

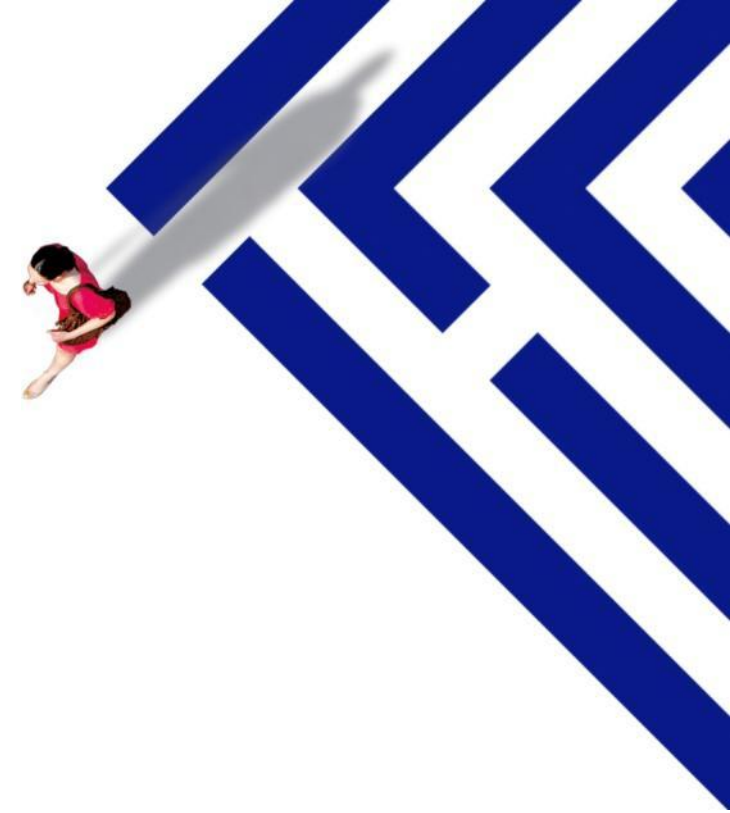
C L I F F O R D  
C H A N C E



**THE BELGIAN LEGAL FRAMEWORK FOR FINANCIAL SERVICES**

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30 May 2017

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# ARTICLE 50 TREATY ON EUROPEAN UNION

## MANY OPEN QUESTIONS



- Is it possible to reach an agreement within the prescribed two year period?
- Can the agreement include transitional provisions?
- Can the UK and the EU negotiate in advance of the Article 50 notice?
- Can the UK withdraw the notice after it has been given?
- Is it likely that the negotiating period will be extended?
- What can be included in the withdrawal agreement?
- Can the UK agree a free trade / other long-term agreement at the same time?
- Who must approve the withdrawal agreement before it is signed?
- Can the agreement come into force after the two year period expires?

