



## **CONFIDENTIAL**

### **Q&As for corporates as at 6 November 2018**

#### **Context and introduction**

Financial services are a vital component of businesses' supply chain. While financial institutions are already putting in place plans to make changes to their business and operations to maintain the continuity of financial services as the UK exits the EU, other businesses are perhaps less aware of the potential implications of these changes to how they continue to access financial services during this period.

While most businesses are currently focusing on the commercial considerations and the direct impacts of Brexit on their business operations, including movement of goods across borders, it is also important that they are also aware of important changes that may take place in the financial services sector, so that they understand what this means for how they access financial services in the UK and the EU, and if necessary, can take action to avoid any disruption that may arise as a result of Brexit.

While an agreement in principle has been reached on a transition or implementation period running from 29 March 2019 to the end of December 2020, this is yet to be finalised, and so these Q&As will focus on a "no deal" outcome, where there is no transition period and the terms of access for financial services between the UK and the EU will fall back on WTO rules.

In the absence of agreement on a formal transition period, HM Treasury and the Bank of England have set out plans for a temporary permissions and recognition scheme, which will allow EU-authorized firms who wish to continue serving business clients in the UK, to operate in the UK for a limited period after withdrawal while they seek authorisation or recognition from UK regulators. The UK Government has also indicated it may lay additional legislation, if necessary, to ensure contractual obligations not covered by the temporary permissions regime can continue to be met.

The ACT has developed a set of key issues and questions that corporate treasurers and those with risk management responsibilities may find helpful to consider in the context of Brexit. We are compiling responses to these questions by consulting members from the FS sector, UK regulators and other stakeholder groups with the aim of providing a set of Q&As to inform businesses. This will provide general advice to firms and will not constitute legal advice.

**BELOW WE HAVE PROVIDED SOME ANSWERS AS AT 6 NOVEMBER 2018 TO AN INITIAL SET OF QUESTIONS FOR CONSIDERATION. PLEASE SEND ANY FEEDBACK, COMMENTS OR ADDITIONAL QUESTIONS YOU WANT ANSWERED TO [technical@treasurers.org](mailto:technical@treasurers.org).**

**The Q&A schedule will be updated as negotiations continue.**

#### *Disclaimer:*

*This material is for general information only and is not intended to provide legal, accounting or other professional advice. Neither the Association of Corporate Treasurers nor any of its officers or employees nor any persons from whom it seeks advice in response to questions can accept responsibility or liability (express or implied, contractual, tortious or otherwise) for the correctness or timeliness of any response. Accordingly, users of this material should not rely on it but should consider taking their own professional advice. The views and opinions expressed are not necessarily those of the Association of Corporate Treasurers or of the legal, accounting or other members of its Council.*

*In no event should this material be viewed as investment advice. Any user of this service who requires advice on investments or securities should obtain it from an organisation duly authorised under applicable legislation.*

## GENERAL NOTES

- a. **FCA/PRA Temporary Permissions Regime:** see <https://www.fca.org.uk/markets/eu-withdrawal/temporary-permissions-regime> This is intended to enable European Economic Area (EEA) firms which pre-Brexit operate in the UK under Passporting to be able to continue to do so if a Transition Period cannot be agreed (that is a Hard Brexit). The firms must apply for their Temporary Permission. See below for a discussion on the Temporary Permissions Regime (TPR). A fuller description of the regime appears below.
- b. **Withdrawal Act (WA):** the UK complies with EU law through a mixture of directives, regulations and other means. A **directive** is a legal act of the EU which requires member states to pass their own legislation to achieve a result defined in the directive. A regulation is deemed to be implemented in the member state. The WA is intended to bring current EU law into UK law with appropriate adjustment, for example substituting the FCA for ESMA as the regulating authority in EMIR.
- c. **Transition Period (TP):** a nearly two year period, yet to be agreed, from 29 March 2019 during which the detail of Brexit can be agreed. Many current arrangements, such as free movement of goods would continue throughout the TP and the UK would remain subject to EU law and its trade deals but is able during the TP to start negotiating trade deals independently of the EU. It is assumed that EEA state passporting rights will enable EEA financial services businesses to continue operating in other EEA states throughout the TP. The FCA Temporary Permissions regime described in (a) above is intended to offer a means of continuing business by way of contract if a Hard Brexit occurs.
- d. **Technical Notes for Hard Brexit:** the UK government has issued Technical notes on the outcomes of a Hard Brexit for a broad range of circumstances. These are being added to as at the date of writing. Those relevant published notes are quoted in the text below and others will be added in updates as relevant. The Technical notes can be accessed through this link:  
<https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal>

