



CONFIDENTIAL

BREXIT Q&As for corporates

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-authorised 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 committed to lay additional legislation, if necessary, to ensure contractual obligations not covered by the temporary permissions regime can continue to be met.

Following discussions with the FCA, the CBI and ACT have 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 will look to compile responses to these questions (timing TBC) 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 outlined an initial set of questions for consideration. Please send any feedback, comments or additional issues to be considered to the ACT Policy & Technical department using the technical@treasurers.org where the Policy & Technical team will respond.

We will update this schedule as new questions are raised and as answers are received.

This facility is available only to ACT members.

Question

CONTRACTUAL ISSUES

How will existing insurance and derivatives contracts be affected?

- What types of contracts might be affected?

Can I continue to access loan facilities under contracts agreed pre-Brexit?

What is, or will be the legal basis for cross border contracts to remain valid / serviceable?

- What arrangements are in place to enable continuation?

Issue: there is a general exposure that passports between parties in the UK and EU27 will become invalid post withdrawal if there is no agreement as to how particular contracts will be managed. If a Transition period is agreed, passports will remain valid until December 2020 to enable the UK and EU27 to agree a permanent solution.

- For example: will ISDA issue a Transition and Exit protocol for ISDAs; will each EU27 member state issue legislation to enable continuation or can the EU achieve this by directive or Regulation?

ISDA issue: In the event there is no withdrawal agreement, the lack of passporting will not enable the transactions to continue where one party to an ISDA transaction is in UK and the other in EU27. Post withdrawal transactions will require a new ISDA agreement to enable parties either both within the UK or both within the EU27.³

What is, or will be the legal basis for cross border documents to remain enforceable?

- 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?
- Will Rome (1) and Rome (2) be enacted in the UK under the Withdrawal Act?

What are financial services providers doing to mitigate risks on contracts?

What happens if my provider cannot transfer contracts in time for March 2019?

- What are regulators doing to mitigate the potential impacts on contract validity?

Under what circumstances will I need to renew or renegotiate contracts?

- ISDA master agreements – will collateralisation arrangements need to change?

TEMPORARY PERMISSIONS REGIME

What is the temporary permissions regime and how does this work?

How will this impact my relationships with financial services providers?

How long will the temporary permissions regime remain in place?

CASH AND LIQUIDITY MANAGEMENT

Will existing cross-border cash pooling arrangements with:

(a) EU27 corporate entities and UK banks and

(b) UK corporate entities and EU27 banks

be impacted in any way?

- Is this dependent on any form of new “equivalence” or “permission” agreement/regime?

Can a UK business continue to make and receive euro payments between the UK and the EU?

- Will the UK remain part of SEPA?
- 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?
- 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)?

Will UK and EU27 SMEs be able to continue to access trade finance credit and support for cross border transactions?

- 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?

INTRAGROUP TRANSACTIONS

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?

- 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?

CAPITAL MARKETS

Will existing debt programmes (for example, Euro Medium Term Note programmes) approved either in the UK or in the EU27 remain fully operative?

- 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?

CREDIT RATINGS

Can my company continue to rely on credit ratings issued in the UK or the EU?

Issue: CRAs issue ratings within the EU when authorised by ESMA in accordance with the CRA Regulations, 462/2013. It is expected that the Withdrawal Act will transfer the CRA into UK law with the FCA as the UK authorising party. CRAs used in the EU are non-UK based, and are based in the EU27.

RELATIONSHIPS WITH PROVIDERS

How will the pricing and availability of products be impacted post-Brexit? When will I be informed by providers of these changes?

- 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.

PENSIONS

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?

TAXATION

What effect will any changes in payment and timing of payment of VAT will have on my business and cash flow?

REGULATION

What EU legislation is brought into UK law under the Withdrawal Act and what changes will there be to the role of UK regulators?