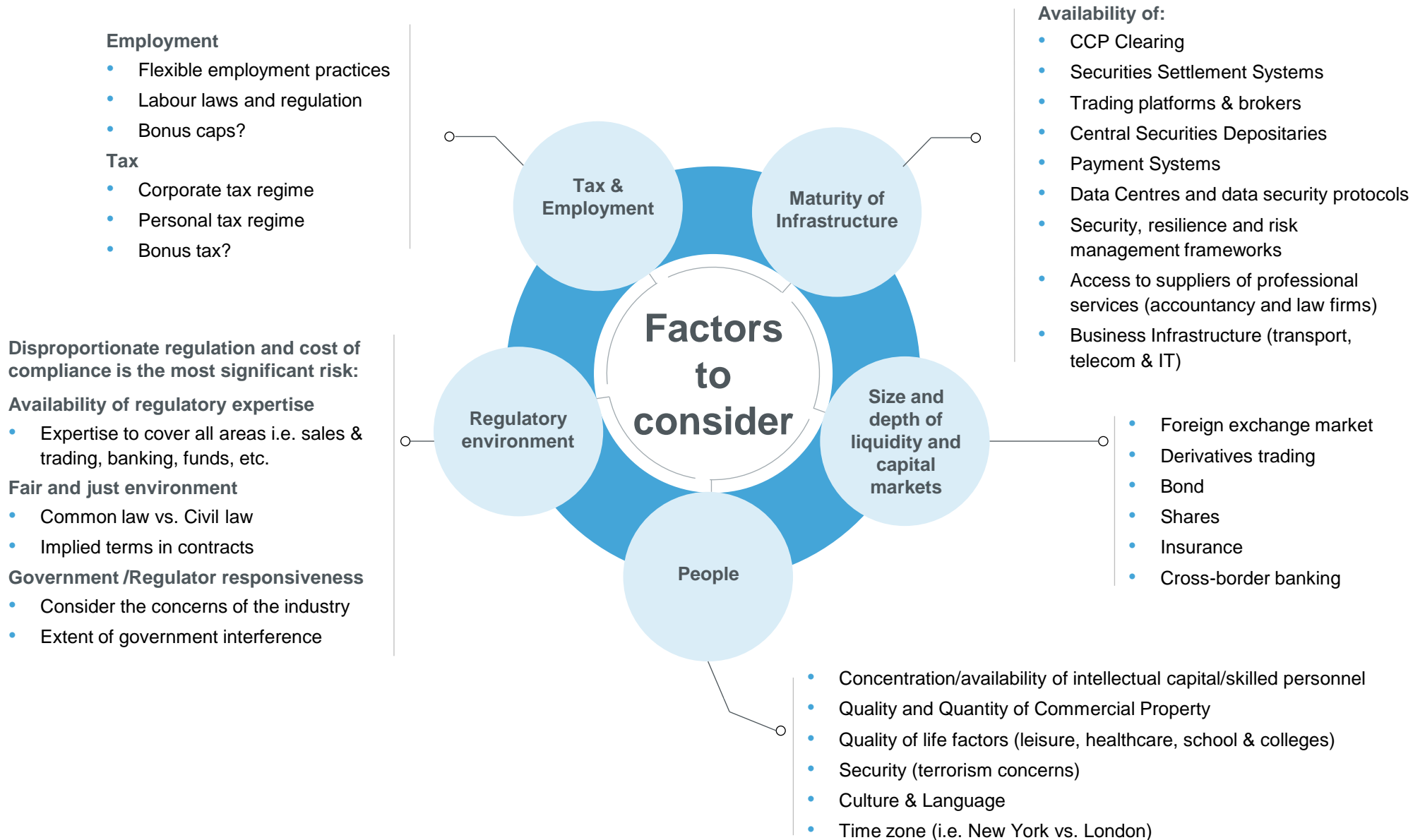
# THE UK OUTSIDE THE EU

## END OF PASSPORT RIGHTS FOR UK FIRMS

Business	EU Legislation	Situation of third country entities
Banking services	CRD4	<ul style="list-style-type: none"> <li>No third country passport</li> <li><b>Create or use a licensed subsidiary in a EU country to passport out</b></li> <li>License branch in host country (but no passport out) (Art. 47 CRD4)</li> </ul>
Investment services	MiFID2 / MiFIR	<ul style="list-style-type: none"> <li>Wholesale selling benefits from third country passport (Art. 46 MiFIR)</li> <li><b>Retail selling requires licensing branch in host country</b> (but no passport out) (Art. 39 MiFID2)</li> <li>Reverse enquiry still possible by default (Art. 42 MiFID2)</li> </ul>
Retail funds	UCITS Directive	<ul style="list-style-type: none"> <li>Loss of “UCITS” label for UK funds (but may become AIFs)</li> <li>UK manager cannot manage EU UCITS</li> <li>Alternative for UK managers: portfolio management delegation or advisory services or <b>establish a licensed subsidiary</b></li> </ul>
AIFs	AIFMD	<ul style="list-style-type: none"> <li>UK manager cannot manage EU AIFs</li> <li>Alternative for UK managers: fund management delegation or advisory services or <b>establish a licensed subsidiary</b></li> <li>Selling AIFs: private placement or third country passport when in place (Art. 40 AIFMD)</li> </ul>
Insurance	Solvency 2	<ul style="list-style-type: none"> <li>No third country passport</li> <li><b>Create or use a licensed subsidiary in a EU country to passport out</b></li> </ul>
Fintechs	PSD2 / EMD2	<ul style="list-style-type: none"> <li><b>License a branch in host country</b> (but no passport out)</li> </ul>

# FINANCIAL SERVICES

## FACTORS IN MAKING LOCATION DECISIONS



# CORPORATE REGULATORY ENVIRONMENT

## ENTERING THE BELGIAN MARKET

### Representation office:

- very light
- limited filing requirements
- limited activities

### Branch:

- registered
- obligation to file accounts and to complete a tax and VAT return
- acts on behalf of foreign entity

### Incorporation of a subsidiary:

- flexible corporate environment: legal structure can be chosen in light of – and tailored to – your specific needs
- companies are easy to set-up – effort to streamline administrative procedures
- NV/SA is the most common form of legal entity (SPRL in the future)
- notary involvement

### Share deal:

- shares of an SA/NV are freely transferable
- perfection of share transfers does not require notarisation or any other involvement of public authorities and does not trigger stamp duties
- attractive target market for private equity investments: many businesses are privately owned, management incentive schemes easy to implement

### Asset deal:

- legal structures available to transfer a business as a whole, without having to complete transfer requirements for each of the assets and liabilities forming part of the business

### Joint ventures:

- contractual freedom to reinforce or vary control in the articles and/or shareholders' agreement
- freedom to structure (quasi-)equity (preferential shares, profit sharing certificates, (convertible) bonds, warrants, or other equity or quasi-equity instruments)

**Generally, open economy, geared towards encouraging foreign investment , with few restrictions on foreign ownership. Stable legal system, little shareholder activism, few corporate litigation.**

# REGULATORY ENVIRONMENT FOR FINANCIAL SERVICES

## “Twin Peaks” model:

- Financial Services and Markets Authority (FSMA)
- National Bank of Belgium (NBB)
- ECB

