



Hogan
Lovells

Brexit

Impact of Brexit on Securitization

James Doyle, Julian Craughan and Tauhid Ijaz

27 July 2016

Introduction

Introduction

- Impact of the referendum and EU legislation in the UK
- Impact on specific regulations and directives relevant to securitization
- Impact of Brexit on securitization?
- Closing thoughts

Impact of referendum

Impact of referendum

No change in the short term

- Market uncertainty, but no immediate legal impact from the referendum decision
- Likely that the UK legal position will remain unchanged for at least two years following date when UK triggers Article 50 of the Lisbon Treaty
- Much financial regulation currently applicable in the UK derives from EU legislation which will remain applicable until any changes are made (as will new EU legislation coming into force in the near future)
- Certain EU regulations will continue to apply given wide extraterritorial effect such as EMIR, MAR, MiFID II & MiFIR

Impact of referendum (continued)

New relationship

- The UK's relationship with the EU could take a number of different forms, ranging from EEA/Single Market Access, Third Country regimes to full exit and reliance on WTO rules
- It is unclear which form the new relationship will take, although we would expect that the UK government would seek to mirror applicable EU legislation in local law to maintain passporting and equivalent arrangements as much as possible
- Relationship will depend on how the European Communities Act is repealed under UK law (for example, there may be continuity provisions for related legislation)
- Even on full exit the UK will need to comply with G20 commitments
- Here we focus on the potential impact of these changes on securitizations

Impact on legislation relevant to securitization

Impact on legislation relevant to securitization

- Solvency II/CRR/AIFMD/AIFMR
 - Disclosure and due diligence requirements
 - Risk retention
 - "Matching adjustment" notes
- Prospectus Directive
 - UKLA no longer able to passport UKLA approved prospectuses?
 - But of limited consequence given investors likely to be qualified professional investors
- Credit Rating Agency Regulations
 - Relocation of rating agencies or reliance on endorsement or certification processes

Impact on legislation relevant to securitization

- LCR
 - Certain non-EU originated assets or receivables originated by non-EU originators will not qualify as level 2B securitizations
- STS/Securitization Regulation
 - Still in draft and implementation not expected until 2018
 - Current draft places restrictions on non-EU originators and SPVs to qualify as STS
 - Amendments from EU Parliament rapporteur may require all investors and originators to be EU regulated entities

Impact on legislation relevant to securitization

- Choice of law and jurisdiction
 - English law recognition of EU law and jurisdiction
 - English courts would continue to recognise for commercial contracts
 - UK could accede to the Hague Convention
 - Remaining EU recognition of English law and jurisdiction
 - Rome Regulations still apply (no requirement for reciprocity)
 - UK would have to accede to the Hague Convention
- For Hague Convention to apply choice of jurisdiction would have to be exclusive and, with limited exceptions, not one-sided

Impact on legislation relevant to securitization

- Insolvency law recognition
 - Companies
 - UK has implemented the UNICITRAL model law into English law
 - English courts should recognise and co-operate with foreign insolvency officials although there is limited case law
 - Credit Institutions
 - EU Credit Institutions Winding Up Directive would presumably no longer be applicable in the UK
 - Financial collateral
 - Financial Collateral Arrangements (No.2) Regulations 2003 may cease to apply but it is likely to be re-enacted in the UK

Impact on tax issues relevant to securitization

Impact on tax issues relevant to securitization

- Withholding on receivables
- Withholding on notes
- Double tax treaties
- VAT
- Stamp tax

Impact on securitization market

Impact on the securitization market

Possible areas where the securitization market may be impacted include:

- Increased defaults and voluntary terminations
- Potential non-eligibility of ABS for ECB repo
- Potential non-eligibility of UK based transaction counterparties for LCR and STS purposes
- UK Sovereign downgrade by the rating agencies and rating caps
- Downgrades to eligible counterparties
- UCITS and covered bonds

Impact on the securitization market

- Cross-border deals may be less favoured
- Uncertainty may ...
 - favour straight-forward / "vanilla" asset classes
 - favour short-term assets
 - increase trend to finance longer-term assets in private rather than public transactions
- Sterling's fall may make some UK assets appear better value to non-Sterling investors

Webinars on Brexit implications across the sector

Coming soon:

- Retail Banking, Wealth Management and Payments Institutions – Thursday 28 July, 2pm (BST)
- Market Infrastructure – Wednesday 3 August, 2pm (BST)

Available to watch now (links below):

- [Implications for Financial Services](#) – held 30 June
- [Impact of Brexit on the Insurance Industry](#) – held 13 July
- [Capital Markets Union](#) – held 19 July
- [Derivatives](#) – held 22 July

Contact Us

- If you have any questions, you can email us on:
FISBrexit@hoganlovells.com
- Access our latest thinking on our Brexit hub at:
www.hoganlovells.com/Brexit
- Follow us on twitter:
@HLBrexit
Join the conversation:
#BrexitEffect



Hogan
Lovells

Brexit

Impact of Brexit on Securitization

James Doyle, Julian Craughan and Tauhid Ijaz

27 July 2016

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.