



Banking

What are the legal issues in relation to Debt Finance following a Brexit?

Issue	Impact	Areas of law affected
<p>Possible activation of increased costs provisions in finance documentation</p>	<p>Lenders may seek to recover costs incurred if compliance with UK and EU regulation imposes additional costs.</p>	<p>Banking and Finance</p>
<p>Bail-in clause to comply with Article 55 of the EU Bank Resolution and Recovery Directive to be inserted into English law governed finance documents if the UK is not part of the European Economic Area</p>	<p>Finance parties may require immediate amendment of finance documents since a lack of bail-in clause will make debt participations less attractive to EEA lenders if there is no bail-in clause.</p>	<p>Banking and Finance</p> <p>Insolvency</p>
<p>Choice of law and choice of jurisdiction clauses cease to be interpreted in accordance with EU legislation and EU legislation regarding recognition of judgments will no longer be effective as between the UK and EU jurisdictions' courts</p>	<p>Limited impact in relation to choice of law if UK courts follow historic approach. Uncertainty as to whether contractual choices of jurisdiction will be upheld by EU jurisdictions' courts and judgments will be recognised between EU and UK courts.</p>	<p>Banking and Finance</p>

What action can you take now?

How can CMS help?

<p>Consider insertion of Loan Market Association form of bail-in clause into English law governed finance documents when created or amended.</p>	<p>We can assist in drafting the relevant documentation.</p>
<p>Check whether Brexit may give rise to events of default under finance documentation (e.g. material adverse change, financial covenants).</p>	<p>We can advise on the interpretation of relevant clauses and how the commercial implications of Brexit that you have identified may impact on your continued compliance with your contractual obligations.</p>

Your contacts



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Please visit our Brexit website for analysis, commentary and additional checklists on the legal implications of a Brexit on businesses operating in, and trading with, the UK: www.cms-lawnow.com/brexit

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