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Brexit – Immigration Update for Switzerland

On 31 January 2020, the United Kingdom (UK) has made history by being the first member state of the European Union (EU) to have left the EU following its referendum held on 23 June 2016. Prior to the UK's exit from the EU, Switzerland has entered into several bilateral agreements with the UK providing for a smooth continuation of their bilateral relations including the *Agreement on Citizens' Rights Following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement*, which, subject to the extension of these bilateral agreements, provides for a protection of acquired rights under the *Agreement on the Free Movement of People* concluded between Switzerland and the EU as well as new immigration provisions applicable to UK and Swiss nationals following the expiry of the transition period on 31 December 2020.

Prior to the UK's exit from the EU on 31 January 2020, the UK's Withdrawal Agreement Bill (WAB) prepared by the UK Government had passed all stages in parliament and been given royal assent. The passing of the WAB was an essential step towards the UK's orderly exit from the EU as it turned Boris Johnson's withdrawal agreement into UK law and gave the UK Government permission to ratify it. Since the UK and the EU have ratified the withdrawal agreement, the UK is entitled to a transition period until 31 December 2020 – subject to a possible extension – during which all agreements concluded with the EU will remain in full force. As a result, all bilateral agreements entered into between Switzerland and the EU will continue to be applicable to the UK until at least 31 December 2020.

Following the expiry of this transition period, the bilateral agreements between Switzerland and the EU, that have been applicable to the UK, will be replaced by bilateral agreements between the UK and Switzerland with an objective to ensure that the existing mutual rights and obligations granted under the current legal framework continue to ap-

ply after the transition period. To that end and also in anticipation of a "no deal Brexit" which would have resulted in an immediate termination of the applicability of all EU agreements, Switzerland and the UK have signed several bilateral agreements providing for a smooth continuation of their bilateral relations, including the *Agreement on Citizens' Rights Following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement (ACP)*.

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The *ACP* aims to protect the rights of Swiss and UK nationals obtained in either the UK or Switzerland under the Agreement on the Free Movement of People (AFMP) concluded between Switzerland and the EU. Until the UK's exit from the EU, the AFMP has afforded UK nationals full freedom of movement including a right to take up legal residence in Switzerland and an unrestricted access to the Swiss labor market.

With the UK's orderly exit from the EU on 31 January 2020, both Swiss and UK nationals may continue to refer to the AFMP with regard to the freedom of movement between Switzerland and the UK during the transition period until 31 December 2020 – subject to a possible extension. Safe for an extension after 31 December 2020, Swiss and UK nationals could not refer to the AFMP as of 1 January 2021 and any rights of Swiss or UK nationals with regard to the freedom of movement and migration have to be regulated by the UK and Switzerland in bilateral agreements. The currently ratified *ACP* shall terminate on 31 December 2020 (Article 13(1) of the *ACP*), thus at the same time as the transition period expires. Nevertheless, prior to that expiry date, the Joint Committee as defined in the *ACP* shall decide whether it is necessary to extend the *ACP* (Article 13(2) of the *ACP*). The Swiss Federal Council and the Government of the UK have the competence to approve the decision of the Joint Committee to extend the bilateral agreement.

Subject to the extension of the bilateral agreements between Switzerland and the UK beyond 31 December 2020 as outlined hereinbefore, the following rights will apply after the expiry of the transition period:

- i. All UK nationals having moved to Switzerland and all Swiss nationals having moved to the UK before or on the expiry date of the transition period will be protected in their status acquired under the rights applicable to them in accordance with the AFMP before or on the expiry date of the transition period.
- ii. UK nationals will continue to be exempt from any visa requirement as Swiss nationals will also remain exempt from the requirement to obtain a visa in the UK.
- iii. While UK nationals will be qualified as third country nationals in Switzerland and lose all the benefits provided to them under the AFMP, simplified access for UK nationals to the Swiss labor market shall be introduced and provide them with similar rights as awarded to EU nationals under the AFMP. This means that the general restrictions applicable to third country nation-

als such as (a) checks in professional qualifications, (b) preference of domestic workforce and (c) consideration given to the interests of the Swiss economy as a whole, would not yet apply to UK nationals willing to enter the Swiss labor market (Article 4(3) and (5) of the *ACP*).

- iv. Temporary waiver of the need for the Federal Migration Office to approve the cantonal permit approvals of UK nationals.
- v. UK nationals admitted to the Swiss labor market shall be entitled to geographical and occupational labor mobility in Switzerland (Article 6 of the *ACP*).
- vi. UK nationals shall be entitled to be admitted to the Swiss labor market as cross-border commuters provided they have residence in the UK or in an EU/EFTA country (Article 7 of the *ACP*).
- vii. The Swiss Federal Council has resolved on the creation of a special annual quota of 3,500 residence and work permits (2,100 long-term residence and work permits and 1,400 short-term residence and work permits) for UK nationals for 2020 in case of a "no deal" Brexit and thus no implementation of a transition period, which could be implemented for 2021 after the expiry of the transition period (Article 4(1) of the *ACP*).

In Summary

Since the UK has left the EU by ratifying a withdrawal agreement, there will be no changes to the current immigration regulations applicable to UK nationals. Specifically, all UK nationals still may refer to the AFMP during the transition period until at least 31 December 2020.

After the expiry of the transition period and subject to the extension of the bilateral agreements (including the *ACP*) concluded by the UK and Switzerland, UK nationals will be entitled to a number of facilitations when entering the Swiss labor market, which include, among others, (a) a facilitated admission, (b) an exemption from any visa requirement, (c) geographical and occupational labor mobility in Switzerland, and (d) the granting of a separate annual quota for UK nationals.

Conclusively, by ratifying bilateral agreements, Switzerland and the UK will continue to ensure that the rights of their respective nationals in the foreign jurisdictions will be upheld and market access will be facilitated in order to guarantee a certain continuity and thus reducing a risk of an adverse impact on their respective economies.

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