

Issue 11: Lex et Brexit — Cross-border models for financial services and SEs and cross-border mergers

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On March 29th, 2017, the UK delivered a letter from the UK Prime Minister to the President of the European Council, Donald Tusk, which gave notice of the UK's intention to withdraw from the European Union ("EU") in accordance with Article 50 of the Treaty on European Union. Thus the starting gun has been fired on two years of negotiation in which both sides will attempt to agree the terms of exit for the UK and a framework for a future trading relationship. The task before the two sides is complex, with sensitive discussions anticipated on a possible transition deal, obligations of the UK to contribute to the EU budget, the status of UK and EU citizens post-Brexit and the legal jurisdiction of the EU courts.

In the context of the triggering of Article 50, attention in the financial services sector has turned to possible models for cross border financial services activity after Brexit. The UK Government and the EU have accepted that the UK will have to relinquish its membership of the single market. If the UK and the EU cannot agree a future trading agreement during the Article 50 negotiation timetable, and no transitional period allowing market access is agreed, financial services firms based in the UK would receive no special treatment as compared with any other "third country" (EU parlance for non-EU states). In this context, we look at three models for the future trading relationship in financial services and consider some of the obstacles and drawbacks for each option.

We then turn our attention to two rarely used mechanisms for the re-domiciliation of UK companies to another EU jurisdiction: the formation of European Companies, known as Societas Europea ("SEs"), and the completion of cross-border mergers under EU derived law. Both regimes may be helpful to a UK group looking to re-domicile entities to other parts of the EU in the context of Brexit, although both have been the subject of recent judicial decisions regarding the form of transactions which are considered permissible.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

John D. Amorosi

+1 212 450 4010
john.amorosi@davispolk.com

John Banes

+1 212 450 4116
john.banes@davispolk.com

Leo Borchardt

+44 20 7418 1334
leo.borchardt@davispolk.com

Will Pearce

+44 20 7418 1448
will.pearce@davispolk.com

Simon Witty

+44 20 7418 1015
simon.witty@davispolk.com

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