



Association for Financial Markets in Europe

**AFME Members' briefing call –
The UK Referendum - Challenges for
Europe's Capital Markets**

24 March 2016



The UK Referendum – Challenges for Europe's Capital Markets: A legal and regulatory assessment

Chris Bates, Partner, Clifford Chance LLP

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



Our report

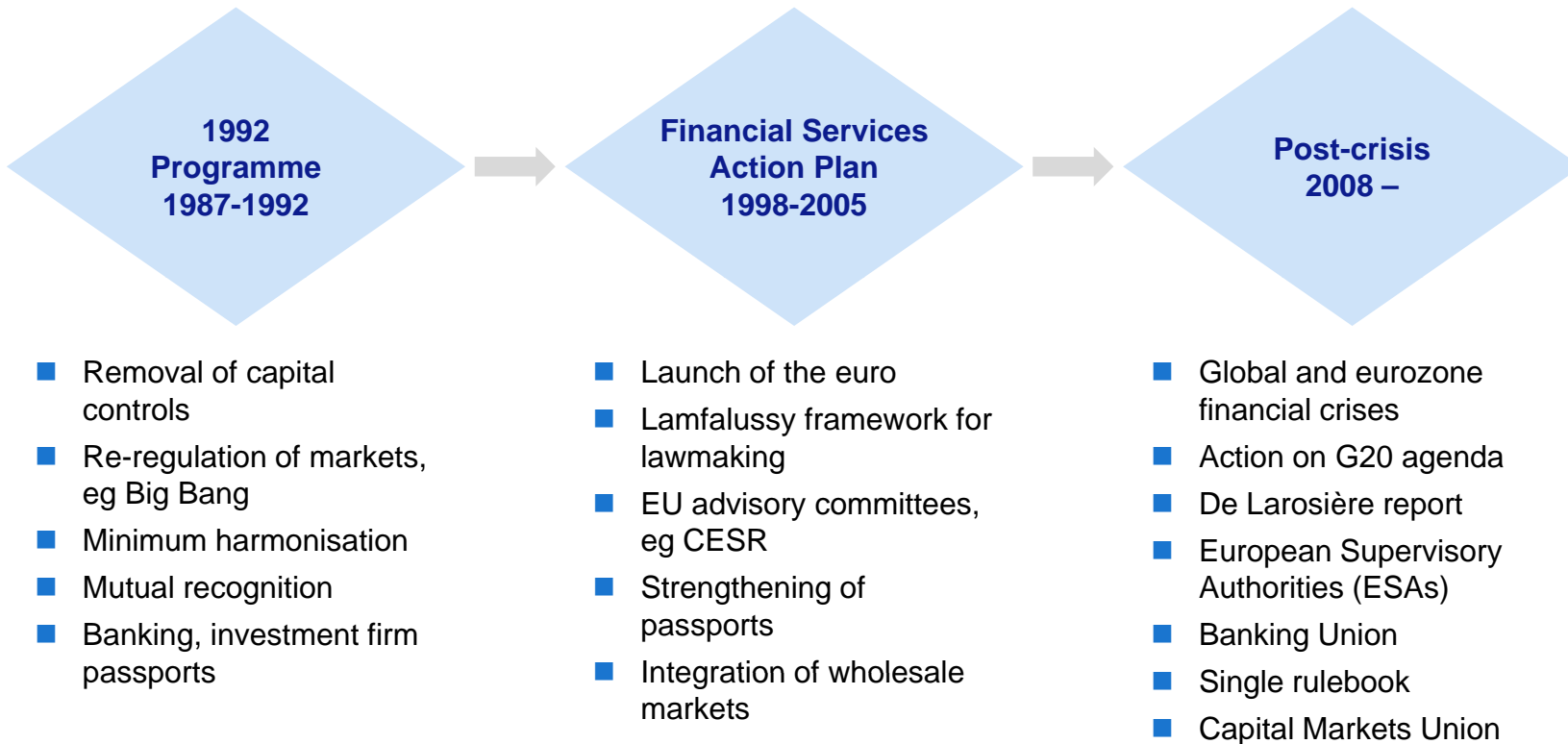
The development of the single market for capital markets business

