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Brexit and Equivalence: Review of the Financial Services Framework Across All Sectors

Since the UK voted to leave the EU on 23 June 2016, there has been much speculation about the form of the future access arrangements between the UK and the EU for financial institutions. In a scenario where no new deal is done, an equivalence framework would come into play, which has been established for institutions that are in the investment business, reinsurance, fund management and market infrastructure sectors. Firms established outside the EU can have access to European investors and markets. Equivalence regimes also assist for prospectuses, accounting standards and capital rules. Many UK institutions may find they are able to continue to access EU markets under the EU equivalence framework.

Currently, access to Europe for third country institutions in sectors of the financial markets is generally based on national laws concerning marketing to customers and is subject to the so-called "regulatory perimeter". The national laws differ quite drastically within Europe. For example, the UK's "overseas persons exclusion" allows a considerable amount of cross-border business to be done with regulated financial institutions and large corporates within the UK. In contrast, the position in much of continental Europe is unfavourable for non-EU institutions that wish to deal with customers without local registration. A variety of more recent EU measures aim to provide a greater deal of consistency for the access of third country institutions based on "equivalence." In this client note, we consider the position of UK institutions that wish to do cross-border business under equivalence regimes established by proposed and recently published European legislation, if the UK were to exit the EU fully. One of the more important pieces of legislation for many firms, MiFID II, will apply from 2018, and so will be in place before the UK leaves the EU.

Access under the equivalence-based framework will generally require a determination of the "equivalence" of the UK's regulatory system. In addition, co-operation agreements often will need to be put in place between the UK and EU member states or one of the European Supervisory Authorities. In this client note, we analyse the position for each sector of the financial market and the steps needed for equivalence. We also set out which countries have this status.

The EU Framework

Equivalency requirements vary for EU market access across different sectors. However, a number of commonly imposed requirements have emerged for the recognition of third country regulatory regimes.

Equivalence Determination: the country in question must be deemed to have a legal system and, sometimes, a supervision regime that is "equivalent" to the EU regime. That determination involves the relevant European

Supervisory Authority ("ESA")[1] providing technical advice to the European Commission on how the third country's laws and regulations compare to the corresponding EU requirements. The European Commission then puts its proposed decision, based on the technical advice, to a vote of EU member states. For financial services legislation, the European Commission has a limited ability to adopt a decision that is not approved of by member states, unless delaying adoption of a decision would create a risk to the financial interests of the EU as a result of fraud or other illegal activities. An equivalence determination may be "conditional" rather than full, meaning that certain EU legislative provisions will only be disapplied for the specific area determined to be equivalent. Furthermore, temporary equivalence decisions are also possible where progress is being made towards equivalence.

One question is how identical a third country's legal and regulatory regime needs to be to that of the relevant EU regime for equivalence to be forthcoming. The European Commission has stated that the equivalence process "involves identifying any differences between our respective legal and supervisory arrangements and assessing whether similar regulatory outcomes are nonetheless achieved; namely the reduction of systemic risk in the financial markets."[2] The recitals to the Markets in Financial Instruments Regulation ("MiFIR") state that an "equivalence assessment should be outcome-based; it should assess to what extent the respective third-country regulatory and supervisory framework achieves similar and adequate regulatory effects and to what extent it meets the same objectives as Union law."

Given that the UK's current regulatory regime is based on EU rules, and assuming that EU laws are generally grandfathered upon Brexit,[3] it seems likely that there will be few technical obstacles to an equivalence determination. If changes are made to EU laws in the UK then the UK would be required to show that similar outcomes are nevertheless achieved from a systemic risk perspective. A broad range of third countries with distinct legal traditions have so far been declared equivalent for reinsurance or derivatives clearing: US, Canada, Japan, Bermuda, Mexico, Switzerland, Hong Kong and Singapore, for example.

Co-operation Agreements: UK regulators may need to enter into co-operation agreements with either the relevant national regulator of a member state or with the relevant ESA, depending on the sector. Such agreements provide for the exchange of information and methods for co-operation and communication. In recent years, co-operation agreements have become more commonplace worldwide. The agreements are the basis for increased co-operation between regulators in the supervision of financial institutions as well as in enforcement actions against those falling short of the standards. Greater regulatory cooperation was mandated by the post-crisis G-20 agreements. Given that the UK and EU regulators already work so closely together to monitor and prevent systemic risk, it seems inconceivable that these relationships would be unwound.

FATF Status: the UK would wish to avoid being on the Financial Action Task Force ("FATF") list of Non Cooperative Country and Territories ("NCCT"), which are considered to have inadequate anti-money laundering and counter terrorist financing regimes in place and therefore pose a risk to the international financial system. The UK is not currently on this list.

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1 The ESAs are the European Securities and Markets Authority ("ESMA"), the European Banking Authority ("EBA") and the European Insurance and Occupational Pensions Authority ("EIOPA").

2 Letter from Michel Barnier, European Commissioner, to Ashley Alder, Chairman of the IOSCO Asia Pacific Regional Committee, dated 20 December 2013 concerning the equivalence decisions necessary for central counterparties ("CCPs") established outside the EU.

3 See our client note, "Brexit: Issues and Q&A for Businesses," dated 28 June 2016, available here.

Tax Agreements: the UK may need to enter into tax agreements with the relevant EU member state which provide for exchange of information on tax matters. Usually, the agreements are required to comply with the standards set out in the OECD Model Tax Convention on Income and Capital.

Member State of Reference ("MSR"): this is an EU member state nominated by a third country firm that will effectively act as the EU coordinating regulator. The MSR is determined according to the criteria in the relevant EU legislation.

Subsidiary vs. Branch vs. Cross-Border Access: Firms establishing a subsidiary in an EU member state benefit fully from the EU passport, although they will be subject to higher capital costs. There is a passport for establishing a branch and a passport for providing services without the establishment of a branch. Member states differ as to their requirements where EU legislation allows for discretion. Some member states require a branch to be established based on the location of the customer. The UK's approach is to require a branch only if the activity is being undertaken in the UK. For cross-border access, the UK's overseas persons exclusion allows third country and EU firms access to the UK wholesale markets without requiring an entity to be established in the UK and without local regulation, provided that the UK's marketing laws are complied with.

Table A below summarises the equivalence decisions under each relevant piece of EU legislation. It is based on the European Commission's overview table of equivalence decisions.[4] However, the scope of Table A is wider than that of the Commission's table. Table B sets out access provisions which do not require equivalence.

Table C below is a sector-by-sector summary of the key requirements for mutual recognition or third country access in Europe and how these would apply to the UK if there was a full exit from the EU. The table refers to the Level 1 legislation and does not include measures in Level 2 legislation with the exception of the draft technical standards on margin for uncleared swaps.

The information in all of the tables is up to date as of 9 August 2016.