*Disclaimer:*

*This material is for general information only and is not intended to provide legal, accounting or other professional advice. Neither the Association of Corporate Treasurers nor any of its officers or employees nor any persons from whom it seeks advice in response to questions can accept responsibility or liability (express or implied, contractual, tortious or otherwise) for the correctness or timeliness of any response. Accordingly, users of this material should not rely on it but should consider taking their own professional advice. The views and opinions expressed are not necessarily those of the Association of Corporate Treasurers or of the legal, accounting or other members of its Council.*

*In no event should this material be viewed as investment advice. Any user of this service who requires advice on investments or securities should obtain it from an organisation duly authorised under applicable legislation.*

## CONTENTS:

### 1. CONTRACTUAL ISSUES:

- a. **WHAT IS, OR WILL BE THE LEGAL BASIS FOR CROSS BORDER DOCUMENTS TO REMAIN ENFORCEABLE?**
- b. **PRE BREXIT CONTRACTS CONTINUING POST BREXIT:**
- c. **INTRA GROUP TRANSACTIONS**
- d. **LOAN AGREEMENTS**
- e. **ISDA DERIVATIVE CONTRACTS**
- f. **INSURANCE CONTRACTS**

### 2. CASH AND LIQUIDITY MANAGEMENT

### 3. PAYMENTS

### 4. CAPITAL MARKETS

### 5. CREDIT RATINGS

### 6. RELATIONSHIP WITH PROVIDERS

### 7. PENSIONS

### 8. TAXATION

### 9. REGULATION

| <b>TEMPORARY PERMISSIONS REGIME (TPR)</b>   |   |
|---|---|
| What is the TPR and how does this work?   | <p>Dated 6 November 2018</p> <p>The temporary permissions regime will enable relevant EEA firms and funds which passport into the UK to continue operating in the UK if the passporting regime falls away abruptly when the UK leaves the EU.</p> <p>Firms will need to notify us that they wish to use the temporary permissions regime. This will be an online process and we expect to open the notification window in early January 2019. The notification window will close prior to exit day.</p> <p>Further details of the scheme are available here: <a href="https://www.fca.org.uk/markets/eu-withdrawal/temporary-permissions-regime">https://www.fca.org.uk/markets/eu-withdrawal/temporary-permissions-regime</a></p> <p>The FCA's consultation on the regime is now open and available here: <a href="https://www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds">https://www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds</a> .</p>  |
| How will this impact my relationships with financial services providers?              | <p>Dated 6 November 2018</p> <p>EEA firms that enter into the temporary permissions regime will be able to continue operating in the UK within the scope of their current permissions for a limited period after exit day, while seeking full UK authorisation. It will also allow funds with a passport to continue marketing in the UK while seeking UK recognition.</p>  |
| How long will the temporary permissions regime remain in place?                       | <p>Dated 6 November 2018</p> <p>We expect the regime will be in place for a maximum of three years within which time firms and funds will be required to obtain authorisation or recognition in the UK.</p>   |
| Which firms/funds will be eligible to use the Temporary Permissions regime            | <p>Dated 6 November 2018</p> <p>The following firms will be able to use the regime:</p> <ul style="list-style-type: none"> <li>• firms which have passports in place before exit day, including firms with top-up permission.</li> <li>• treaty firms which qualify for authorisation before exit day, including firms with top-up permission.</li> <li>• electronic money and payment institutions who are exercising their passporting rights under the Electronic Money Directive (EMD) or the Payment Services Directive (PSD2) before exit day.</li> </ul> <p>The following EEA-domiciled funds will also be able to use the regime, if we have received notification of their intention to market in the UK under the relevant passport prior to exit day.</p> <ul style="list-style-type: none"> <li>• UCITS schemes</li> <li>• Alternative Investment Funds (AIFs)</li> </ul> <p>Further transitional arrangements are being put in place for other types of firm, and details on this will be provided in due course. Further information on our approach is available in the FCA consultation at <a href="https://www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds">https://www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds</a>.</p> |
| What if the firm does not enter the TPR or, if it does, has its application declined? | <p>Dated 6 November 2018</p> <p>When the government announced in December 2017 that if necessary, it will legislate for a Temporary Permissions Regime, it also set out that it will legislate, if necessary, to ensure that contractual obligations, such as insurance contracts, which are not covered by the regime, can continue to be met.</p> <p><a href="https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-12-20/HCWS382/">https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-12-20/HCWS382/</a> .</p>  |

