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Issue 8: Lex et Brexit — The Law and Brexit

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As we move to a monthly schedule for the publication of Lex et Brexit, we finally have some idea as to the schedule for the Brexit process. The British Prime Minister indicated in her party conference speech that the UK will begin the exit process and two year negotiation period by the end of March 2017. While this finally provides some clarity on timetable, there remains considerable uncertainty over the terms of Brexit. At the recent meeting of EU heads of state in Brussels, the signals from both sides continue to point towards a so-called ‘hard’ Brexit meaning, inter alia, materially restricted access to the EU market for UK providers of goods and services.

In this edition of Lex et Brexit, we look at another of the Prime Minister’s key announcements made during the Conservative party conference: the proposal for a ‘Great Repeal Bill’ (the “**Bill**”) to repeal the UK legislation which enables membership of the EU and to end the supremacy of EU law in the UK. Paradoxically, the Bill will not repeal any substantive EU law. Instead, the Bill will preserve all pre-Brexit day EU law in force in the UK and carry over into UK law the full body of EU law not already implemented in UK domestic law. The intention is then for the UK to change these laws as necessary over time. We identify a number of legal and policy challenges inherent in these proposals, including the need to accommodate transitional arrangements (if these can be agreed with the rest of the European Union (the “**EU**”)) and the prospect of the UK government being able to change the regulatory landscape in the UK with only limited parliamentary scrutiny.

We then examine the impact of Brexit on the regulation of UK fund managers under the Alternative Investment Fund Managers Directive (the “**AIFMD**”). We conclude that the availability of arrangements in AIFMD to allow the passporting of non-EU (“**third country**”) fund managers may assist some UK firms, but timing, logistical and political factors mean that many will feel it prudent to consider setting up some form of licensed entity within the EU after a ‘hard’ Brexit.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

John D. Amorosi
+1 212 450 4010
john.amorosi@davispolk.com

John Banes
+1 212 450 4116
john.banes@davispolk.com

Leo Borchardt
+44 20 7418 1334
leo.borchardt@davispolk.com

Connie I. Milonakis
+44 20 7418 1327
connie.milonakis@davispolk.com

Will Pearce
+44 20 7418 1448
will.pearce@davispolk.com

Simon Witty
+44 20 7418 1015
simon.witty@davispolk.com

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