4 The Commission's overview table is available here.

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Full equivalence decision	F
Transitional equivalence decision	T
Partial equivalence decision	P

Table A

EQUIVALENCE DECISIONS		Abu Dhabi	Argentina	Australia	Bermuda	Brazil	Canada	Caymans	China	DIFC	Egypt	Guernsey	Hong Kong	India	Indonesia	Isle of Man	Israel	Japan	Jersey	(South) Korea	Malaysia	Mauritius	Mexico	Monaco	New Zealand	Russia	Saudi Arabia	Singapore	South Africa	Switzerland	Thailand	Taiwan	Turkey	US
Accounting Standards For Prospectus	Third country GAAP with IFRS						F		F									F		F														F
Accounting Standards For Consolidated Reporting	Third country GAAP with IFRS						F		F									F		F														F
Benchmark Regulation	Benchmark administrator - use of benchmark within the EU																																	
Credit Rating Agencies Regulation	Credit rating agencies-use of ratings within the EU		F	F		F	F						F										F					F						F
CRR	Credit institutions - Article 107(4)			F		F	F		F			F	F	F		F		F	F				F	F			F	F	F	F				F
	Investment firms - Article 107(4)			F		F	F		F				F		F			T[5]		F			F				F	F	F					F
	Exchanges - Article 107(4)			F		F	F		F					F	F			F		F			F				F	F	F					F
	Exposures to central governments, central banks, regional governments, local authorities and public sector entities			F		F	F		F			F	F	F		F		F	F				F	F			F	F	F	F				F
	Credit institutions - Article 142			F		F	F		F			F	F	F		F		F	F				F	F			F	F	F	F				F
	Investment firms - Article 142			F		F	F		F				F		F			T[6]		F			F				F	F	F					F
	Calculation of own funds requirements																																	
CRR And CRD	Group consolidated supervision																																	
CSDR	CSDs																																	

5 Japan's investment firms' regime is limited to Type I Financial Instruments Business Operators.

6 Ibid.

Full equivalence decision	F
Transitional equivalence decision	T
Partial equivalence decision	P

EQUIVALENCE DECISIONS		Abu Dhabi	Argentina	Australia	Bermuda	Brazil	Canada	Caymans	China	DIFC	Egypt	Guernsey	Hong Kong	India	Indonesia	Isle of Man	Israel	Japan	Jersey	(South) Korea	Malaysia	Mauritius	Mexico	Monaco	New Zealand	Russia	Saudi Arabia	Singapore	South Africa	Switzerland	Thailand	Taiwan	Turkey	US
EMIR	Regulated markets																																	F
	Transaction requirements																																	
	CCPs			F			F[7]						F					F		F			F					F	F	F				P[8]
	Trade repositories																																	
	CCPs - reporting of initial margin																																	
EMIR – Margin for Uncleared Swaps	Banks prudential and supervisory arrangements on a consolidated basis																																	
	Banks supervisory and regulatory prudential arrangements																																	
MiFIR / MIFID2	Trading venues - trading obligation for derivatives and shares																																	
	Derivatives: trade execution and clearing obligations																																	
	Trading venues - clearing access																																	
	Trading venues and CCPs-access to benchmarks and licences for the purposes of clearing and trading obligation																																	
	Investment firms providing investment services to EU professional clients and eligible counterparties																																	
	Regulated markets-exemption for investment firms from certain appropriateness & suitability rules																																	
SFTR	Trade repositories																																	
	Transaction requirement																																	

[7] The decision for Canada relates to the Canadian provinces of Alberta, British Columbia, Manitoba, Ontario and Quebec.

[8] The US CCP regime is limited the framework of the Commodity Futures Trading Commission. See row 9 in table C.

Full equivalence decision	F
Transitional equivalence decision	T
Partial equivalence decision	P

EQUIVALENCE DECISIONS		Abu Dhabi	Argentina	Australia	Bermuda	Brazil	Canada	Caymans	China	DIFC	Egypt	Guernsey	Hong Kong	India	Indonesia	Isle of Man	Israel	Japan	Jersey	(South) Korea	Malaysia	Mauritius	Mexico	Monaco	New Zealand	Russia	Saudi Arabia	Singapore	South Africa	Switzerland	Thailand	Taiwan	Turkey	US
Short Selling Regulation	Requirements for markets																																	
Solvency II	Third-country reinsurers in the EU: equivalent treatment of their activities and of EU reinsurers' activities				F													T												F				
	EU insurers and reinsurers in third countries: equivalence of third-country solvency rules for calculation of capital requirements and own funds			T	P T	T	T											T					T							F				T
	Third-country insurers and reinsurers in the EU - equivalence of group supervision by the third-country supervisory authorities				P																									F				
Statutory Audit	Audit firms and auditors	F		F		F	F		F	F		F			F	F		F	F	F	F							F	F	F	F	F		F
	Audit firms and auditors - transitional period				T			T			T											T			T	T							T	

Table B

ACCESS PROVISIONS NOT INCLUDING EQUIVALENCE	
Benchmark Regulation	Benchmark administrator-MSR recognition-use of benchmark in the EU
	Benchmark administrator-endorsement-use of benchmark in the EU
Credit Rating Agencies Regulation	Endorsement-use of ratings in the EU
Settlement Finality Directive	Settlement and payment system designation if governed by the law of an EU member state
Prospectus Directive	Issuers - approval of prospectus

Table C

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
1.	**Investment Firms** MiFID II[9]	Under MiFID II, the third country access regime depends on the type of clients an investment firm intends to provide services to.[10] *Retail and elective professional clients* Third country investment firms may provide services subject to the relevant national regime provided that: (a) the third country is not listed as a NCCT by FATF; (b) a co-operation agreement is in place; (c) tax agreements are in place; and (d) the services will be subject to on going supervision by the third country regulator. No passport to provide services throughout the EU will be available. Member states have the option to require the establishment of a branch.	Most provisions will become applicable on 3 January 2018.	UK investment firms would not be able to provide investment services to any EEA clients, to the extent that the services or activities are truly cross-border and are locally regulated under a relevant national EU law, without subsidiarisation or obtaining state-by-state licences for local EU branches.	None yet; not in force.

[9] The revised Markets in Financial Instruments Directive (Directive 2014/65/EU) and MiFIR (Regulation (EU) No. 600/2014), together are known as MiFID II.

[10] **Elective professional clients ("opt-up")**: public sector bodies, local public authorities, municipalities and private individual investors may opt to be treated as a professional client either generally or for a particular service or transaction. The investment firm will need to assess the expertise, experience and knowledge of its client including whether the client satisfies of at least two of: (i) the client has traded significantly ten times on average in last four quarters; (ii) has cash and investments exceeding EUR 0.5M; and (iii) has been a financial services professional for over a year.

Retail clients: a client that is not a professional client.

Per se professional clients: banks, investment firms, insurers, asset managers, funds, commodity dealers, other institutional investors, non-EU equivalent entities; national and regional governments, central banks, bodies managing public debts, international and supranational institutions; large companies (whose size meets any two of: balance sheet total: EUR 20M, net turnover: EUR 40M and own funds: EUR 2M) and other institutional investors who main activity is to invest in financial instruments including those that mostly securitise assets and finance transactions.