| QUESTIONS   | ANSWERS  |
|---|--|
| 1. <b>CONTRACTUAL ISSUES</b>  |  |
| <p><b>a. WHAT IS, OR WILL BE THE LEGAL BASIS FOR CROSS BORDER DOCUMENTS TO REMAIN ENFORCEABLE?</b></p> <ul style="list-style-type: none"> <li>• Will parties be able to rely on contract-agreed English Law if one party is not in the UK, or the contract is performed outside of the UK?</li> <li>• Will Rome I and Rome II be enacted in the UK under the Withdrawal Act?</li> </ul>   | <p>Dated 23 October 2018</p> <ol style="list-style-type: none"> <li>1. <b>First Steps:</b> Ascertain the governing law in contracts made between your UK entities and EU27 entities.</li> <li>2. <b>English Law contracts:</b><br/><br/>You are most likely to have your contracts under English Law if you are an English or Welsh company. Scottish and Northern Ireland companies may use local law or English law. This probably extends to your loan and derivative agreements for finance. English Law is often used for agreements between UK and EU27 businesses. This has caused no problem because <b>REGULATION (EC) No 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)</b> enables an EU entity, which the UK remains until either the withdrawal date or the end of the TP, to choose the jurisdiction for its contracts including use of non-EU jurisdictions.<br/><br/>Rome II continues to apply to the EU27 following Brexit. In fact there are processes in place to increase access to courts within the EU27 which will judge on English Law and in English. See: <a href="https://www.bbc.com/news/uk-politics-42979920">https://www.bbc.com/news/uk-politics-42979920</a> We expect Rome II to be included in the Withdrawal Act (WA).<br/><br/>Less certain is how post Brexit judgements by UK courts will remain enforceable in EU27 member states. However the UK Government has indicated that the UK will accede in its turn to the 2005 Hague Convention. This will give a similar result in many cases. The UK Government may also sign up to the Lugano Convention (subject to agreement) which would align the position further with the present position.<br/><br/>Dated 6 November 2018</li> <li>3. <b>Hard Brexit:</b> The Government has stated that in a no deal scenario, the UK would retain Rome I and Rome II on applicable law in contractual and noncontractual matters, which generally do not rely on reciprocity to operate. The government published on 13 September 2018 a technical note on “Handling civil legal cases that involve EU countries if there’s no Brexit deal” (<a href="https://www.gov.uk/government/publications/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexite-deal/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexite-deal">https://www.gov.uk/government/publications/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexite-deal/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexite-deal</a> ). This contains the following advice:<br/><br/>“All parts of the UK would retain the Rome I and Rome II rules on applicable law in contractual and non-contractual matters, which generally do not rely on reciprocity to operate. This would ensure that businesses and individuals could generally continue to use the same rules as at present to determine which law would apply in cross-border disputes.”</li> </ol> |
| <p><b>b. PRE BREXIT CONTRACTS CONTINUING POST BREXIT:</b></p> <ol style="list-style-type: none"> <li>i. What are financial services providers doing to mitigate risks on contracts?</li> <li>ii. What happens if my provider cannot transfer contracts in time for March 2019?</li> <li>iii. What are regulators doing to mitigate the potential impacts on contract validity?</li> </ol> | <p>Dated 23 October 2018</p> <p>See specific notes below on ISDA Agreement, Loan Agreements, and Insurance</p> <p><b>Hard Brexit:</b> The FCA Temporary Permissions regime may enable an EU27 financial services supplier to continue to service its UK contracts in the event of a Hard Brexit, if the service provider applies for Temporary Permission. Temporary Permission is intended to enable the EU27 financial services provider to continue business until it has gained authorisation to perform its services in the UK or has offered an alternative supplier. Obtaining Temporary Permission does not ensure the EU27 will permit the service provider to continue to operate in the UK (although restrictions would be universal).</p> <p><b>Negotiated Withdrawal:</b> It is intended the withdrawal agreement will clarify the terms under which EU27 financial service suppliers will be able to continue to supply to the UK during a TP in which those arrangements will be finalised.</p> <p>The FCA has plans to offer the Temporary Permissions facility for EU27 suppliers of financial services. An EU27 non-financial services provider will need to ensure it is enabled to export from the EU27 and import into the UK. See Technical Notices for industry specific advice.</p> <p>For EU27 suppliers of financial services into the UK, the Temporary Permissions facility may be available for a Hard Brexit. An EU27 non-financial services provider will need to ensure it is enabled to export from the EU27 and import into the UK. See Technical Notices for industry specific advice.</p>  |

