

Corporate Department

Brexit Implications for Financial Services Sector

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Serious concerns are being expressed about the significant consequences for the financial services sector resulting from the decision of the UK to exit the EU. The exact nature of these consequences will not be clear until the UK has negotiated the terms of its exit arrangement, but participants in the financial services sector are already considering the possible impact of Brexit on their business operations, as well as their corporate structures. This arises not least because the concept of the EU single market for financial services has been central to the financial services industry for many years.

Regulation

Post-Brexit, one has to assume that there will be two different sets of regulatory regimes existing for service providers operating in both the UK and the EU, even if the UK simply adopts entirely and exactly the EU financial services regulatory regime. It is more likely than not that the UK regimes post-Brexit may, indeed, be quite similar to the existing regime, but nonetheless there will be some differences thereby creating two different regulatory regimes. By way of example, all of the regulatory regime comprising the Prospectus Directive, the Transparency Directive and the Market Abuse Directive are applied across the EU. This will not automatically, or necessarily, be the case for UK issuers or offerings post-Brexit.

Passporting Rights

Currently, members of the EU can rely on an EU "passport" to operate in any other EU country, provided they are regulated in their home country. Post-Brexit, it is likely that UK financial service providers will not be able to rely on an EU passport to operate in other EU countries but, similarly, EU suppliers of financial services into the UK or to UK residents will not be able to rely on their home country authorisations and may need to seek to be licensed specifically to operate under the new UK regulatory regime. If the UK's exit arrangements do not include their remaining as a Member of the EEA or other similar relationship arrangements, to avoid them becoming a "third party" under EU legislation, then it may be necessary for firms currently operating in the UK, to consider relocating to an EU Member State and obtaining authorisation in that country. The process for obtaining authorisation and relocation into another jurisdiction can be complex and, indeed, costly and business, no doubt, will not want to engage with that process until greater certainty has been achieved in relation to what the UK's exit arrangements may be, but at the same they must balance this against needing to protect their businesses and it may be that the necessary planning needs to be commenced sooner, rather than later.

It is interesting that some commentary from the UK and the City of London is suggesting that there will be no major issue and simply the UK regime will qualify for "equivalence" under the EU legislation so as to retain the benefit of the passporting capability. However, it must be borne in mind that equivalence, as provided for under EU legislation, is determined by the EU. Depending on how the UK's exit negotiations are proceeding, one would have to question whether it will necessarily be the case that the UK's regime will be granted equivalence.

It is without doubt the case that the financial services industry will face challenges arising from Brexit and in the current pre-Brexit period will be exposed to upheaval in the light of such uncertainty. Businesses may look to Ireland as an alternative base to protect access to EU markets, with the similarities between the Irish and UK legal systems providing an advantage in any such move.

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