Eligible counterparties ("ECPs"): banks, investment firms, insurers, asset managers, funds, other institutional investors, other EU regulated firms, national governments, central banks, supranational organisations and non-EU equivalent regulated entities as well as commodity dealers and large companies (whose size meets any two of: balance sheet total: EUR 20M, net turnover: EUR 40M and own funds: EUR 2M – according to the draft Commission Delegated Regulation adopted on 25 April 2016) consenting to be treated as an ECP.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
	Investment Firms MiFID II (continued)	*Per se professional clients and eligible counterparties* Third country investment firms may provide services without establishing a branch in the EEA, provided that they register with ESMA[11] and provide certain information to EU clients.[12] Such registration is subject to the following conditions being satisfied: (a) an equivalence decision; (b) the firm is authorised in its country of establishment to provide investment services; and (c) co-operation arrangements between ESMA and the third country regulator are in place. If there is no equivalence decision, national EU authorisation regimes remain valid.	For the provision of services to *per se* professional clients and ECPs, a UK investment firm would be able to continue to provide services under national regimes until three years after the adoption of an equivalence decision.		
2.	**Trading Platforms, including Exchanges – Derivatives Trading Obligation** MiFID II	Derivatives trading[13] for instruments subject to mandatory trading venue execution requirements may be carried out on a third country trading venue provided that the following conditions are satisfied: (a) an equivalence decision; (b) the third country provides for an effective equivalent system for the recognition of trading venues authorised under MiFID II; and (c) the trading venue has clear, transparent	Most provisions will become applicable on 3 January 2018.	UK trading venues, including exchanges, would not be suitable trading venues and therefore may not benefit from possible business resulting from the introduction of the mandatory trading in Europe or may cease to be used by existing EU customers.	None yet; not in force.

[11] The European Commission adopted, on 14 July 2016, the Regulatory Technical Standards on the information to be submitted to ESMA for registration purposes. See here.

[12] A firm must inform its EU clients in writing, before providing services, that it may only provide services to ECPs and per se professional clients in the EU and that the firm is not subject to direct regulatory supervision in the EU. The firm must also offer to submit disputes relating to the relevant services to the jurisdiction of a court or arbitral tribunal in an EU member state.

[13] MiFID II introduces a requirement for financial counterparties and some non-financial counterparties to trade certain derivative instruments on a regulated market, multilateral trading facility ("MTF") or organised trading facility or equivalent third country trading venue.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
		rules on the admission of financial instruments to trading.			
3.	**Trading Platforms, including Exchanges – Investment Firm Trading Obligation for Shares** MiFID II	Investment firms may trade shares[14] that are subject to mandatory trading venue execution requirements on a third country market provided that an equivalence decision has been adopted which confirms that: (a) the third country markets are subject to authorisation and effective supervision and enforcement on an ongoing basis (equivalent to MiFID II); (b) the trading venue has clear, transparent rules on the admission of securities to trading (equivalent to MiFID II); (c) securities issuers are subject to disclosure obligations (equivalent to the Prospectus Directive); and (d) market transparency and integrity is ensured by the prevention of market abuse by insider dealing and market abuse (equivalent to the Market Abuse Regulation ("MAR")).	Most provisions will become applicable on 3 January 2018.	UK trading venues, including exchanges, would not be suitable trading venues and therefore may not benefit from possible business resulting from the introduction of the mandatory trading requirement in Europe or may cease to be used by existing EU customers.	None yet; not in force.
4.	**Derivatives Trading and Clearing** MiFID II	If a non-EU entity is established in a jurisdiction which has been determined as equivalent, EU or non-EU brokers could comply with the equivalent rules in that country rather than the MiFID II trading and clearing requirements for derivatives.	Most provisions will become applicable on 3 January 2018. No co-operation agreement is required. However, the third country will need to assist ESMA in preparing its technical advice on equivalence.	EU financial counterparties would need to apply EU standards when trading with UK counterparties until the UK's regulatory regime was determined to be equivalent. Given the regulatory standards in the UK, it would likely only be a matter of time whilst negotiations are undertaken with the EU to ensure that an equivalence decision is rendered.	None yet; not in force.

[14] MiFID II introduces a requirement for investment firms to trade shares (which are admitted to trading on an exchange or traded on a trading venue) on a regulated market, MTF, systematic internaliser or an equivalent third-country venue.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
5.	**Trading Venues and CCPs – Access Rights** MiFID II	A third country trading venue may only request access to an EU CCP if an equivalence decision relating to the trading obligation for derivatives has been made (see row 2). A third country CCP may only request access to an EU trading venue if it has been recognised by ESMA under the European Market Infrastructure Regulation ("EMIR") (see row 9). Third country trading venues and CCPs may only make use of the access rights under MiFIR if the following conditions are satisfied: (a) an equivalence decision; (b) the third country provides for mutual access for foreign trading venues and CCPs to its trading venues, CCPs, benchmarks and licenses; and (c) the third country regime provides for authorisation, supervision and enforcement for trading venues on an ongoing basis.	Most provisions will become applicable on 3 January 2018. No co-operation agreement is required. However, the third country will need to assist ESMA in preparing its technical advice on equivalence.	UK trading venues and CCPs would not have rights of access to EU trading venues, CCPs, benchmarks and licenses.	None yet; not in force.
6.	**Exchanges for Shares, Bonds and Certain Securitised Debt Instruments** MiFID II	Investment firms may make use of the exemption from certain of the appropriateness and suitability requirements in relation to shares, bonds or other securitised debt admitted to trading on a third country exchange provided that an equivalence decision has been adopted which confirms that: (a) the third country markets are subject to authorisation and effective supervision and enforcement on an ongoing basis (equivalent to MiFID II); (b) the trading venue has clear, transparent rules on the admission of securities to trading (equivalent to MiFID II); (c) securities issuers are subject to disclosure obligations (equivalent to the Prospectus Directive); and (d) market transparency and integrity is	Most provisions will become applicable on 3 January 2018. No co-operation agreement is required. However, the third country will need to assist ESMA in preparing its technical advice on equivalence.	UK exchanges would potentially lose business where EU investment firms wished to make use of the exemption.	None yet; not in force.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
		ensured by the prevention of market abuse by insider dealing and market abuse rules (equivalent to MAR).			
7.	**CCPs – Capital Charges for Banks for Exposure to CCPs and Reporting by CCPs** CRR[15] and EMIR[16]	EU banks are subject to capital charges for their exposures to CCPs. Lower capital requirements will be imposed for exposures to a qualifying CCP ("QCCP") than for exposures to a non-QCCP CCP. A third country CCP that is recognised by ESMA under EMIR attains status as a QCCP and may provide clearing services to EU clearing members. The requirements for CCP recognition are set out in row 9.	CCPs are required to report the total amount of initial margin collected from clearing members as part of the calculation for own funds for exposures to CCPs. The transitional period for regulatory capital requirements for EU banks' exposures to CCPs and the transitional period for CCPs to report the collection of initial margin from clearing members have been extended to 15 December 2016.[17]	Higher capital requirements would be imposed on EU banks for their exposures to a UK CCP that is not recognised as a QCCP (based on standard exposures). A UK CCP would be able to apply for recognition under EMIR if the UK derivatives regulatory regime was determined to be equivalent to that under EMIR. However, it is expected that transitional measures would be put in place for any UK CCP that had already been authorised under EMIR.	Equivalence decisions have been made for Australia, Canada, Hong Kong, Japan, Mexico, South Africa, South Korea, Singapore, Switzerland and the US. 19 CCPs from Australia, Canada, Hong Kong, Japan, Mexico, South Africa, South Korea, Singapore, Switzerland and the US have been recognised under EMIR. The list is available here.
8.	**Exchanges – OTC Derivatives** EMIR	For a third country exchange to be equivalent to an EU regulated market, an equivalence decision is required which confirms that the third country market: (a) complies with legally binding requirements equivalent to those applicable to regulated markets under MiFID;[18] and (b) is subject to effective supervision and enforcement in the third country.	EMIR came into effect on 16 August 2012. However, the provision on equivalence for third country markets was inserted by a later amendment to EMIR and it has applied since 12 January 2016.	Counterparties to OTC derivatives must comply with the risk mitigation rules under EMIR, including the exchange of margin (about which, see rows 11 and 12).	15 markets in the US were declared equivalent on 1 July 2016. The list is available here.[19] No other third country markets have been granted equivalence status yet.