| QUESTIONS  | ANSWERS  |
|--|--|
| iv. Under what circumstances will I need to renew or renegotiate contracts?  | Your EU27 contract counterparty will need to inform you if it is unable to continue to supply in the UK after the Brexit date, or after the end of the TP.   |
| <p><b>c. INTRA GROUP TRANSACTIONS</b></p> <p>Can intra-group transactions between UK and EU entities (FX trades, loans/deposits, interest rate and cross currency swaps etc.) continue to be carried out?</p> <ul style="list-style-type: none"> <li>For example, a UK corporate Holdco can currently transact a swap with an EU bank and back-to-back the transaction to an EU27 subsidiary as the UK Holdco holds the banking relationship. Would the EU27 subsidiary be required to have the EU27 bank relationship, and a new ISDA agreement, to undertake such a swap on its own behalf?</li> </ul> | <p>Dated 6 November 2018</p> <p>Brexit may impact intragroup transactions in a number of ways:</p> <ul style="list-style-type: none"> <li>When assessing whether transactions can be carried out after exit, firms should consider relevant requirements in the jurisdictions where the parties to the transactions are based, including those relating to MiFID and EMIR. In the UK, there is an exclusion from the requirement to be authorised for firms doing intra group business, subject to their also being able also to rely on a MiFID exemption.</li> <li>Brexit may impact the regulatory treatment of intragroup transactions. For example, without regulatory action, intragroup trades would no longer be exempt from EMIR requirements on clearing and margining..</li> </ul>  |
| <p><b>d. LOAN AGREEMENTS</b></p> <ul style="list-style-type: none"> <li>Can I continue to access loan facilities under contracts agreed pre-Brexit?</li> </ul>   | <p>Dated 23 October 2018</p> <ol style="list-style-type: none"> <li>As a UK entity, your loan documentation will often be based on the forms published by the Loan Markets Association (the LMA) forms of document used for loans written between UK Borrowers and banks lending in the London markets. The lawyers acting for you when you agreed the loan will be able to confirm or advise otherwise if this is correct. The following notes reflect a position where a UK corporate is the borrower, and banks currently lending in the London money markets are the lenders.</li> <li>Some groups may have loan agreements where the lenders are group entities within the EU27. These are likely to be subject to local loan agreement standards. In the event the lenders include UK financial institutions, the Hard Brexit effect of loss of passporting rights for UK lenders in EU27 domiciled loan agreements remains an unknown outcome. At present there is no planned EU equivalent of the UK's Temporary Permissions regime to enable UK lenders to continue as though their passporting rights continue.</li> <li>English Law: There is no Brexit reason to change the governing law of contract. The ability for EU commercial parties to select the law of commercial contacts is written into Rome II which is set out in more detail in section 1.a. above.</li> <li>EU Law references: Your loan agreements may however contain some minor references to EU law and you may need to consider with your lenders how these remain applicable post Brexit.</li> </ol> <p>Clauses to Watch:</p> <ol style="list-style-type: none"> <li>Illegality: what is the consequence of a Lender's participation becoming illegal due to Brexit?</li> <li>Facility Agent: what is the consequence of the Agent's role ceasing to be legal or operational due to Brexit?</li> <li>Transfer and Accession of New Lenders: How do these function? Must they be triggered pre Brexit or post?</li> </ol> <ol style="list-style-type: none"> <li>Passporting: Lenders may be non-UK and rely on passporting to lend into the UK market. Passporting rights will cease on 29 March 2019 unless there is a negotiated withdrawal and TP during which to resolve the loss of passporting. The UK's Temporary Permissions regime, see Section 6 of this paper, is expected to help EU27 lenders to continue to operate in the UK for up to three years. At present there is no planned similar regime in the EU27.</li> </ol> <p>Potential Outcomes:</p> <ol style="list-style-type: none"> <li>Negotiated withdrawal and a TP: we await details of the Withdrawal Agreement.</li> <li>Hard Brexit:             <ol style="list-style-type: none"> <li>No change takes effect until the withdrawal date;</li> <li>An EU27 lender may be able to apply for Temporary Permission to continue for up to three years so that it can continue to act as though it is passported under pre-Brexit practice providing its domestic and EU regulations enable it to continue to do so.</li> <li>your lender is expected to use the three year period to seek authorisation as a lender in the UK. Otherwise you may be required to agree to transfer of the loan obligation, drawn and undrawn to another lender. LMA documentation can contain terms to enable and describe the process to do so.</li> </ol> </li> </ol> |