Techniques for integrating EU capital markets

Treaty alternatives to EU membership

Impact of Brexit under existing financial services legislation

The development of the single market for capital markets business



Techniques for integrating EU capital markets

Harmonisation of laws

- Increased scope of legislation
- More regulations, instead of directives
- More 'Level 2' rulemaking
- Fewer national options and discretions

Institutionalised regulatory cooperation

- Obligations to cooperate
- Mandatory exchanges of information
- Mandatory colleges
- Binding mediation between supervisors

Principles of non-discrimination

Passporting and mutual recognition

CRD and MiFID passports

- Available to EU banks, investment firms
- Banking services: deposits, loans, FX, etc.
- Investment services: dealing, advice, investment management, underwriting, etc.
- Right to establish branches and provide cross-border services
- No additional local licence required

Plus

- Protection from additional host state rules
- Remote access to market infrastructure
- Rights of trading venues, CCPs, CSDs, etc
- Passports for prospectuses, UCITS, AIFs, credit ratings, benchmarks
- Recognition of insolvency regimes and judgments

Practical impact of passports

EU firms have centralised capital market services in a single hub

- Providing services across the EU
- Participating remotely in market infrastructure
- Hub can be place of incorporation or a branch in another Member State

‘De-subsidiarisation’

- Elimination of local entities or replacement by branches

Centralisation of funds, prospectus approvals

- eg Dublin, Luxembourg

Market infrastructures provide services on an EU wide basis

Passports critical factor for non-EU groups operating in EU

- Choose to operate significant business in EU subsidiaries instead of branches



Treaty alternatives to EU membership

EEA membership

- Preserves single market access
- Passports continue to operate

But

- EEA implementation of EU financial services legislation has stalled
 - EEA Agreement does not cater for role of European Supervisory Authorities
 - 2014 agreement to address issues not yet implemented
 - Large backlog of unimplemented legislation
- In any event, unanimity slows EEA implementation of EU rules
- EEA EFTA states no direct influence on new legislation
 - Failure to agree implementation leads to partial suspension of EEA Agreement

Other free trade arrangements

- Alternative Treaty models
 - General Agreement on Trade in Services
 - EU Preferential Trade Agreements, eg Korea, Singapore, Canada
 - EU-Switzerland bilateral arrangement
 - TTIP, TPP, TiSA
- Limited commitments on cross-border market access for capital market services
 - Advisory and auxiliary services (excl. intermediation)
 - Portfolio management for some client categories
- Commitments are to national treatment
 - Can still impose licensing requirements
 - No commitment to mutual recognition
- 'Prudential carve out'
 - States reserve the right to regulate

Impact of Brexit under existing financial services legislation

UK becomes a “third country” under existing EU legislation

- Loss of passports and mutual recognition regimes
- UK based firms face significantly more restrictive regime for cross-border business into EU – patchwork of different approaches to licensing

EU ‘third country regimes’ could mitigate some impacts

- Usually conditioned on equivalence of regulation and effective reciprocity
- At outset, UK likely to maintain equivalence and provide reciprocal access
- New MiFIR “third country entity passport” for cross-border wholesale investment services

Risks:

- Political constraints on extending regimes to UK
- Period of uncertainty before confirmed whether regimes available
- Gaps in coverage of third country regimes
- Over time, regulatory divergence leads to loss of equivalence
- EU legislators can unilaterally amend or withdraw regime
- GATS constraints on specific UK-EU preferential equivalence arrangements



Other areas of impact

- Branches*
- Bank groups
- UCITS
- AIFs*
- Portfolio management and advice*
- Prospectuses
- Trading venues*
- Central counterparties*
- Settlement finality
- Central securities depositories*
- Transparency and reporting*
- Credit rating agencies*
- Benchmarks*
- Central banks and governments
- Judgment enforcement
- ECB eligibility