[15] Regulation (EU) 575/2013; the Capital Requirements Regulation.

[16] Regulation (EU) 648/2012.

[17] Commission Implementing Regulation (EU) 2016/892 of 7 June 2016.

[18] The Markets in Financial Instruments Directive (Directive 2004/39/EC). MiFID II will repeal MiFID and any references in European legislation to MiFID must then be construed as referring to MiFID II.

[19] Commission Implementing Decision (EU) 2016/1073 of 2 July 2016.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
9.	**Clearing Houses** EMIR	For a third country clearing house to have direct access to European members or exchanges without needing to be established in the EEA, the following conditions need to be satisfied: (a) co-operation arrangements between ESMA and the third country regulator are in place; (b) an equivalence decision; and (c) recognition by ESMA.	EMIR came into effect on 16 August 2012. A third country clearing house can apply to ESMA for recognition. A list of recognised CCPs is available (last updated on 17 June 2016) and a list of applicants is available (last updated on 8 January 2016), see here.	UK clearing houses would not be able to clear derivatives for EU clearing members and EU exchanges and trading venues.	Equivalence decisions have been made for Australia, Canada, Hong Kong, Japan, Mexico, South Africa, South Korea, Singapore, Switzerland and the US. Some of the decisions are qualified. For example, the US decision is limited to derivative clearing organisations ("DCOs") that are regulated by the Commodity Futures Trading Commission and have been declared systemically important derivatives clearing organisations ("SIDCOs") by the Financial Stability Oversight Council or DCOs that have opted into additional standards similar to the SIDCO regime. Other decisions require CCPs contractually (e.g., in their rules) to impose EU standards in some areas. Co-operation agreements under EMIR have also been put in place for these jurisdictions. The equivalence decisions, details of co-operation arrangements and ESMA's technical advice are available here. You may like to see our client note, "Update on Third Country Equivalence under EMIR" which is available here.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
10.	**Clearing Brokers (Derivatives)** EMIR	If a non-EU entity is established in a jurisdiction which has been determined as equivalent, EU or non-EU brokers could comply with the equivalent rules in that country rather than any applicable EMIR requirements as to derivatives market conduct, for example, timely confirmation and portfolio reconciliation.[20]	Note that the need for equivalency for rules on margin for uncleared swaps has been delayed until 1 March 2017. No co-operation agreement is required. However, the third country will need to assist ESMA in preparing its technical advice on equivalence.	EU financial counterparties would need to apply EU standards when trading with UK counterparties until the UK's regulatory regime is determined to be equivalent. Given the regulatory standards in the UK it would likely only be a matter of time whilst negotiations are undertaken with the EU to ensure that an equivalence decision is rendered. Brokers should also be aware of being caught by EMIR's extraterritorial scope.[21]	No equivalence decisions have yet been made. ESMA's technical advice on equivalence for certain jurisdictions is available here. You may like to see our client note, "Update on Third Country Equivalence under EMIR" available here.
11.	**Counterparties to Uncleared Swaps – Collateral Eligibility** CRD and the adopted Regulatory Technical Standards ("RTS") on Margin for Uncleared Swaps	A collecting counterparty may, for the purposes of assessing the credit quality of certain collateral, use the internal ratings based model of the third country posting counterparty where that counterparty is subject to equivalent prudential and supervisory oversight on a consolidated basis.[22] See row 14.	Although EMIR came into force on 12 August 2012, the detailed provisions on margin for uncleared derivatives will only apply from the date that the final RTS apply from. That date is uncertain following the recent notification by the European Commission that it was delaying adoption of the relevant legislation. Without that delay, implementation would be in line with international standards which will begin to be phased in from 1 September 2016, starting with the largest counterparties.	The credit quality assessment of a UK counterparty would have to be done using more standardised (and potentially less liberal) methodologies provided for, including using the credit quality assessment of an External Credit Assessment Institution.	There is no list of approved third countries for institutions eligible for group consolidated supervision as this is done at EU member state level. However, we understand that some member states have approved USA, China, Brazil, Switzerland and others under CRD III or CRD IV.

[20] Where two non-EU entities are trading with each other, it is open for the Commission to impose EMIR's obligations on each of the two entities if the contract falls within EMIR's extraterritoriality provisions which apply: (i) if the contract has a "direct or foreseeable effect" in the EU; or (ii) if it is necessary to prevent the evasion of EMIR. The EU Level 2 legislation detailing these requirements has been adopted in fairly limited circumstances.

[21] You may wish to read our client note, "EU Clearing Obligation for Interest Rate Swaps Looms," available here, which sets out how the obligation would apply to third country entities. A summary of the IRS clearing obligation is available here and a summary of the CDS clearing obligation is available here.