**QUESTIONS**

**c. ISDA DERIVATIVE CONTRACTS:**

- How will existing derivatives contracts be affected?
- will ISDA issue a protocol for ISDAs?
- will each EU27 member state issue legislation to enable continuation or can the EU achieve this by directive or Regulation?
- ISDA master agreements – will collateralisation arrangements need to change?

**ANSWERS**

Dated 23 October 2018

**1. First Steps:**

Ascertain the residence of the parties to the ISDA agreement: is one UK and the other an EU27 entity, an UK subsidiary of an EU27 entity, or a UK Branch of an EU27 entity? Ensure you examine the terms of the ISDA Agreement between the parties, and the confirmation issued for each deal transacted under that agreement, to know the specific Terms & Conditions. The Confirmation can be used to amend the terms T&Cs of ISDA Master Agreements.

**2. Available 3<sup>rd</sup> Party Advice:**

ISDA have provided a helpful Brexit Q&A at <https://www.isda.org/2018/04/10/brexit-faq/>. ISDA and other EU27 organisations have issued a call for regulatory effort to manage the transition in the event of a Hard Brexit: see <https://www.isda.org/2018/10/09/cliff-edge-effects-under-eu-law-in-a-no-deal-brexit-scenario/>.

**3. Perceived Problems:**

- a. **Loss of Passporting:** a Hard Brexit has no Transition Period in which to establish the effect of a loss of passporting where existing and new transactions are between UK and EU27 parties. At present parties to cross border transactions maturing after 29 March 2019 do not know if they will need to terminate or transfer the transaction to different entities.
- b. **Transition Friction:** Although not directly affecting the vast majority of corporates who are NFC- businesses. NFC+ and FCs are not aware of the action required to manage clearing of derivatives which mature after 29 March 2019 which could require the transfer of most (£41trn nominal value) from UK CCPs to EU27 CCPs with the added risk of a hiatus during which transactions cannot be cleared in the UK and have yet to be transferred to the EU27.
- c. **Increased Cost:** ISDA and others have raised the issue of increased cost to FCs due to direct costs of transition and potentially increased capital costs if EU27 FCs are not able to use existing credit ratings to calculate the capital costs of carry of transactions with UK NFCs and FCs.

**4. Potential outcomes:**

**a. Negotiated Brexit with WA and TP:**

- i. Additional draft wording has been submitted to the FCA for inclusion in the WA which if accepted would help contract continuity throughout the TP and thereafter whether the non UK party is an EU27 entity or a UK Branch of one. A satisfactory outcome to the TP should enable transactions to continue throughout the TP and beyond if their end date is beyond the end of the TP.
- ii. It is assumed the agreement would define the degree to which EU27 and UK financial services businesses would operate without passporting.

**b. Hard Brexit – No certainty WA is executed, no TP:**

- i. Contract continuity is not certain. Potential for illegality clauses to be triggered and transactions terminated unless parties can agree to novation of transactions to new parties using the terms of the agreement.
- ii. The planned FCA Temporary Permissions regime may enable your non-UK financial counterparties to seek permission to continue acting in the UK as though passporting if no TP has been agreed. There is no certainty the EU27 will offer a similar facility for UK financial entities Although ISDA and other EU27 institutions have recommended this to the EU.
- iii. A change in the residence of the financial services counterparty may cause WHT to become payable with requirement to gross up.

