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For Financial Services, It's Time to Act, Deal or No Deal

Leading City lawyer sets out detailed proposals for best UK options in Politeia's new publication.

Publication: Immediate

Link to PDF: [The Art of the No Deal: How Best to Navigate Brexit for Financial Services](#)

Whether the UK makes a payment to the EU for a free trade deal or not, this country must also prepare for a 'no deal' outcome. That's the advice of one of the City's leading financial lawyers, the author of Politeia's new proposals, [The Art of the No Deal: How Best to Navigate Brexit for Financial Services](#).

Barnabas Reynolds, who leads the EU and global regulatory and advisory financial practice at Shearman and Sterling, explains that preparations for both courses should be made simultaneously. Whatever the result of the Brussels negotiations, the UK's financial services must be ready for continued trade with the EU and globally after Brexit, deal or no deal. The goal is continuity with minimum friction or extra cost.

Reynolds explains that while the first option is to pursue free trade, on the basis of mutual recognition of laws and standards, and that this is the preferred outcome, the second, 'no deal' outcome must also be made ready.

There is, he explains, less to fear from 'no deal', and much more to recommend it than many realise. But for it to work well the government must put the right legal framework in place. The prize will be that London retains the benefits it enjoys as a leading world financial centre, perhaps even more so when freed from EU rule.

To achieve these goals, the UK government must take active steps now. Reynolds explains how we can plan properly for a no deal outcome in financial services, setting out the ten practical steps to bolster Britain's position:

Ten Steps For the UK to Take (Chapter 6)

1. Re-vamp the UK's legal and regulatory framework for financial services, identifying and tackling key areas where EU requirements have led to a lack of competitiveness and unnecessarily burdensome regulation.
2. Facilitate innovative structuring by financial institutions and help establish private sector UK facilities to enable 'no move' contingency planning.
3. Engage with financial market participants to facilitate 'no move' contingency planning, avoiding the dangerous and unquantifiable systemic risks occasioned by significant moves.
4. Focus on market infrastructure and examine ways to ensure continuity of EU business within the UK's jurisdiction.
5. Defer, where legally possible, the implementation of EU laws and regulations which have yet to be implemented in the UK.
6. Reinstate some form of international competitiveness objective for the UK's regulators (subject to a systemic risk override) and remove the competition-based rulemaking function from the FCA.
7. Take steps to form other enhanced equivalence/mutual recognition arrangements internationally and act to reduce any adverse reactions by overseas regulators to 'politicised' EU interpretations of regulation.

8. Enhance the other, including soft, attractions of the City: in particular ensure our courts and ancillary legal fabric continue to be of the very highest standards.
9. Announce tax incentives for EU-facing business as a fall-back in the case of a no deal outcome, to cushion the transition to the new environment.
10. Insist on the proper interpretation of EU law.

These steps would bring many benefits and provide a cheap and attractive basis for business. They would mean that mutual recognition businesses in the sector need not relocate to the EU to serve EU customers - supported by the right legal structures to avoid expensive moves. In this way the synergies and savings in doing business in London can be exploited. Such benefits outweigh the advantages of the passport, which is not needed for most cross-border transactions, and for which alternative arrangements can be substituted without friction.

The author concludes that the advantages for the sector of either course would be significant.

- Leaving behind EU civil law will help the sector as the UK returns to its common law tradition. The principles of UK law support competition, freedom and markets. They are also the basis for the sector's historic success and suit the UK's way of doing business.
- Freed from EU rulebook, the UK can and should move swiftly towards a more business-friendly regulation and tax regime. Businesses can press the UK Government to exploit the new-found freedom.

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Notes to Editors

1. The first option, proposals for free trade on the basis of mutual recognition of laws and standards, was set out in detail in [A Template for Enhanced Equivalence](#) and [A Blueprint for Brexit](#), when the talk for many was stuck in maintaining the passport.

2. In a checklist addressed to different sorts of business - investment banking, commercial banking, derivatives, asset management, insurance and infrastructure - Reynolds sets out the steps they should take now to avoid moving. These will allow them to prepare for the different contingencies and provide EU customers with the cheapest possible access to capital from London including:

- Maximise use of international law protections from any cliff edge
- Utilise reverse solicitation, the insurance trust, agency, indirect clearing, customers' UK subsidiaries and other structures which avoid the necessity for moves
- Treat the EU like any other jurisdiction around the world in doing business there
- Have confidence in and place reliance upon the rule of law

The Author

Barnabas Reynolds – Partner and Head of the Global Financial Institutions Advisory and Financial Regulatory practice at Shearman & Sterling LLP.

He is also the author of [A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK](#) and [A Template for Enhanced Equivalence: Creating a Lasting Relationship for Financial Services between the EU and the UK](#) (Politeia, 2016 and 2017 respectively).

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