* Existing EU third country regime could mitigate some impacts

- Relocation issues for banks and investment firms using UK as hub
- Cross-border wholesale business into UK less affected
- Impact on asset management depends on business model
- Market infrastructure would need to be recognised as equivalent
- Transitional arrangements for EU and non-EU firms and infrastructures
- Impact of regulatory divergence over time

Worldwide contact information

35* offices in 25 countries

Abu Dhabi

Clifford Chance
9th Floor
Al Sila Tower
Sowwah Square
PO Box 26492
Abu Dhabi
United Arab Emirates
Tel +971 (0)2 613 2300
Fax +971 (0)2 613 2400

Bucharest

Clifford Chance Badea
Excelsior Center
28-30 Academiei Street
12th Floor, Sector 1
Bucharest, 010016
Romania
Tel +40 21 66 66 100
Fax +40 21 66 66 111

Hong Kong

Clifford Chance
27th Floor
Jardine House
One Connaught Place
Hong Kong
Tel +852 2825 8888
Fax +852 2825 8800

Milan

Clifford Chance
Piazzetta M.Bossi, 3
20121 Milan
Italy
Tel +39 02 806 341
Fax +39 02 806 34200

Prague

Clifford Chance
Jungmannova Plaza
Jungmannova 24
110 00 Prague 1
Czech Republic
Tel +420 222 555 222
Fax +420 222 555 000

Singapore

Clifford Chance
12 Marina Boulevard
25th Floor Tower 3
Marina Bay Financial Centre
Singapore 018982
Tel +65 6410 2200
Fax +65 6410 2288

Amsterdam

Clifford Chance
Droogbak 1A
1013 GE Amsterdam
PO Box 251
1000 AG Amsterdam
The Netherlands
Tel +31 20 7119 000
Fax +31 20 7119 999

Casablanca

Clifford Chance
169, boulevard Hassan 1er
Casablanca 20000
Morocco
Tel +212 520 132 080
Fax +212 520 132 079

Istanbul

Clifford Chance
Kanyon Ofis Binasi Kat 10
Büyükdere Cad. No. 185
34394 Levent
Istanbul
Turkey
Tel +90 212 339 0001
Fax +90 212 339 0098

Moscow

Clifford Chance
Ul. Gashka 6
125047 Moscow
Russian Federation
Tel +7 495 258 5050
Fax +7 495 258 5051

Riyadh

Clifford Chance
Building 15, The Business Gate
King Khaled International Airport Road
Cordoba District, Riyadh
P.O. Box: 90239, Riyadh 11613,
Kingdom of Saudi Arabia
Tel +966 11 481 9700
Fax +966 11 481 9701

Sydney

Clifford Chance
Level 16
No. 1 O'Connell Street
Sydney NSW 2000
Australia
Tel +612 8922 8000
Fax +612 8922 8088

Bangkok

Clifford Chance
Sindhorn Building Tower 3
21st Floor
130-132 Wireless Road
Pathumwan
Bangkok 10330
Thailand
Tel +66 2 401 8800
Fax +66 2 401 8801

Doha

Clifford Chance
QFC Branch
Suite B, 30th floor
Tornado Tower
Al Funduq Street
West Bay PO Box 32110
Doha
State of Qatar
Tel +974 4491 7040
Fax +974 4491 7050

Jakarta**

Linda Widyati & Partners
DBS Bank Tower,
28th Floor, Ciputra World One
Jl. Prof. Dr. Satrio Kav 3-5
Jakarta 12940
Indonesia
Doha
Tel +62 21 2988 8300
Fax +62 21 2988 8310

Munich

Clifford Chance
Theresienstraße 4-6
80333 Munich
Germany
Tel +49 89 216 32-0
Fax +49 89 216 32-8600

Rome

Clifford Chance
Via Di Villa Sacchetti, 11
00197 Rome
Italy
Tel +39 06 422 911
Fax +39 06 422 91200