**c. Negotiated Brexit with WA but failure to agree post TP arrangements – hence a cliff edge after the TP. Similar to 2.b. but taking effect at the end of the TP.**

**5. Other considerations:**

- a. **UK Subsidiaries and branches of EU27 Entities:** There has been a process of “domestication” since 2008. Banks, UK and EU27, dependent on their home government for financial support have gradually withdrawn into their national borders. Brexit may enhance this process with the potential for your counterparty to ask for termination, particularly if you are out of the money, or transfer of the transaction to an EU27 entity. Care: the change of residence of the counterparty may trigger gross up clauses for WHT (see following).
- b. **Withholding Tax (WHT):** generally the nature of the parties to an ISDA agreement are such that WHT is not required to be deducted from interest payments with each party making a representation to this effect when the

| QUESTIONS   | ANSWERS  |
|---|--|
|   | <p>ISDA Agreement is finalised. This cannot be assumed to continue post Brexit because local jurisdictions, EU27 member states or the UK could withdraw the exemptions which enable WHT free payments. Negotiations will be monitored to understand if this is going to occur. We recommend you make your tax advisers aware of the parties with which you have ISDA derivative transactions so they can keep you informed of the potential to require gross up. You should check the gross up clauses of your ISDA agreements and transactions to understand the consequence of gross up which may include termination.</p> <p>c. <b>Collateralisation:</b> It is expected that cash collateralisation would be no different in treatment to periodic payments under the transaction. Settlement with non-cash collateral may require that the provider possesses certain authorisations to be able to do so and these may change as the Brexit process develops.</p>   |
| <p><b>d. INSURANCE CONTRACTS</b></p> <p>How will existing insurance contracts be affected?</p> <p>What types of contracts might be affected?</p> <ul style="list-style-type: none"> <li>• My contract is underwritten by multiple insurers (or banks), not all of which are in the UK. What will happen to the contract if only some of the non-UK firms transfer the contract? Does the contract remain valid as a whole in this circumstance? Will the contract need to be re-agreed if only some of the contracting parties are changing?</li> <li>• I have business establishments in both the UK and the EEA – will my insurance provider be able to continue to service contracts covering all of them?</li> <li>• If one of my mandatory insurances is not transferred in time, does this make it invalid and, in that case, would I be breaking the law?</li> </ul> | <p>Dated 30 October 2018</p> <p>You should address questions on your businesses' policies to your insurance advisers. The following is a summary of information made publicly available by brokers and insurers<br/>We understand that contracts written by UK insurers for insurance elsewhere in the EEA will become illegal post a hard Brexit. That means claims could not be paid. Similarly, contracts written by EEA insurers for cover in the UK would become illegal.</p> <p>All insurance contracts including long tail liability contracts.</p> <p>We are advised by some members with UK and EEA establishments that their insurers have already prepared to issue EEA insurance using EEA entities with effect from the 29 March 2019. UK policies to be issued by UK insurance entities.<br/>The text below is a simple description of the current understanding of post Brexit.</p> <ul style="list-style-type: none"> <li>• We recommend that in all circumstances you discuss your post 29 March 2019 insurance with your brokers and insurers.</li> <li>• Insurers can make use of a "Part 7" transfer which enables the policy to be transferred to an EEA insurance entity so that cover continues. This could enable EEA establishments to be covered by EEA insurance entities while the UK establishment cover remains with UK insurance entities. At present we are not aware that this process is being pursued, but it could have application to long tail liability policies where claims have been made prior to 29 March 2019 but may not be paid until after 29 March 2019.</li> <li>• We understand UK cover for EEA establishments would be invalid post 29 March 2019.</li> </ul> |
| 2. CASH AND LIQUIDITY MANAGEMENT  |  |
| <p>Will existing cross-border cash pooling arrangements with:</p> <p>(a) EU27 corporate entities and UK banks and<br/>(b) UK corporate entities and EU27 banks<br/>be impacted in any way?</p> <ul style="list-style-type: none"> <li>• Is this dependent on any form of new "equivalence" or "permission" agreement/regime?</li> </ul>   | ANSWERS TO FOLLOW  |
| <p>Will UK and EU27 SMEs be able to continue to access trade finance credit and support for cross border transactions?</p> <ul style="list-style-type: none"> <li>• For example: EU27 domiciled suppliers to UK businesses can currently source domestic trade finance (e.g. invoice discounting) to fund working capital. Will EU27 banks be able to continue to do so during Transition and thereafter? Otherwise will businesses need to accelerate payment to their SME suppliers?</li> </ul>   | ANSWERS TO FOLLOW  |

