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**BREXIT – CONTRACTUAL CONTINUITY**

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# **BREXIT: CONTINUITY OF CONTRACT**

**The UK's withdrawal from the EU creates concerns for both UK and EU27 financial institutions as to their ability to maintain and run off their portfolios of existing cross-border contracts**

## **Context**

### **Brexit will end EU passport rights of financial services firms**

- Transition arrangements only provide temporary relief
- The future relationship agreement may not provide a substitute if the UK is outside the single market.

### **Affects UK and EU27 firms that rely on the passport**

- UK firms lose passport right to provide services into EU27, likewise for EU27 firms into the UK
- Both when contracting cross-border and through branches.

### **Focus is on existing portfolios of contracts**

- Firms may be able to book new business in appropriately authorised entities or branches
- But unlikely to be practical to move all existing contracts to new entities or branches.

### **Absent a solution, firms need to assess whether they can continue to maintain these contracts**

- Need to assess whether maintenance involves regulated activities requiring local authorisation
- Whether any local exemptions may be available
- If not, whether they can end or move the contract.

# CONTINUITY OF CONTRACT AND LIFE-CYCLE EVENTS

## Continuity of contract and life-cycle events

### Ongoing performance of and exercise of rights under existing contracts, e.g.

- Payments, deliveries, posting of collateral
- Drawdown under a revolving credit facility
- Exercise of options.

### Changes to existing contracts, e.g.

- Amendments, renewals
- Terminations, novations
- Portfolio compressions
- Restructurings in financial distress.

### Agreements with indefinite duration, e.g.

- Investment management agreements, custody agreements

Derivatives	Lending	Ongoing services
Payment or delivery obligations	Establishing commitment (re. term, revolving, acquisition facility, flexible facility)	Investment management agreements
Exercise of option	Funding a participant in a loan (re term, revolving, acquisition facility, flexible facility)	Custody agreements - Corporate actions
Rolling open position	Actions allowing cancellation of the commitment and option to reinstate	
Collateral transfers	Establishing ancilliary facility	
Novations	Acting as facility agent	
Unwinds	Guarantee arrangements	
Portfolio compression	Security Trustee	

## **BREXIT: CONTINUITY OF CONTRACT**

Outward business – UK firms into EU27

### **Options for securing contractual continuity for UK firms providing services in EU27**

- Provisions in the Withdrawal Agreement that are directly effective in EU27 Member States
- Legislative action at EU or EU27 Member State level
- Reliance on regulatory forbearance.

### **Issues of negotiability, timing/coordination and (in relation to forbearance) effectiveness**

#### **Current EU views**

Inward business – EU27 firms into UK

### **Options for securing contractual continuity for EU27 firms providing services in UK**

- Provisions in Withdrawal Agreement directly effective under Withdrawal Agreement and Implementation Act
- Interim authorisation regime under FSMA
- Temporary exclusions in Regulated Activities Order.

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