

Brexit and relocation – key factors for the financial sector

Since the decision of the UK in June 2015 to leave the EU, there has been widespread speculation and discussion about the relocation of UK authorized financial institutions. In recent months before and after the UK government triggered Article 50 to leave the EU, several institutions have made relocation decisions across the EU. In the majority of cases, banks (although there has been a lot of activity by MiFID insurance/reinsurance payment services entities) had existing operations in another EU member state and this involved a shift in operations rather than requiring the fresh authorization of a subsidiary. SIMON O'NEILL writes.



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A number of factors are likely to influence an institution's decision over the coming months as follows:

1. Growing uncertainty created by the delay in commencing negotiations due to the general election called by Theresa May.
2. The likelihood of a very hard Brexit due to the Conservative party's election manifesto which promises to control immigration, leave the single market and withdraw from the jurisdiction of the European Court of Justice. Actions which, despite the Great Repeal Bill adopting the body of existing law, are likely to impact the possibility of the financial sector in the UK obtaining equivalent status in the immediate aftermath of Brexit.
3. The necessity for businesses to maintain continuity of operations and contingency planning.

The Bank of England in March issued a directive to UK financial institutions to prepare contingency plans for how they will deal with Brexit by the 14th July. Specifically, focus is on issues which might arise if agreement cannot be reached in the Brexit process on:

- (i) the mutual recognition of standards
- (ii) the cooperation on financial regulation/supervision, and
- (iii) trade agreements.

A significant volume of enquiries have already been made with the IDA in Ireland to move/establish operations

in Ireland as part of such contingency planning. The IDA is reporting in excess of 80 such enquiries. This number is likely to continue to grow in the coming months as institutions prepare for 'push the button' contingency plans. In the interest of financial stability, the European Central Bank (ECB) is reported to be considering a fast-track authorization model (provided it can be established that firms' financial models meet the standards of the UK regulator).

In Ireland, the Central Bank of Ireland has announced the establishment of a new team to handle Brexit-related authorization queries. Notwithstanding any possible fast-track authorization that may be permitted by the ECB, the Irish central bank will still require institutions to demonstrate that they are substantively run from Ireland and that their structure and operations permit effective supervision with local management accountable for decision-making as part of any authorization application.

Currently, the Capital Requirements Directive allows deposit-taking institutions to conduct services (including lending) from the UK throughout the EU. A hard Brexit means this automatic passport would be lost therefore requiring the authorization of a new subsidiary in an EU member state in order to access the EU market.

No more than their conventional counterparts, Islamic financial institutions may not be able to meet the full requirements of their customers in circumstances where they are solely authorized to carry on business in the UK.

In many cases, Islamic financial institutions may not have separate EU authorized subsidiaries to which they can restructure operations. If they wish to operate within the EU, they

will be required to establish a separate subsidiary. Inga Beale, former CEO of Lloyd's of London, is a recent example – she stated that "it is important that we are able to provide the market and customers with an effective solution that means business can carry on without interruption when Britain leaves the EU".

As an alternative for UK Islamic financial institutions, Ireland offers an ideal statutory framework similar to that in the UK, an English-speaking, common law jurisdiction with a highly skilled financial services industry, an extensive network of tax treaties including many Middle Eastern countries and a tax framework which recognizes Shariah compliant structures.

Ireland is already recognized as a leading jurisdiction for the listing of Sukuk, with Gulf sovereign bond listings on the Irish Stock Exchange including Kuwait, Jordan, Oman and Bahrain. The most recent example is the decision by the Kingdom of Saudi Arabia to list the world's largest-ever Sukuk on the ISE in April 2017.

Like it or not, the consequences of the UK's Brexit decision mean that options and routes for UK firms to access the EU market will be restricted. Businesses and regulated institutions need to adopt contingency plans for their own business purposes and specifically the given requirements of the Bank of England. Ireland as an open, transparent and highly reputable jurisdiction, with similar regulatory requirements to the UK, offers a unique hedge for UK authorized institutions which operate or intend to operate across the EU. In addition, the fact that there is currently no Shariah compliant institution operating in Ireland makes the opportunity for such institutions not just to hedge their Brexit risk but also to grow their customer base a very interesting prospect. ☺