| QUESTIONS  | ANSWERS   |
|--|---|
| <b>3. PAYMENTS</b>   |   |
| <p>Can a UK business continue to make and receive euro payments between the UK and the EU?</p> <ul style="list-style-type: none"> <li>• Will the UK remain part of SEPA?</li> <li>• Will new bank accounts be required in country of each supplier to enable payment, or will say, a UK business be able to continue to access SEPA through a UK bank portal?</li> <li>• Where EU 27 corporates have UK bank accounts (or UK corporates EU27 bank accounts), should they consider opening new “local” bank accounts (in sufficient time to allow it to notify its customers of the new arrangements and for it to reconfigure its own systems and processes for the new banking, payments and receipts arrangements)?</li> </ul> | <p>Dated 6 November 2018</p> <p>Payments between the UK and EU will still be able to take place after we have left the EU.</p> <p>The UK Government wishes to remain in SEPA in order to benefit from lower costs and faster transaction times. To this end, the Government intends to retain relevant EU payments law in such a way that it maximises the prospects of the UK remaining in SEPA. As the geographical scope of SEPA already extends beyond the EU and EEA, including several third countries and territories, it is possible for the UK to continue in the scope of the SEPA schemes, provided it fulfils the eligibility criteria.</p>   |
| <p>Can intra-group transactions between UK and EU entities (FX trades, loans/deposits, interest rate and cross currency swaps etc.) continue to be carried out?</p> <ul style="list-style-type: none"> <li>• For example, a UK corporate Holdco can currently transact a swap with an EU bank and back-to-back the transaction to an EU27 subsidiary as the UK Holdco holds the banking relationship. Would the EU27 subsidiary be required to have the EU27 bank relationship, and a new ISDA agreement, to undertake such a swap on its own behalf?</li> </ul>   | <p>ANSWERS TO FOLLOW</p>  |
| <b>4. CAPITAL MARKETS</b>  |   |
| <p>Will existing debt programmes (for example, Euro Medium Term Note programmes) approved either in the UK or in the EU27 remain fully operative?</p> <p>Will there be new “frictional costs” of operation? Will securities issued thereunder continue to be eligible for any index or receive the same regulatory treatment as they do now?</p>   | <p>Dated 23 October 2018</p> <p>The answer to this question revolves around the Prospectus Directive (PR). A new PR comes into force on 21 July 2019, after Brexit and possibly during the TP. The outcomes will differ depending on whether the debt issue is exempt or non-exempt: exempt being bonds issued in denominations of €100,000 or greater. Smaller denomination bonds are colloquially known as Retail Bonds marketed to retail investors.</p> <p>We would expect that most members are engaged in the issue of exempt bonds and that their outstanding issues are exempt bonds.</p> <ul style="list-style-type: none"> <li>• Issuers will continue to be able to make <i>exempt</i> offers of bonds in EEA Member States without needing to publish an approved prospectus in accordance with the PR, so issuers with prospectuses approved by the FCA in the UK will be able to make <i>exempt</i> offers of bonds in EEA Member States after Brexit.</li> <li>• But in the event of a Hard Brexit or any transitional or other arrangement, issuers would need to have a prospectus approved by an EU27 national competent authority and published in accordance with the PR in order to make a <i>non-exempt</i> offer of bonds to the public in one or more EEA Member States after 29 March 2019.</li> </ul> |



