BANKING WITHOUT PASSPORTING

BREXIT NEGOTIATIONS SUGGEST CURRENT CROSS-BORDER BANKING ARRANGEMENTS WILL CHANGE. CHARLOTTE MORGAN SETS OUT THE QUESTIONS CORPORATE TREASURERS NEED TO ASK OF THEIR BANKS

Much of the original discussion around Brexit focused on supply-chain implications, for example, customs duties and tariffs. But over recent months, corporate treasurers have increasingly voiced concerns about possible implications for financing arrangements. The ACT has held several well-attended webinars and panel discussions on this topic.

At our last event, speakers addressed the implications for banks that currently provide services across the EU from a single base, using the passport arrangements. These arrangements don't cover all financial services, but they do simplify things considerably for financial services businesses.

As far as can be judged from information emerging from the Brexit negotiations, it's unlikely the banking passport will continue in its present form. There may be a short-term continuation under transitional arrangements, and there may well be some sort of financial services 'trade agreement' for certain activities, but it seems unlikely to be as comprehensive as present permissions. And it doesn't seem that the World Trade Organization will provide 'back-up' free-trade principles for financial services in the way it does for trade in goods.

As a result, several UK banks have announced they will be seeking new banking licences within the EU 27. These licences might be for subsidiaries – which might then be able to use the passport arrangements to replicate what the bank currently does from the UK, within the EU 27 – or for branches, which would normally be limited to activities in an individual EU country.

And banks based in the EU 27 might need to get new licence permissions for some of their UK activities, depending on how they are currently structured.

New structures

All of this involves negotiations between individual banks and regulators, the outcome of which will decide what services can be provided and how much capital, liquidity, staff and premises the bank will be required to maintain in the different centres. Although in theory it might be possible to carve up these various types of resources between different centres with the sum of the parts (post Brexit) equalling the (pre Brexit) whole, in practice, the new structures are likely to require more resources if the same level of services is to be maintained. It will be helpful if the transitional agreement provides more time for these negotiations, so there is less risk of sudden change.

The sort of issues that treasurers have raised include:

- If their bank is going to operate as a subsidiary in a particular country instead of as the branch of a pan-Europe institution, the subsidiary may have a lower rating or no rating at all, which might affect risk assessments or internal policies regarding deposits.
- Would a particular bank's lending limits in some countries be lower if regulatory requirements, structures or capital levels change?
- Will contracts need to be rewritten with a new institution?
- Is there any risk of early terminations or novations, and might this have cash-flow implications?
- Will the bank propose a different entity to participate in syndicated loans? Could this affect any withholding tax arrangements?
- Will the new structures affect services that operate across Europe, such as cash pooling?
- If euro-based derivatives have to be held in an EU-based clearing house, will that involve higher margin requirements and higher charges from the banks due to them disaggregating their positions?

All of these points are worth discussing with your banks. And don't forget the other implications of Brexit for your business: if capital is required to build new warehousing facilities, or if goods are going to be delayed at ports, which might demand additional working capital. Not to mention possible FX volatility. The announcement of transitional arrangements should mean far less uncertainty and allow time to plan for change, but as the Article 50 date approaches, corporate treasurers should be assessing the risks.

Visit the ACT's dedicated Brexit web page at www.treasurers.org/brexit

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