BREXIT & FINANCIAL SERVICES

ASSISTING BANKS, ASSET MANAGERS AND INSURERS
IN TIMES OF UNCERTAINTY

NOVEMBER 2017

BDO

INTRODUCTION
ABOUT BDO

BDO: PROFILE AND POSITIONING

BDO is one of the world's leading auditing and consulting firms.

We are an entrepreneurial network and a professional partner for regional companies and global groups alike.

We aim to provide auditing and consulting services and support of the highest quality. We act with foresight, create added value and proactively approach our clients.

BDO FINANCIAL SERVICES

BDO's strategy is ambitious: To further expand its strong market position in the financial services industry.

Today, BDO's industry specialists provide consulting and auditing services to leading banks, investment managers and insurance companies across Europe.

More than 1,000 employees across Europe focus on financial services, including auditors, tax consultants, lawyers and other specialists, for example in the fields of compliance, IT, M&A and business valuation.

High quality, strong motivation and independence serve as a benchmark for everything we do.

BDO INTERNATIONAL

US$7.6 billion 2016 REVENUE

158 Countries

1,400 Offices

68,000 Staff

BREXIT CREATES CHALLENGES AND UNCERTAINTY

The financial markets play a central role in the economic development of the European Union (EU) and the United Kingdom (UK). This has been true in the past and this will be true after Brexit.

In the aftermath of the 2008 global financial crisis, the EU – including the UK – have made significant efforts to stabilise the financial markets. The regulation resulting from these measures is complex, encompassing rules for banks and insurers, but also other providers of financial services, including securities investment funds, alternative investment funds from real estate to private equity and brokers, to name a few. As a consequence, the regulatory environment for financial services is highly harmonised, being based on European Directives implemented on a national level as well as European Regulations.

If the Brexit will lead to a disintegration of the EU and the UK financial markets, there is a substantial risk that competition and supply may deteriorate and the financing and the investments of real-economy-companies will be harmed.

"HARD BREXIT"

In case a Brexit agreement in accordance with Article 50 TEU does not make provision for equivalence of EU and UK regulatory and supervision frameworks, the UK would have to be classified as third country. It would have to be checked case-by-case if EU rules and regulations contain a relevant third-country regime.

BESPOKE AGREEMENT BETWEEN THE EU AND THE UK

As a likely outcome of the exit agreement according to Article 50 TEU, a special agreement could ensure that the UK will formally leave the EU and therefore honour the outcome of the referendum but also retaining access to the Single Market. Such an agreement could be made on a sector-specific approach, also covering the financial services industry. Such agreement could be similar to the relationships between the EU and Switzerland. However, the UK government will likely be required to make concessions in other areas including immigration.

EQUIVALENCE AND THIRD-COUNTRY PASSPORT

If membership for the financial industry cannot be successfully negotiated, the UK may count as a 'third country" for EU financial regulation, being classified as an "equivalent" legal system. Equivalence can only be requested by third countries where it is explicitly provided for in EU legislation. However, not all areas of EU law covering financial services provide for equivalence rulings. Article 47(1) MiFIR serves as an example for such a provision.

- Equivalence usually restricted to wholesale financial services (retail banking business not included)
- Other equivalence rules (e.g. for hedge funds under the AIFMD) have never been used by the European Commission
- Equivalence status can be unilaterally withdrawn by European Commission

Refer to next page for an overview on existing third-country regimes in a selection of relevant regulations.

BREXIT CREATES CHALLENGES AND UNCERTAINTY

Segment	Regulation	Content	Third-country regime after Brexit	Access to EU Single Market?
Banking	CRD I: Directive 2006/48/EC and 2006/49/EC; CRD II: Directive 2009/111/EC; CRD III: Directive 2010/76/EU; CRD IV: Directive 2013/36/EU.	According to the Capital Requirements Directives (CRDs), credit institutions are allowed to offer banking services across the entire European Union and to open branches for this purpose.	No third-country regime for banking services provided. As an exception, the MiFID II/MiFIR applying for investment services include a third-country regime.	No
Securities	MiFID II: Directive 2014/65/EU; MiFIR: Regulation (EU) 600/2014.	On the basis of MiFID II (Markets in Financial Instruments Directive and MiFIR (Markets in Financial Instruments Regulation), companies can establish themselves freely within the EU and offer securities and derivatives across borders without needing an additional national permit. This also includes all ancillary services which are necessary to provide securities and derivatives services. MiFID II/MiFIR also contains an EU-wide permit for data provision services as well as trading venues.	MiFID II/MiFIR includes a third-country regime on the basis of an equivalence regime but limited to some areas. Third-country financial services providers can offer professional clients investment services under simplified conditions. The European Commission, supported by the European Securities Committee, may recognise the equivalence of the third country's supervisory regime (Article 46 MiFIR). Under the condition that the European Securities and Markets Authority (ESMA) concludes a cooperation agreement with the foreign supervisory authority, EU-wide provision of such MiFID-regulated services to professional clients would be dependent only on implementation of a notification procedure ("third-country entity passport"). However, no third-country regime is provided for data provision services in MiFID II/MiFIR.	Yes, partially
Payment services	PSD I: Directive 2007/64/EC; PSD II: Directive 2015/2366.	The Payment Services Directives PSD I/PSD II create an EU-wide single market for payment flows. payment services can be supplied across the entire EU based on an EU passport.	The PSDs contain no provision for a third-country regime.	No
Asset manage-ment	UCITS: Directive 2014/91/EU; AIFMD: Directive 2011/61/EU; AIFM Regulation (EU) 231/2013.	The current regulatory regime in the UK for asset management is based essentially on EU directives, mainly the UCITS (Directive on Undertakings for Collective Investment in Transferable Securities), AIFMD (Directive on Alternative Investment Fund Managers), together with the AIFM Regulation, as well as MiFID II/MiFIR (see above). Even though a large portion of UCITS funds are domiciled in Luxembourg or Ireland, UCITS is regarded as a synonym for harmonised EU provisions in asset management which are successfully established internationally.	UCITS does not include any third-country regime. Under the AIFMD, there is the possibility for the European Commission to grant a third-country passport. Such decision is built on a recommendation from ESMA which evaluates the regulatory regime of the third country in question. Some countries, including Canada, Guernsey, Japan, Jersey and Switzerland, have already gone through this process, and ESMA has given the European Commission a positive recommendation, while the third-country passport under AIFMD has not yet been granted. For the possible equivalence regimes under MiFID II/MiFIR see above.	UCITS: No AIFMD: Yes
Insurance	Solvency II: Directive 2009/138/EC.	Solvency II grants branches of EU insurance companies the possibility of home-country authorisation and control. This applies for both direct insurance and reinsurance.	After Brexit, branches of EU direct insurers will lose the privilege of recognition of home-country authorisation and control. As a consequence, EU insurers will need local authorisation in the UK and be subject to the full extent of British supervision (may encompass local capital requirements). However, reinsurers from third countries have, due to an existing third-country regime, facilitated access to the EU market, which means no licence requirement for cross-border business, if the European Commission determines the equivalence of the solvency system.	Yes, partially