| QUESTIONS   | ANSWERS   |
|---|---|
|   | <ul style="list-style-type: none"> <li>The PR also prohibits the admission to trading on a regulated market situated or operating within the EEA unless a prospectus has been published in accordance with the PR.</li> <li>So absent any transitional or other arrangement, an issuer's non-exempt securities could not be admitted to trading on a regulated market situated or operating within the EEA after 29 March 2019 unless the issuer has published an approved prospectus in accordance with the PR.</li> </ul> <p>Government has explicitly referred to Prospectus in its Technical Note <i>Banking, insurance and other financial services if there's no Brexit deal</i>: "The government has committed to putting in place unilateral action, if necessary, to resolve these issues as far as possible on the UK side. For example, the government has committed to continue to treat prospectuses that are valid in the UK before exit (including those approved by a competent authority in a different EU member state) as valid for the remainder of the 12 months from their date of approval, including where that includes a period after the UK exits the EU." but this would be a unilateral action.</p> <p>ISDA and other EU27 organisations have also raised concerns over EU27 trading in UK bonds issued prior to 29 March 2019 (see: <a href="https://www.isda.org/2018/10/09/cliff-edge-effects-under-eu-law-in-a-no-deal-brexit-scenario/">https://www.isda.org/2018/10/09/cliff-edge-effects-under-eu-law-in-a-no-deal-brexit-scenario/</a> ) which essentially requires EU27 grants equivalence, and vice versa, or passes something similar to the UK Temporary Permissions regime as a temporary measure to remove points of friction. For example, an EU27 financial firm can pre Brexit buy UK bonds through a UK trading venue but would not be able to do so post Brexit unless equivalence is agreed or a temporary permission is used.</p> |
| <p><b>5. CREDIT RATINGS</b></p>   |   |
| <p>Can my company continue to rely on credit ratings issued in the UK or the EU?</p>  | <p>ANSWERS TO FOLLOW</p>  |
| <p>If Brexit will affect the authorisation of credit ratings agencies, could this affect the stability or solvency of any of my financial services providers?</p>   | <p>ANSWERS TO FOLLOW</p>  |
| <p><b>6. RELATIONSHIPS WITH PROVIDERS</b></p>   |   |
| <p>How will the pricing and availability of products be impacted post-Brexit? When will I be informed by providers of these changes?</p> <ul style="list-style-type: none"> <li>Will providers be required by a certain date to clarify what they are doing regarding their various client facing activities and what this means for corporates? E.g. where will DCM support for a Euro bond issue be provided from and who is the bank's contracting party? – e.g. London or Paris, will FX sales teams move from London to an EU27 country etc.?</li> </ul> | <p>Dated 23 October 2018</p> <p>We recommend a pro-active relationship with service providers. Define the services you use and seek confirmation from your service providers that they will continue to offer those services or the alternative arrangements they can offer within their group.</p> <p>No date has been set other than the withdrawal date of 29 March 2019. Corporates should seek advice from their financial services providers as to how they expect to service extant issues: for example, for periodic settlements Corporates should expect that DCM support for EU27 issued non-exempt bonds will be managed by EU27 entities and that any service agreements would need to be re-written with EU27 parties.</p>   |
| <p><b>7. PENSIONS</b></p>   |   |
| <p>My company has a cross-border pension fund arrangement, for example, a pension fund manager in the Netherlands currently manages UK-based pension funds. Will this be allowed to continue post-Brexit?</p>   | <p>ANSWER TO FOLLOW</p>   |

| QUESTIONS   | ANSWERS  |
|---|--|
|   |  |
| 8. <u>TAXATION</u>  |  |
| <p>What effect will any changes in payment and timing of payment of VAT will have on my business and cash flow?</p>                     | <p>Dated 23 October 2018</p> <p><b>Hard Brexit:</b></p> <p>Government has issued Technical Note <i>VAT for businesses if there's no Brexit deal</i>: see <a href="https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexit-deal/vat-for-businesses-if-theres-no-brexit-deal">https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexit-deal/vat-for-businesses-if-theres-no-brexit-deal</a> in which it states:</p> <p>“If the UK leaves the EU without an agreement, the government will introduce postponed accounting for import VAT on goods brought into the UK. This means that UK VAT registered businesses importing goods to the UK will be able to account for import VAT on their VAT return, rather than paying import VAT on or soon after the time that the goods arrive at the UK border. This will apply both to imports from the EU and non-EU countries.”</p> <p>You should maintain contact with your tax advisers to be aware when these changes are made, if required. This is intended to ensure there is no adverse cash flow effect due to a Hard Brexit.</p> |
| 9. <u>REGULATION</u>  |  |
| <p>What EU legislation is brought into UK law under the Withdrawal Act and what changes will there be to the role of UK regulators?</p> | <p>Dated 23 October 2018</p> <p><b>Withdrawal Act (WA):</b> the UK currently complies with EU law through Directives, Regulations and other means. A directive is a legal act of the EU which requires member states to pass their own legislation to achieve a result defined in the directive. A regulation is deemed to be implemented in the member state. The WA is intended to bring current EU law into UK law with appropriate adjustment, for example substituting the FCA for ESMA as the regulating authority in EMIR.</p>  |
| <p>If I have a complaint about an EEA firm, who can I speak to?</p>   | <p>Dated 23 October 2018</p> <p>We can only assume you would need to complain to the firm's domestic, or if EU27, EU level regulator.</p>  |