## FSMA:

- responsible for the integrity of the financial markets and fair treatment of financial consumers
- supervising financial markets and listed companies
- authorising and supervising certain categories of financial institutions
- compliance by financial intermediaries with codes of conduct
- supervising the marketing of investment products to the general public
- “social supervision” of supplementary pensions
- contributing to the financial education of savers and investors

## NBB:

- central bank
- maintaining an efficient and reliable financial system
- authorising and supervising credit institutions, investment firms, payment institutions, custody, settlement and clearing, re-insurance, finance services groups, systemic financial institutions
- securities settlement system (NBB-SSS)

## Contact Point for FinTech:

- NBB and FSMA focus on FinTech
- simplified procedures and short response times from regulators

# FEATURES OF THE BELGIAN REGULATORY ENVIRONMENT

## Balanced insolvency regime:

- bankruptcy and effective resolution powers and debt recovery for creditors
- judicial reorganisation and rehabilitation of viable business activities

## Litigation:

- litigation procedure is essentially a written procedure
- generally considered not too costly, but can be slow

## Real estate:

- contractual freedom
- little mandatory provisions

## SMEs' access to finance:

- law on SME financing
- limitation on prepayment penalties
- information requirements

## Regulator's priorities:

- FSMA focus on consumer protection

## Evolving legislation:

- new insolvency law
- reform of rules for taking security over movable goods
- new Companies Code



# LANGUAGE REQUIREMENTS

## In corporate matters:

- statutes must be in French or Dutch (or German)
- documents to be filed must be in French or Dutch (or German)
- board meetings in English; minutes may be in English, with limited exceptions
- accounts, tax and VAT returns are in French or Dutch (or German)
- tax rulings are in French or Dutch

## Employment:

- employment agreements drafted in French or Dutch (or German)
- contacts with social security administration and other administrations are in French or Dutch

## Commercial contracts:

- can generally be in English

## Litigation:

- conducted in French or Dutch
- arbitration may be conducted in English
- CEPANI procedure can be entirely in English

## Property:

- lease agreements can be in English, but one-page summary translated in French or Dutch for registration purposes
- notarial deeds evidencing real estate rights are in French or Dutch

## Regulators:

- contacts with regulators (FSMA and NBB) can be in English
- circulars, questionnaires, position papers are sometimes translated into English
- laws, and regulations are in French and Dutch (and sometimes German) – certain laws are translated into English

# EMPLOYMENT LAW AND PENSIONS

## Employment law:

- promotion of mobility of employees
- employment legislation allows for a flexible business organisation, especially in case of structural changes, corporate transactions, downsizings and reorganisations
- simple formalities

## Trade unions and works councils:

- works council involvement generally limited to information and consultation

## Employment terms and termination:

- termination compensations for higher paid executives capped
- temporary unemployment regime

## Remuneration regulations for financial institutions:

- largely in line with CRDIV
- bonus caps and variable remuneration rules are slightly more strict

## Pension funds:

- the prime location for cross-border pension funds
- implementation IORPs Directive 2003/41/EC
- effective and advantageous legal, fiscal and prudential framework (OFP structure), with respect of foreign social and labour law requirements

## QUESTIONS?

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### Your Brexit contact at Clifford Chance Brussels

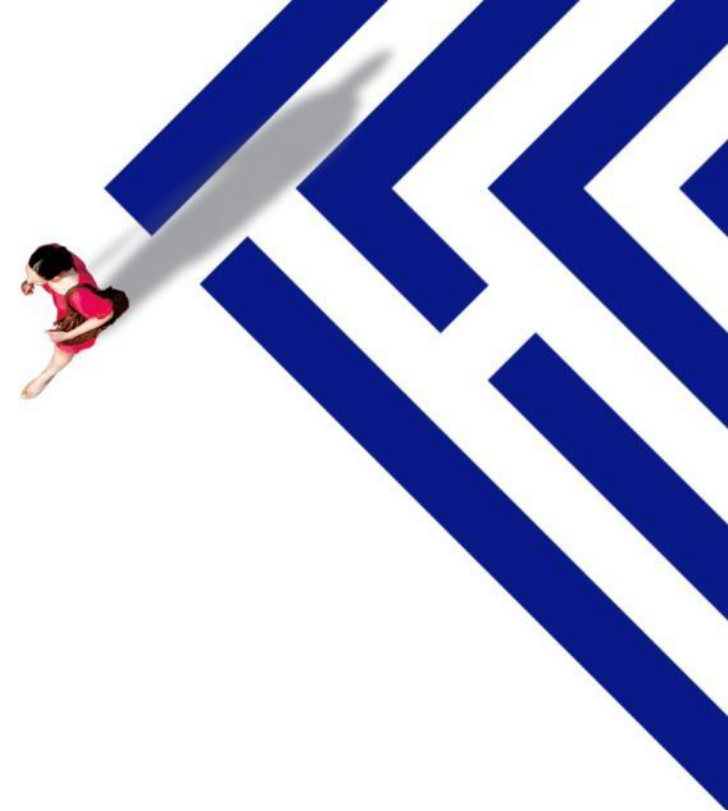


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