BREXIT: HOW AFFECTED ARE FINANCIAL SERVICES SECTORS?

Equivalence procedures vary from legislation to legislation while some do not contain any. As a consequence, not all financial services sectors will be affected in the same way.

BANKS

Compared to other financial services sectors, UK headquartered banks will most likely be hit hardest. They will no longer be able to rely on their passport under the CRD IV as it does not include any provisions for third-country access to EU markets. Many UK based banks have already taken decisions to relocate some operations to maintain their ability to trade with the EU27.

ASSET MANAGERS

Asset managers should be less affected than banks, as the AIFM Directive grants cross-border rights to non-EU firms, providing that equivalence is recognised by the European Commission and the firm is authorised by the ESMA. In contrast, the UCITS Directive does not contain a third country equivalence framework, and requires a fund and its management to be located in the EU.

INSURERS

The insurance sector should also be less affected than banks as the Solvency II Directive recognises the fact that the insurance industry is a global industry. The European Commission can decide about the equivalence of a third country's solvency and prudential regime. However, there is no such provision for primary insurance, and a number of insurers have already made decisions to set up subsidiaries in the EU27.

BREXIT: HOW BDO CAN ASSIST THE FINANCIAL SERVICES INDUSTRY

Due to the Brexit, existing market access arrangements are at risk. This forces financial institutions with cross-border activities to rethink their organisational setup.

To minimise the impact of a "hard Brexit" on the provision of client services, financial institutions may consider interim steps during the 24 months withdrawal period. Given such a background, Brexit planning should take worst possible scenarios into consideration.

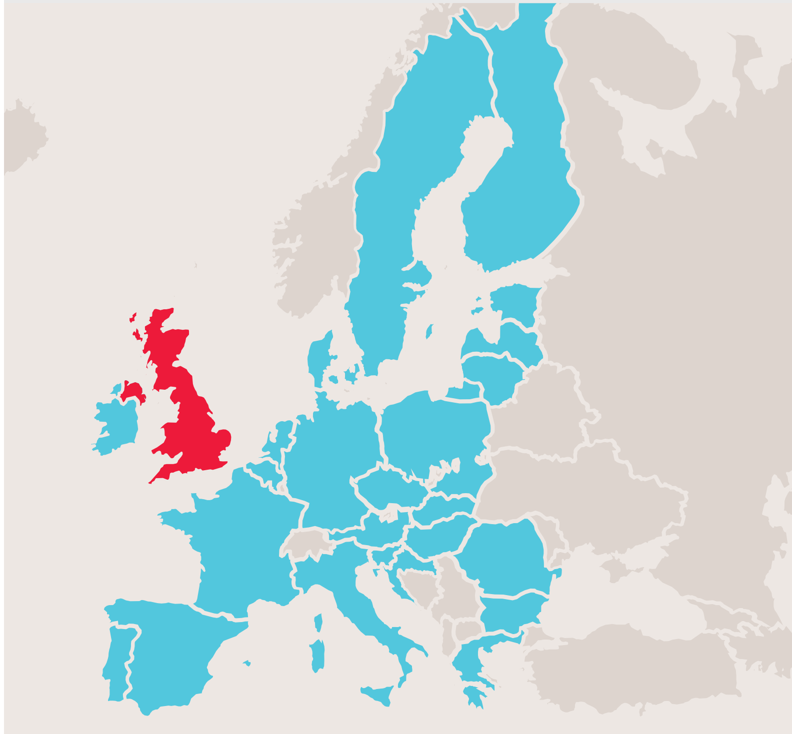
Issues to be considered when assessing EU markets/jurisdictions include:

- Regulatory and legal environment
- Tax environment
- Language
- Infrastructure
- Attractiveness and size of market
- Access to other markets
- Access to critical skills
- Sustainability factors
- Culture & lifestyle factors

The BDO Financial Services practice assists financial institutions with focus on strategy, client relationship, profitability and capital allocation, encompassing services around:

- Decision making on markets/jurisdictions
- Licence application
- M&A and transaction services
- Transition agreements

FOR A COMPREHENSIVE OVERVIEW ON CHALLENGES AND OPPORTUNITIES ARISING FROM BREXIT DOWNLOAD BDO'S BREXIT PLANNING GUIDE:



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