Tokyo

Clifford Chance
Akasaka Tameike Tower, 7th Floor
17-7 Akasaka 2-Chome
Minato-ku, Tokyo 107-0052
Japan
Tel +81 3 5561 6600
Fax +81 3 5561 6699

Barcelona

Clifford Chance
Av. Diagonal 682
08034 Barcelona
Spain
Tel +34 93 344 22 00
Fax +34 93 344 22 22

Dubai

Clifford Chance
Level 15
Burj Daman
Dubai International Financial Centre
PO Box 9380
Dubai
United Arab Emirates
Tel +971 4 503 2600
Fax +971 4 503 2800

London

Clifford Chance
10 Upper Bank Street
London, E14 5JJ
United Kingdom
Tel +44 20 7006 1000
Fax +44 20 7006 5555

New York

Clifford Chance
31 West 52nd Street
New York, NY 10019-6131
USA
Tel +1 212 878 8000
Fax +1 212 878 8375

São Paulo

Clifford Chance
Rua Funchal 418 15th Floor
04551-060 São Paulo SP
Brazil
Tel +55 11 3019 6000
Fax +55 11 3019 6001

Warsaw

Clifford Chance
Clifford House
Norway House
ul. Lwowska 19
00-660 Warszawa
Poland
Tel +48 22 627 11 77
Fax +48 22 627 14 66

Beijing

Clifford Chance
33/F, China World Office 1
No. 1 Jianguomenwai Dajie
Chaoyang District
Beijing 100004
China
Tel +86 10 6535 2288
Fax +86 10 6505 9028

Düsseldorf

Clifford Chance
Königsallee 59
40215 Düsseldorf
Germany
Tel +49 211 43 55-0
Fax +49 211 43 55-5600

Luxembourg

Clifford Chance
10 boulevard G.D. Charlotte
B.P. 1147
L-1011 Luxembourg
Grand-Duché de Luxembourg
Tel +352 48 50 50 1
Fax +352 48 13 85

Paris

Clifford Chance
1 rue d'Astorg
CS 60058
75377 Paris Cedex 08
France
Tel +33 1 44 05 52 52
Fax +33 1 44 05 52 00

Seoul

Clifford Chance
21st Floor, Ferrum Tower
19, Euji-ro 5-gil
Jung-gu, Seoul 100-210
Korea
Tel +82 2 6353 8100
Fax +82 2 6353 8101

Washington, D.C.

Clifford Chance
2001 K Street NW
Washington, DC 20006 - 1001
USA
Tel +1 202 912 5000
Fax +1 202 912 6000

Brussels

Clifford Chance
Avenue Louise 65 Box 2
1050 Brussels
Belgium
Tel +32 2 533 5911
Fax +32 2 533 5959

Frankfurt

Clifford Chance
Mainzer Landstraße 46
60325 Frankfurt am Main
Germany
Tel +49 69 71 99-01
Fax +49 69 71 99-4000

Madrid

Clifford Chance
Paseo de la Castellana 110
28046 Madrid
Spain
Tel +34 91 590 75 00
Fax +34 91 590 75 75

Perth

Clifford Chance
Level 7, 190 St Georges Terrace
Perth, WA 6000
Australia
Tel +618 9262 5555
Fax +618 9262 5522

Shanghai

Clifford Chance
40th Floor
Bund Centre
222 Yan An East Road
Shanghai 200002
China
Tel +86 21 2320 7288
Fax +86 21 2320 7256

* Clifford Chance's offices include a second office in London at 4 Coleman Street, London EC2R 5JJ. ** Linda Widyati & Partners in association with Clifford Chance.
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Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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Q&A

The Association for Financial Markets in Europe advocates stable, competitive and sustainable European financial markets that support economic growth and benefit society.

London

39th Floor
25 Canada Square
London, E14 5LQ
United Kingdom

Tel: +44 (0)20 3828 2700

Brussels

Rue de la Loi 82
1040 Brussels
Belgium

Tel: +32 (0)2 788 3971

www.afme.eu