















Financial Services

What are the legal issues for the financial services sector following a Brexit?

| Issue | Impact | Areas of law affected |
|---|---|---|
| <p>FCA/PRA authorisations ceasing to be valid in EU/EEA countries</p> | <p>Brexit (without EEA membership) would be likely to mean a loss of mutual recognition/passporting for UK financial institutions, for example, when dealing with EU/EEA clients/counterparties on a cross border basis or via local branches. Groups would need to consider regulatory/corporate/capital restructuring, for example, establishing/using subsidiaries incorporated in EU/EEA states, obtaining additional authorisation in EU/EEA countries, changing business/transaction flows and capital structures.</p> |  Financial Services  Banking  Funds  Insurance  Corporate |
| <p>EU/EEA authorisations ceasing to be valid in the UK</p> | <p>Brexit (without EEA membership) would be likely to mean a loss of mutual recognition/passporting for EU/EEA financial institutions, for example, when dealing with UK clients/counterparties on a cross border basis or via local branches. Impacted groups would need to consider regulatory/corporate/capital restructuring, for example, establishing/using subsidiaries incorporated in the UK, obtaining UK authorisation and changing business/transaction flows and capital structures.</p> |  Banking  Financial Services  Insurance  Funds |
| <p>FCA authorisation of funds and managers ceasing to be valid in EU/EEA countries</p> | <p>A loss of mutual recognition/passporting would impact UK incorporated UCITS/AIFMD funds and fund managers in relation to EU/EEA business/sales. Retail funds would lose their UCITS status. Loss of the UCITS badge may also impact sales outside the EU/EEA and perhaps even in the UK. Unless restricted to domestic business, funds would need to re-domicile to retain the UCITS/AIFMD status. Alternatively funds could seek to deal with the local marketing regime in relevant EU/EEA countries (although the position would change if the AIFMD third country regime comes into effect).</p> |  Financial Services  Corporate  Funds |

Status of EU/EEA funds and managers in the UK

As above in reverse (but the UK might not wish to restrict UK investors' access to UCITS and AIFs?).



Financial Services



Corporate



Funds

Legal and regulatory uncertainty – commercial, economic, financial and political uncertainty

The FPC found Brexit to be the most significant near-term domestic risk to financial stability, with uncertainty continuing after a vote to leave. Firms would face a volatile period. The legal system would face similar challenges to stability and firms/UK lawyers would need to adapt to greater uncertainty and change. Uncertainty about the legal basis for FI regulation and the responsibilities of institutions will hinder the development of regulatory policy/change and may even adversely impact supervision



Banking



Financial Services



Insurance



Funds

New freedom for the UK to adapt or revoke inappropriate EU regulatory requirements

Brexit (without EEA membership) would remove the legal obligation for the UK to implement EU FS regulation. Firms may wish to lobby for changes where current EU derived requirements are burdensome, sub-optimum for the UK market or lack domestic support from regulators. One example might be the EU bonus cap rules. The UK's freedom may well be tempered, however, by the desire to achieve 'equivalence' recognition from the EU in order to take advantage of the third country regimes under EU FS legislation.



Banking



Financial Services



Insurance



Funds

Transactions and other contracts

The Brexit changes to the current legal regime will impact the terms and effect of contracts and transactions. There will be a broadly based review of standard documentation – both precedents and industry standards such as ISDAs. Firms and lawyers will need to be alert when dealing with contracts and transactions whilst uncertainty persists.



Banking



Financial Services



Insurance



Funds

Loss of UK's leading role in formation of regulatory policy in EU

The UK has been highly influential in the development of the EU rules for financial institutions. After a 'vote to leave' the UK's voice would diminish and the UK would probably cease to have any real policy involvement following Brexit. Lobbying in relation to EU rules would have to be routed via EU/EEA firms/bodies and would no longer take account of UK specific issues.



Banking



Financial Services



Insurance



Funds

Increased risk of EU roles attacking the City/UK

The City has faced various challenges from EU proposals. The UK has sought to rely upon its rights as an EU state (e.g. under the EU treaties) and has obtained further protection under the new UK/EU settlement. After Brexit the EU will be free to promote the interests of EU states/financial centres free from UK challenge under these protections.



Banking



Financial Services



Insurance



Funds

What action can you take now?

How can CMS help?

| | |
|--|---|
| <p>Brexit planning – group/regulatory structure.</p> <p>Map EU/EEA business/operations. Identify other areas impacted by Brexit – e.g. cross-border outsourcing/ services. Consider options – at least in outline - for post-Brexit structure/reorganisation. Identify/plan for/ investigate key issues (e.g. authorisation, capital, employment, intra-group/shared services and tax) to evaluate optimum structure and necessary reorganisation to implement.</p> | <p>Review and advise on optimum structures, reorganisation mechanics – including pan-European advice from CMS offices across EU.</p> <p>Review planning assumptions and conclusions.</p> <p>Review mapping of current structures.</p> <p>Advice on any of the key legal issues mentioned.</p> |
| <p>Brexit planning – internal briefing.</p> <p>Ensure necessary briefing internally on Brexit and raise awareness of above issues/impacts – from Board level to business support/operations and business units. Establish internal working group structure.</p> | <p>Provide in-house Brexit training/presentation.</p> <p>Lead in-house Brexit brain-storming.</p> <p>Review in-house briefing.</p> |
| <p>Brexit planning – legal.</p> <p>See above. General counsel to ‘run slide-rule’ over Brexit legal issues/impact and how in-house team/external counsel would handle these.</p> | <p>Review plans and assumptions.</p> <p>Brainstorm impact/issues.</p> <p>Advise on relevant legal issues.</p> |
| <p>Brexit planning - public affairs/governmental relations.</p> <p>See above. Prepare list of areas/issues for lobbying post vote to leave.</p> | <p>Brainstorm/review issues.</p> |
| <p>Current contracts and transactions.</p> <p>Review current contract negotiations and transactions – closing pre and post 23/6/16. Assess Brexit impact on contract/deal terms</p> | <p>Advise on contractual issues – Brexit impact.</p> <p>Review internal policy on Brexit impacts re contract terms.</p> |

Your contacts



Financial Services



Paul Edmondson

Head of Financial Services

T +44 (0)20 7367 2827

E paul.edmondson@cms-cmck.com



Banking



Aidan Campbell

Partner

T +44 (0)141 304 6112

E aidan.campbell@cms-cmck.com



Banking



Patrick Donegan

Partner

T +44 (0)20 7367 3062

E patrick.donegan@cms-cmck.com



Corporate



Chris Southorn

Partner

T +44 (0)20 7367 3603

E chris.southorn@cms-cmck.com



Insurance



Stephen Netherway

Partner

T +44 (0)20 7367 3015

E stephen.netherway@cms-cmck.com



Funds



Cathy Pitt

Partner

T +44 (0)20 7367 3294

E cathy.pitt@cms-cmck.com



Funds



Karagh Gilliatt

Partner

T +44 (0)131 200 7308

E karagh.gilliatt@cms-cmck.com

The information contained in this document is intended to be for informational purposes and general interest only to help firms plan for implications of a withdrawal of the United Kingdom from the European Union. It should not be construed as professional advice or recommendation on United Kingdom European Union membership nor is it to be relied on. It does not constitute legal or tax advice.

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

Further information, including a list of our offices, can be found at www.cms-cmck.com

© CMS Cameron McKenna LLP 2016. 1604-0127-4