

Company and commercial

Frankfurt calling to Brexit-hit businesses

Although the shape of a post-exit UK is far from decided, companies are already scoping out Frankfurt as a hub for their EU operations – and for good reasons



While the political discussion about the shape and form of Brexit is still going on, the affected financial industry players must now plan their reaction. All banks, financial services providers, payment services providers, asset managers and insurance companies licensed in the UK and providing regulated services in the European Union or the European Economic Area (EEA) under the EU passport regime are in principle affected. If the EU passport privileges fall away, any such services could no longer be provided into the EU without at least one local licence.



Dr Ulrich Soltész, partner, and Dr Maximilian von Rom, partner, Gleiss Lutz

Supervised EU/EEA subsidiary required for the European market

In order to obtain a local licence, the UK entity could set up either a branch or a subsidiary in the jurisdiction in which it intends to provide regulated services and apply for the necessary licence. Using a subsidiary would have the advantage that the new licence could be passported into all other EU/EEA member states. A subsidiary could provide regulated services in all other member states either by setting up local branches or cross-border without any local presence.

This would not be possible if the UK entity were to set up branches of its own. In such case, separate licences would have to be obtained for each member state in which the UK entity intends to set up a branch.

Substantial outsourcing to UK companies possible

Affected companies may want to mitigate the effects on their existing structure and personnel and, therefore, wish to move as few personnel as possible to the EU/EEA jurisdiction.

If the EU/EEA operation is set up as a subsidiary, the subsidiary could set up a branch in the UK for the purpose of employing UK personnel and holding and maintaining assets or contracts necessary to operate from the UK. As an alternative, the EU/EEA subsidiary could enter into an outsourcing agreement with a UK (group) company.

According to German regulatory outsourcing requirements, the outsourcing company must exercise certain management and parts of control functions in order to ensure that the German entity is not just an empty shell. These regulatory requirements would also

apply if the German business takes the form of a branch which outsources to its UK headquarters in principle.

Frankfurt considered the best choice for future EU/EEA operations

Many companies affected by Brexit are contemplating using Frankfurt as a hub for their EU/EEA operations in the future. Frankfurt is considered by many to be the best possible choice for various reasons. To the extent institutions are subject to supervision by the ECB, they would gain easy and direct access to their supervisory authority. To the extent institutions are supervised by the national competent authority, they would become subject to supervision by the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin), which has a very high reputation for competence, pragmatism and responsiveness.

BaFin recently set up a central contact point for foreign regulated companies intending to move to Germany. Supervisory laws in Germany are very similar to the corresponding UK laws as Germany is an EU member state. Germany further has a highly developed legal system, a strong and growing economy and Frankfurt offers affordable lease costs, an international environment and a perfectly developed infrastructure.

Several options for structuring

There are several options for structuring a new business in Germany. German corporate law offers a range of possible corporate forms.

With respect to any outsourcing arrangements – apart from regulatory requirements – in particular tax and employment law aspects need to be taken into account.

With regards to data protection, it is expected that the UK will be recognised by the EU Commission as a country that ensures an adequate level of data protection. In that case, German subsidiaries/branches would be able to share personal data with UK companies under the same conditions that apply to data transfers within the EU.

Against this background, setting up a business in Frankfurt is the favoured solution for many UK-based companies that wish to continue their regulated business activities in the EU/EEA.

Gleiss Lutz

Gleiss Lutz

Taunusanlage 11
60329 Frankfurt, Germany

Tel: (+49) 69 95514 108

E-mail: brexit@gleisslutz.com

Web: www.gleisslutz.com