[22] This reflects the position under the text of the RTS as adopted by the European Commission on 28 July 2016. The adopted RTS are still subject to change and the requirements may change.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
12.	**Banks – Collateral Management** CRR and the adopted Regulatory Technical Standards ("RTS") on Margin for Uncleared Swaps	A derivative counterparty may hold initial margin collected as cash with a third country bank if an equivalence decision is made to the effect that the third country's supervisory and regulatory arrangements for banks are equivalent to CRR.[23]	Although EMIR came into force on 12 August 2012, the detailed provisions on margin for uncleared derivatives will only apply from the date that the final RTS apply from. That date is uncertain following the recent notification by the European Commission that it was delaying adoption of the relevant legislation. Without that delay, implementation would be in line with international standards which will begin to be phased in from 1 September 2016 starting with the largest counterparties.	UK banks would lose business as places where cash collateral is held.	None yet, not in force. The current text of the adopted RTS is very broad in that it requires equivalence with all of CRR. This is wider than the equivalence requirements relating to CRR to date.
13.	**Trade Repositories** EMIR and SFTR[24]	For a third country trade repository ("TR") to provide services to counterparties subject to the SFTR and EMIR reporting obligations, the following conditions must be satisfied: (a) an equivalence decision which confirms that: i. TRs in that third country comply with legally binding requirements (SFTR & EMIR); ii. TRs in that third country are subject to supervision and enforcement on an ongoing basis (SFTR & EMIR); iii. Guarantees of professional secrecy exist (SFTR & EMIR); and iv. Mutual access to the data held by TRs (SFTR); (b) registration with ESMA under SFTR or	The SFTR applied from 12 January 2016, subject to certain exceptions dependent on the adoption of delegated acts by the European Commission, including for the reporting obligation for third country entities. EMIR has applied since 16 August 2012.	A UK TR would not be able to provide services to EU counterparties subject to the SFTR and EMIR reporting obligations.	No equivalence decisions have yet been made.

[23] Ibid.

[24] Regulation (EU) 2015/2365; the Securities Financing Transactions Regulation.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
		recognition by ESMA under EMIR;[25] and (c) co-operation arrangements between ESMA and the third country regulator are in place (SFTR & EMIR).			
14.	**Banks – Group Consolidated Supervision** CRR and CRD[26] (together, "CRD IV")	For an EU bank to be able to fall within the consolidated supervision of its third country parent, the relevant EU national regulators must assess whether the bank is subject to consolidated supervision by a third country supervisory authority which is equivalent to CRD IV.	The CRD and CRR entered into force on 17 July 2013 and 28 June 2013 respectively. CRD IV applied, for the most part, from 1 January 2014.	An EU bank which has a UK parent which is a financial holding company or mixed financial holding company would be subject to the full requirements of CRD IV. Alternatively, the EU entity would be subject at UK topco level downward, to "other appropriate supervisory techniques" which also achieve the objectives of consolidated supervision, as determined by the national laws of the member state where the EU bank is established, which may include requiring the establishment of a holding company in the EU.	There is no list of approved third countries for institutions eligible for group consolidated supervision as this is done at EU member state level. However, we understand that some member states have approved USA, China, Brazil, Switzerland and others under CRD III or CRD IV.
15.	**Banks – Exposures to Third Country Investment Firms, Banks and Exchanges** CRR	An equivalence decision is required before an EU bank can treat its exposures to third country banks, investment firms and exchanges on the same terms as exposures to the EU equivalents.	CRR entered into force on 28 June 2013 and applied across the EU from 1 January 2015. Transitional measures are included in the CRR: where no equivalence decision had been made and until 1 January 2015, EU banks and investment firms could continue exposures to the relevant third country entity as exposures to EU banks and investment firms. There has been no extension of the 1 January 2015 deadline yet.	EU banks and investment firms would be subject to higher capital requirements.	17 countries are recognised as having an equivalent prudential and supervisory regime for banks, 13 for investment firms and 13 for exchanges. The list of countries is available here.

[25] The SFTR provides for a TR that is recognised by ESMA to apply for an extension for the purposes of registration under the SFTR.

[26] The Capital Requirements Directive (2013/36/EU).

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
16.	**Payment & Securities Settlement Systems** Settlement Finality Directive (the "SFD")[27]	No equivalence regime. However, a settlement system that is not located in an EU member state may become a designated system under the SFD provided that the system is governed by the law of an EU member state as chosen by its participants, provided that the participants may only choose the law of a member state in which at least one of them is headquartered.[28] The SFD may be applied by EU member states to domestic banks and investment firms that participate in third country systems.	The SFD entered into force on 11 June 1998. The UK transposed the Settlement Finality Directive through the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.	UK systems would largely be unaffected. However, unless the UK regulation was amended, it is possible that the finality protections afforded in the UK would cease to operate. Maintaining the existing SFD designations would require UK-based designated systems to change the governing law of the rules of their systems to an EU member state law. Given the benefits the legislation affords to both UK and EU banks and investment firms it is unlikely that the UK would not strive to ensure it is retained. If new individual UK/EU member state bilateral agreements were not concluded, EU institutions would no longer be required to apply the protections afforded by the SFD to UK institutions.	Not applicable. However, SIX x-clear, a clearing house based in Switzerland, has UK designation as does CLS System operated by CLS Bank International based in New York. SIX x-clear and CLS do this by having their systems governed by an EU member state law.
17.	**Funds** AIFMD[29]	Non-EU Alternative Investment Fund Managers ("AIFMs") must be authorised in an EU Member State in order to manage EU Alternative Investment Funds ("AIFs"), or to market either EU or non-EU AIFs in the EU. Authorisation of a non-EU AIFM would require: (a) full compliance with the AIFMD as though the AIFM were based in the EU; (b) a co-operation agreement to be in place; (c) the non-EU country to not be listed by the	The AIFMD came into effect on 22 July 2013. Authorisation of non-EU AIFMs is not expected to be possible until late 2016 at the earliest, and not expected to become compulsory until 2018 at the earliest. Until authorised, a non-EU AIFM may only market AIFs in accordance with national private placement regimes in EU countries, or must rely	UK AIFMs may not market AIFs (whether EU or non-EU AIFs) in the EU unless they could rely on reverse solicitation; or manage EU AIFs. Other options for UK AIFMs seeking to benefit from the marketing passport could include establishing an affiliated EU AIFM (or using an EU third party AIFM) and delegating substantial parts of management back to the non-EU	A list of co-operation agreements between EU member states and non-EU countries is available here. Some individual EU countries have published their own, more exhaustive lists of agreements. The UK list is available here. Currently, the 'passport' has not been extended to any third country. However, on 18

[27] Directive 98/26/EC.

[28] For example, SIX x-clear is a designated system under the SFD.

[29] Directive 2011/61/EU; the Alternative Investment Fund Managers Directive.

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		FATF as a NCCT; (d) a tax-exchange agreement to be in place; and (e) the appointment of a legal representative established in the MSR.	on reverse solicitation. Note that there is no 'equivalence' regime under AIFMD. Instead, ESMA conducts an assessment of the third country in question and decides whether to issue positive advice to the Commission to extend the 'passport' to that third country.	AIFM.	July 2016, ESMA issued advice to the Commission in relation to the US, Guernsey, Jersey, Hong Kong, Switzerland, Singapore, Australia, Bermuda, Canada, the Cayman Islands, the Isle of Man and Japan. The advice was positive in relation to Canada, Guernsey, Japan, Jersey and Switzerland. Other advice given was qualified. You might like to view our client note on Brexit for Fund Managers which is available here
18.	**Undertakings for Collective Investment in Transferable Securities ("UCITS")** UCITS Directive[30]	No equivalence regime.	The recast UCITS Directive originally applied from 1 July 2011. The latest amendments to the UCITS Directive were to be implemented by 18 March 2016.	Upon exiting the EU, UK UCITS funds would cease to be governed by the UCITS Directive. UK funds that were previously considered UCITS, upon exit, would be treated in EEA counties as AIFs governed by AIFMD. Access is therefore as above for AIFMD. It is currently possible for a UK fund manager to act as a management company of an EEA (non-UK) UCITS. Upon exit, such a UCITS fund would need to have an EEA-domiciled management company or be self-managed, to continue as a UCITS fund. For UK managers currently operating under delegation from an EEA management company of an EEA UCITS or from a self-managed EEA UCITS, it is likely that nothing would change.	Not applicable.

