alessandro Portolano

Partner – Chiomenti
T. +39 02 72157 535
alessandro.portolano@chiomenti.net

Jasmine Mazza

Associate – Chiomenti
T. +39 02 72157 883
jasmine.mazza@chiomenti.net