P.R.I.M.E. Finance
Panel of Recognized International Market Experts in Finance

Brexit’s Implications for Financial Markets

Habib Motani
P.R.I.M.E. Finance Annual Conference 2019
4 & 5 February, Peace Palace, The Hague
DIRECTION OF TRAVEL

The UK is due to exit the EU at 11pm UK time on 29 March 2019

**Deal**
Draft withdrawal agreement may still be agreed (perhaps amended)

**Requires (in UK)**
- UK Parliament approval
- Act of Parliament to give effect to agreement in UK domestic law
- Compliance with Constitutional Reform and Governance Act 2010 (pre ratification)

**Requires (in EU)**
- Approval by European Parliament
- Approval by EU Council (qualified majority)

**Draft agreement establishes transition period until end 2020**
- Extendable by mutual agreement to end 2021 or 2022
- ‘Full status quo’ transition for business: passport/other rights continue in UK/EU

**Delay**
UK and European Council can delay deadline

**Requires**
- UK request in accordance with constitutional requirements (probably resolutions of both Houses under EUWA)
- Unanimous agreement of European Council
- If delay past May, resolution of issue of UK participation in EU Parliament elections

**Possible prelude to**
- UK general election
- Second referendum (requires Act of Parliament)

**Leading to**
- Withdrawal of Article 50 notice (may require UK Act of Parliament)
- Deal or no-deal

**No deal**
Default position under EU and UK law

UK becomes a ‘third country’ under EU law

Activation of onshoring of EU law as UK domestic law
NO DEAL PREPAREDNESS: UK

European Union (Withdrawal) Act 2018

- Repeals European Communities Act 1972 on ‘exit day’
- EU-related domestic law continues in effect
- EU regulations and other direct EU legislation become part of domestic law
- Ministers given power to make SIs amending UK law to remedy deficiencies arising from Brexit

Progress with statutory instruments (SIs)*

- Government now expects to make ~600 SIs
- So far, 343 SIs laid before Parliament (~7,000 pages)
- Most require affirmative resolution of Parliament (some only negative resolution, but Parliament can upgrade)
- Of these, only 104 have completed Parliamentary process
- But Government has power temporarily to override need for affirmative resolution in cases of urgency

*Hansard Society Westminster Lens: Brexit Statutory Instruments Dashboard (25 January)
NO DEAL PREPAREDNESS: UK

Significant progress on UK preparedness on financial services: generally UK treats EU as a third country

Delegation to UK regulators
- Powers to amend rule-books and RTS/ITS
- Consultations by both PRA and FCA
- Ongoing powers to make/amend RTS/ITS under onshored EU legislation

Temporary regimes
- Temporary permissions regime: EU firms and funds passporting into the UK
- Temporary recognition regime: EU and third country CCPs
- Temporary registration regimes: new UK credit rating agencies and trade repositories
- Financial services contracts regime (FSCR): allows firms, CCPs and trade repositories to run-off outstanding arrangements
- Equivalence determinations and exemptions: HMT powers to make these by direction
- Other transitional arrangements: intragroup exemptions under EMIR, EU registered benchmarks
- Temporary transitional powers (expected): giving UK regulators powers to disapply requirements

Third-country arrangements
- Discussions with CFTC/others to roll-over reliefs/exemptions

Accession to Hague Convention
- Covers exclusive choice of court agreements made on or after 1 April 2019

Financial Services (Implementation of Legislation) Bill
- Allows HM Treasury to adopt legislation to deal with ‘in flight’ files
- Specified EU legislation adopted but not yet in effect or proposed but not yet adopted as at exit day
- E.g., EMIR Refit/2.2, Risk Reduction Package, Low Carbon Benchmarks, SFTR reporting
NO DEAL PREPAREDNESS: EU

The Commission only proposes limited measures to mitigate impact of no-deal exit on financial sector

Recognition of UK CCPs and CSDs
- Temporary equivalence determinations for existing UK CCPs (12 months) and CSDs (24 months)
- Subject to UK regulators and ESMA agreeing extensive arrangements for access to information
- ESMA to progress applications for recognition in advance of Brexit

Facilitation of post-Brexit novations
- Amendments to RTS to allow novations from UK to EU entities within 12 months after Brexit
- Without triggering clearing or margin requirements

No arrangements for equivalence determinations or other measures to cover, e.g.:
- Data transfers
- UK trading venues for EMIR and MiFIR
- Intragroup exemptions under EMIR
- UK trade repositories, data service providers, credit rating agencies
- Risk weighting of exposures to UK entities
- UK benchmarks
Derivative contract continuity issues left to Member States: ‘new patchwork’ of legislative responses

<table>
<thead>
<tr>
<th>Status</th>
<th>Addresses contract continuity for derivatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>Proposed New third country licence regime for cross-border MiFID services to professional clients/eligible counterparties (plus transitional regime for UK firms)</td>
</tr>
<tr>
<td>France</td>
<td>Adopted Temporary powers to adopt ordinances (no published proposals)*</td>
</tr>
<tr>
<td>Germany</td>
<td>Proposed BaFin power to allow UK passported firms temporarily to continue to provide banking and investment services closely connected to existing transactions</td>
</tr>
<tr>
<td>Ireland</td>
<td>Proposed No specific provision*</td>
</tr>
<tr>
<td>Italy</td>
<td>Proposed Temporary measures to allow intermediaries to continue to provide services in Italy*</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Proposed Temporary powers to take measures to address risks arising from Brexit</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Proposed Temporary powers to take measures to address risks arising from Brexit*</td>
</tr>
<tr>
<td>Norway</td>
<td>Adopted Temporary regime to allow UK firms to provide cross-border investment services to professional clients and eligible counterparties</td>
</tr>
<tr>
<td>Sweden</td>
<td>Proposed Temporary regime to allow UK firms to provide cross-border investment services to professional clients</td>
</tr>
</tbody>
</table>

* Also includes specific measures to address membership of UK systems to address loss of settlement finality directive protection
SOME KEY ISSUES IN NO DEAL

- Contract continuity: ability to perform ‘life cycle’ events without requiring a local licence on UK-EU27 contracts
- Possible need for new Article 55 and resolution stay recognition clauses
- Continued use of EMIR intragroup exemption from clearing and margin
- Ability to novate to an EU27 affiliate without triggering clearing or margin requirements
- Choice of court clauses and enforceability of judgements
- Use of English law: impact of local law on contract terms and structure
- Replacement of inappropriate references to EU law with references to onshored UK law
- Impact of Benchmark Regulation
- Prospectuses
- ECB Eligible Collateral
- Insolvency issues