[30] Directive 2009/56/EU.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
19.	**Exemptions for Market Makers from Short Selling Requirements – Exchanges** Short Selling Regulation ("SSR")[31]	Third country market makers are able to benefit from the exemptions in the SSR relating to the restrictions on uncovered sales in shares, sovereign debt and CDS and the notification requirements for short sales in shares and sovereign debt, provided that the following conditions are satisfied: (a) an equivalence decision has been made for the markets in the relevant third country; and (b) the third country market maker provides written notification to its home member state regulator that it intends to make use of the exemption.	The SSR applied from 1 November 2012.	A UK market maker would not be able to benefit from the exemptions under the SSR.	No equivalence decisions have yet been made. ESMA's list of market makers that are making use of the exemption is available here.
20.	**Securities Financing Transactions** SFTR	If a non-EU entity is established in a jurisdiction which has been determined as equivalent, EU or non-EU counterparties could comply with the equivalent rules in that country rather than any applicable SFTR reporting requirements.	No co-operation agreement is required. However, the third country will need to assist ESMA in preparing its technical advice on equivalence.	EU counterparties would need to apply EU standards when trading with UK counterparties until the UK's regulatory regime was determined to be equivalent. Given the regulatory standards in the UK, it would likely only be a matter of time whilst negotiations are undertaken with the EU to ensure that an equivalence decision is rendered. Brokers should also be aware of being caught by EMIR's extraterritorial scope.[32]	No equivalence decisions have yet been made.

[31] Regulation (EU) No 236/2012.

[32] You may wish to read our client note, "EU Clearing Obligation for Interest Rate Swaps Looms," available here, which sets out how the obligation would apply to third country entities. A summary of the IRS clearing obligation is available here and a summary of the CDS clearing obligation is available here.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
21.	**Insurers and Reinsurers** Solvency II[33]	For reinsurance only, an equivalence decision is required. For insurers and reinsurers for the purposes of group solvency and group supervision, an equivalence decision is required, adopted by either the European Commission or, in the absence thereof, by the group supervisor in consultation with other relevant supervisors. Equivalence may be full or in part and temporary equivalence is also possible.	Solvency II applied from 1 January 2016.	Reinsurance contracts with UK reinsurers would be treated differently to contracts with EEA-reinsurers. A bespoke approach would be needed for groups headquartered outside of Europe, including in the UK. UK-based insurers would need to establish one or more locally-authorised branches or carriers within the EU to access the market there. However, the equivalence-based access available for reinsurance means that UK-based insurers should be able to access EU customers by establishing a "pass-through" EU vehicle, with relatively light capitalization and staff, which reinsures all of its risks back to head office. EU groups which include UK insurers or reinsurers would not be able to rely on UK capital requirements instead of the Solvency II rules in respect of the UK entities as part of group solvency calculations. For EEA insurers or reinsurers with UK parents, there would be no ability to rely on the supervision of the parent by the UK regulator/s. Member States would be permitted to apply many of the rules set out in Solvency II directly to a UK insurance or reinsurance entity that is subject to EU group supervision or to agree "other methods" so as to ensure appropriate supervision of	For reinsurance, Bermuda, Japan and Switzerland have been determined as temporarily or fully equivalent. For group solvency and group supervision, the regimes in Australia, Brazil, Canada, Japan, Mexico and the USA have been determined as equivalent in whole or in part. Switzerland has full equivalence for group supervision and group solvency. Bermuda has full equivalence also, for insurance (not reinsurance), save for its rules on captives and special purpose insurers. You may like to see our client note, "Brexit: Implications for the Insurance and Reinsurance Industry," available here.

[33] Directive 2009/138/EC.

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				the relevant entity within the group.	
22.	**Insurance Mediation** Insurance Mediation Directive ("IMD1")[34] and the revised and recast Insurance Mediation Directive ("IMD2")[35]	No equivalence regime.	IMD1 applied from 15 January 2005. IMD2 will apply from 23 February 2018 and will repeal and replace IMD1.	Insurance and reinsurance sales and distribution by UK entities in the EU would be subject to national laws throughout the EU.	Not applicable.
23.	**Benchmark Administrators – Use of Benchmarks** Benchmark Regulation[36]	Benchmarks provided by administrators established in a non-EU country can be used in the EU by EU-supervised entities if the benchmark administrator and its benchmarks are included in ESMA's register of benchmarks. This requires either: (a) an equivalence decision and satisfaction of certain other requirements; (b) the administrator obtaining prior recognition from its MSR; or (c) endorsement of a benchmark by an EU authorised or registered benchmark administrator or other supervised entity. *Equivalence* For this option, the following requirements must be fulfilled: i. a co-operation agreement is in place; ii. an equivalence decision for either all benchmark administrators or for specific administrators or specific benchmarks or families of benchmarks; iii. the administrator of the benchmark is	For the most part, the Benchmark Regulation will apply from 1 January 2018. Certain provisions giving ESMA powers to produce draft technical standards and giving the Commission power to adopt delegated legislation, including in relation to the third country provisions, applied from 30 June 2016. A benchmark provided by a third country administrator that is already being referenced in financial instruments and financial contracts in the EU on 1 January 2020 may continue to be referenced in those contracts and financial instruments. However, no financial instruments and financial contracts in the EU may start to reference a benchmark provided by a third country administrator on or after 1 January 2020. An EU index provider that was	Subject to transitional provisions, UK benchmark administrators would not be able to provide benchmarks to EU-supervised entities for use within the EU.	The Benchmark Regulation entered into force on 30 June 2016. No equivalence determinations or other arrangements have been made or put in place yet.

[34] Directive 2002/92/EC.

[35] Directive 2016/97/EC.

[36] Regulation 2016/1011/EU.

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	authorised and supervised in its own country; iv. the administrator has notified ESMA of its consent that its benchmarks may be used by supervised entities in the EU, the list of benchmarks covered by that consent and the details of its national regulator; and v. the third country regime complies with the IOSCO Principles for Financial Benchmarks[37] and the IOSCO Principles for Oil Price Reporting Agencies.	providing a benchmark on 30 June 2016 must apply for authorisation or registration by 1 January 2020. An EU index provider may continue to provide an existing benchmark until 1 January 2020 unless or until its application for authorization or registration is refused.		
Benchmark Administrators – Use of Benchmarks Benchmark Regulation (continued)	*MSR recognition* Until an equivalence decision is made, a third country benchmark administrator may provide its benchmarks for use in the EU by supervised entities provided that: i. the benchmark administrator: a. subject to certain exceptions, complies with the Benchmark Regulation which may be fulfilled by complying with the IOSCO Principles; b. establishes a legal representative in its MSR; and c. applies for recognition to the relevant regulator of the MSR. ii. co-operation arrangements are in place; and iii. the laws of the third country do not prevent the effective supervision and oversight of the benchmark administrator by the regulator in its MSR.			

[37] The Principles for Financial Benchmarks are available here and the Principles for Oil Price Reporting Agencies are available here.

SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
Benchmark Administrators – Use of Benchmarks Benchmark Regulation (continued)	*Endorsement* Until an equivalence decision is made, a third country benchmark administrator may provide its benchmarks for use in the EU by supervised entities provided that an EU authorised or registered administrator or any other supervised entity has endorsed for use in the EU the benchmark or family of benchmarks provided by the benchmark administrator. The EU authorised or registered administrator or any other supervised entity must apply to its national regulator for approval of the endorsement, satisfying the following conditions: i. it has a "clear and well defined role within the control or accountability framework of the third country administrator which allows such person to effectively monitor the provision of the benchmark"; ii. verification that the provision of the benchmark to be endorsed meets requirements that are as stringent as those in the Benchmark Regulation; iii. demonstrate the necessary expertise to monitor the provision of activities performed in the third country effectively and to manage the associated risks; and iv. demonstrate an objective reason to provide the benchmark or family of benchmarks in a third country and endorse them for use in the EU.[38]			

[38] The Commission is responsible for setting the conditions for a national regulator to assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for use in the EU.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
24.	**Credit Rating Agencies – Use of Credit Ratings** CRA Regulation[39]	Third country credit ratings issued in third countries may be used in the EU if the following conditions are satisfied: (a) the CRA is authorised or registered and is subject to supervision in that third country; (b) an equivalence decision exists which confirms that: i. CRAs in that country are subject to authorisation and supervision and enforcement on an ongoing basis; ii. CRAs in that country are subject to legally binding rules equivalent to the EU rules; and iii. The regulatory regime of the third country prevents interference by supervisory (or other public) authorities with the content of credit ratings and methodologies; (c) the co-operation arrangements are operational; (d) the credit rating issued by the third country CRA and its credit rating activities are not of systematic importance to the financial stability or integrity of the financial markets of one or more Member States; and (e) the CRA is certified by ESMA. A third country CRA credit rating may be endorsed by an EU CRA when the following	The CRA Regulation entered into force on 7 December 2009. The CRA Regulation II which, among other things, amended the CRA Regulation to empower ESMA to supervise and register EU CRAs, entered into force on 1 June 2011. The CRA Regulation III entered into force on 20 June 2013.	The credit ratings of a UK CRA would not be able to be used in the EU. A UK CRA would also be able to apply for an exemption from the requirement to have a physical presence in the EU by demonstrating that the requirement would be too onerous and disproportionate based on the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings.	The Commission has adopted equivalence decisions for: Argentina, Australia, Brazil, Canada, Hong Kong, Japan, Mexico, Singapore and the US.[40] ESMA has also assessed the following third country regimes to be as stringent as the EU regime: Argentina, Australia, Brazil, Canada, Hong Kong, Japan, Mexico, Singapore, South Africa and the US.[41]

[39] CRA Regulation (Regulation 1060/2009) as amended by CRA Regulation II (Regulation 513/2011) and CRA III Regulation (Regulation 462/2013).

[40] Equivalence decisions published in the Official Journal of the European Union can be found at the following links: Argentina, Australia, Brazil, Canada, Hong Kong, Mexico, Singapore and the US. The equivalence decision for Japan has been adopted by the Commission but as of yet has not been published in the Official Journal.

[41] ESMA's list of assessed third country CRAs can be found here.

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		conditions are satisfied: (a) the credit rating activities resulting in the issuing of the credit rating to be endorsed are undertaken in whole or in part by the endorsing CRA or by CRAs belonging to the same group; (b) the CRA has verified and is able to demonstrate on an ongoing basis to ESMA that the conduct of the third country CRA resulting in the credit rating to be endorsed fulfils requirements which are at least as stringent as those in the CRA Regulation; (c) the third country CRA is subject to effective supervision; (d) there is an objective reason for the credit rating to be produced in a third country; (e) the CRA established in the third country is authorised or registered, and is subject to supervision; and (f) co-operation arrangements between ESMA and the third country regulator are in place.			
25.	**Central Securities Depositories – Securities Settlement** CSD Regulation[42]	A third country central securities depository ("CSD") may provide services in the EU if: (a) a co-operation arrangement between ESMA and the third country regulator is in place (which includes the third country regulator providing periodic reports on the CSD's activities and the identities of issuers and participants in the securities settlement system operated by the CSD); (b) there is an equivalence decision; (c) the CSD is subject to authorisation, supervision and oversight;	The CSD Regulation entered into force on 17 September 2014. The Target2-Securities ("T2S")[43] platform became operational on 22 June 2015. There is a programme for migration and, according to the European Central Bank, T2S will service 21 jurisdictions (EU and non-EU) by the end of 2017.	UK CSDs would not be able to operate a securities settlement system or provide notary services or central maintenance services in the EU.	No equivalence determinations or other arrangements have been made or put in place yet.

[42] Regulation (EU) 909/2014; the Central Securities Depositories Regulation.

[43] T2S is a Eurosystem securities settlement system offering settlement in central bank money across European securities markets.

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		(d) the third country provides for the equivalent recognition of foreign CSDs in its country; and (e) where relevant, the third-country CSD takes the necessary measures to allow its users to comply with the relevant national law of the Member State in which the third-country CSD intends to provide CSD services.			
26.	**Mortgage Providers** Mortgage Credit Directive[44]	No equivalence regime.	The Mortgage Credit Directive entered into force on 21 March 2014.	Not applicable.	Not applicable.
27.	**Financial Collateral Arrangements** Financial Collateral Directive ("FCD")[45]	No equivalence regime.	The FCD entered into force on 6 June 2002. The UK transposed the FDC through the Financial Collateral Arrangements (No 2) Regulations 2003.	UK legislation would need to be amended to ensure that financial collateral arrangements involving UK counterparties continued to benefit from the legal certainty provided by the FCD. It is likely that the UK regime will be preserved.	Not applicable.
28.	**Listed Issuers – Securities Issuances** Prospectus Directive[46] and the proposed Prospectus Regulation [47]	Access to the EU capital markets for third country issuers requires the following conditions to be satisfied: (a) approval by the national regulator of the relevant EU member state; (b) the prospectus must be drawn up in accordance with the international standards set by the International	The Prospectus Directive entered into force on 31 December 2003. Transposition into UK law was through the Prospectus Regulations 2005. The proposed Prospectus Regulation will repeal the Prospectus Directive	UK-listed companies, whether domestic or non-EU, who seek to engage in retail offers of securities in the EU, would face the need for a further review of relevant prospectuses by an EU "home member state"[48] supervisor. Failure to gain approval could render the prospectus ineligible for an offer to the public or for admission to	ESMA published an opinion in 2013 setting out the framework for the assessment of prospectuses of third country issuers (available here). ESMA has issued opinions pursuant to that framework for Israel and Turkey.

[44] Directive 2014/17/EU.

[45] Directive 2002/47/EC.

[46] Directive 2003/71/EC.

[47] Proposal for a Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading 2015/0268 (COD).

[48] The Prospectus Directive allows for third country issuers to choose a "home member state" which is responsible for the approval of offering and listing documentation. Approval by that home member state allows the issuer to apply for a "passport," under which an offering may be made into other member states, using the same prospectus, subject only to minor additional requirements.

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		Organization of Securities Commissions; and (c) the disclosure requirements are equivalent to the requirements under the Prospectus Directive. Once one national regulator has approved the prospectus it can be passported into other EU member states. The provisions on access by third-country issuers are very similar in the proposed Prospectus Regulation.	when it comes into force.	trading on an EU regulated market. Under the proposed Prospectus Regulation, UK-listed companies would also need to appoint an EU supervised firm as its representative for the purposes of its offer.	
29.	**Issuers – Accounting Principles** IAS Regulation[49] and related Equivalence Mechanism Regulation[50] as well as the Transparency Directive[51] and the Prospectus Directive (and its Implementing Directive)	For third country issuers to be able to use Generally Accepted Accounting Principles ("GAAP")[52] in preparation of their financial statements an equivalence decision is required. For that decision to be made the GAAP of the third country must enable investors to make a similar assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer as financial statements drawn up in accordance with International Financial Reporting Standards ("IFRS").	The legislation is all in force. The Equivalence Mechanism Regulation includes transitional provisions under which third country issuers could have used financial statements drawn up using the accounting standards of a third country for a limited time until 31 March 2016.	This would not be an issue if the UK continued to mandate IFRS for listed issuers.	The GAAP of the US, Japan, Canada, China, Japan, South Korea and the US have obtained permanent equivalence status.[53] India had temporary equivalence until 31 March 2016.

[49] Regulation (EC) No 1606/2002.

[50] Commission Regulation (EC) No 1569/2007.

[51] Directive 2004/109/EC.

[52] EU laws require issuers whose securities are traded on a regulated market by applying IFRS to their consolidated financial statements. Third country issuers may prepare their financial reports in accordance with IFRS or any other standard which has been declared equivalent to IFRS.

[53] Commission Decision 2008/961/EC, available here.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
30.	**Audit Firms and Auditors – Financial Statements** Statutory Audit Directive[54]	*Use of audit accounts* For a third country audit firm or auditor to provide the financial accounts for a third country issuer whose securities are admitted to trading on an EU exchange (subject to limited exceptions), the following conditions must be satisfied: (a) an equivalence decision to the effect that the audits of the annual or consolidated financial statements are carried out in accordance with international auditing standards and the EU requirements or the equivalent thereof; and (b) registration with the national regulator of the relevant EU exchange. In the absence of an equivalence decision, a member state may make an equivalence assessment before registering an audit firm or auditor. *Member state oversight* Registered third country audit firms and auditors may be exempt from being subject to the national regulator's systems of oversight, their quality assurance systems and their systems of investigation and penalties if the firm or auditor has been subject to a quality review in its own country and provided that: (a) an equivalence decision has been made; and (b) there is reciprocity from the third country. Once an equivalence decision is made, each member state may decide whether to rely on it fully or partially and may disapply or modify the requirements accordingly.	The Statutory Audit Directive entered into force on 29 June 2008, although the equivalence requirements were tweaked in 2014. Until an equivalence decision is made, a member state may make its own assessment of equivalence or rely on that of another member state. If the Commission gives a negative equivalence decision, it may allow third country audit firms and auditors to continue their audit activities under the laws of the relevant member state for a transitional period.	The audit accounts of a UK audit firm or auditor would not be able to be used by third country issuers admitted to trading on an EU exchange. A UK audit firm or auditor whose accounts could be used would be subject to oversight by an EU member state. If a UK audit firm or auditor is not registered in the relevant member state, then its audit reports would have no legal effect in that member state.	Full equivalence decisions have been adopted for Abu Dhabi, Australia, Brazil, Canada, China, Dubai, Guernsey, Indonesia, Isle of Man, Japan, Jersey, South Korea, Malaysia, Singapore, South Africa, Switzerland, Thailand, Taiwan and the US. Transitional equivalence decisions have been adopted for Bermuda, Cayman Islands, Egypt, Mauritius, New Zealand, Russia and Turkey.

[54] Directive 2006/43/EC.

	SECTOR / LEGISLATION	REQUIREMENTS	CURRENT STATUS AND ANY TRANSITIONAL PERIOD	CONSEQUENCES OF FAILURE TO ACHIEVE EQUIVALENCE	APPROVED COUNTRIES
31.	**Payment Services** Payment Services Directive I & II[55]	No equivalence regime.	The Payment Services Directive entered into force on 25 December 2007 and was transposed into UK law by the Payment Services Regulations 2009 on 1 November 2009. The revised Payment Services Directive entered into force on 12 January 2016 and must be transposed by EU Member States by, and will apply from, 13 January 2018.	A UK institution would need to establish a separate legal entity within an EU Member State. Failure to do so would negate the institution's ability to access the market. However, there are arguments that some payment services are only provided where the service provider is located.	Not applicable.
32.	**Euro Payments** Single Euro Payments Area ("SEPA") Regulation[56]	No equivalence regime.	The SEPA Regulation entered into force on 31 March 2012. Only applies to UK Payment Service Providers ("PSPs") from 31 October 2016.	UK PSPs would in principle still be able to participate in SEPA although the Regulation would cease to apply.	Not applicable.
33.	**E-Commerce** Electronic Commerce Directive ("ECD")[57]	No equivalence regime.	The ECD entered into force on 17 July 2000. The Electronic Commerce (EC Directive) Regulations 2002 implement the ECD into UK law.	UK institutions' ease of e-commerce supply would be affected if the UK Regulations were repealed. When dealing in the EU, UK institutions would likely need to adhere to contractually binding terms that reflect the ECD.	Not applicable.
34.	**Electronic Money Services** Electronic Money Directive II[58]	No equivalence regime.	The Electronic Money Directive II entered into force on 30 October 2009. The Electronic Money Regulations 2011 transposed the Electronic Money Directive into UK law and came into force on 30 April 2011.	UK electronic money institutions would largely be unaffected. However, UK institutions would only be able to access the EU on terms which were no more favourable those for EU institutions.	Not applicable.

[55] Payment Services Directive 2007/64/EC and Payment Services Directive II 2015/2366/EU.

[56] Regulation 260/2012. The SEPA Regulation applies to transactions denominated in Euros where both the payee and payer's payment service providers are located in the EU or where the sole payment service provider is located in the EU. Geographically, SEPA includes all of the EU member states plus Iceland, Liechtenstein, Norway, Switzerland, the Principality of Monaco and San Marino.

[57] Directive 2000/31/EC.

[58] Directive 2009/110/EC.