

Brexit

How should Financial Institutions React?

30 June 2016

Introduction

Introduction

- What regulations will apply until Brexit?
- What will the post-Brexit environment look like?
- What are the options if there is no passport or third country access?
- How would a transfer of business be achieved?
- The European perspective on relocation
- Closing thoughts

What regulations will apply until Brexit?

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Continued
Compliance
with existing
EU measures

Implementation
of new EU
measures

Reduced UK
influence over
EU
policy

Uncertainty
over the future
regulatory
structure



July 2016
Market Abuse
Regulation

December 2016
PRIIPs

January 2018
MiFID II /
MiFIR

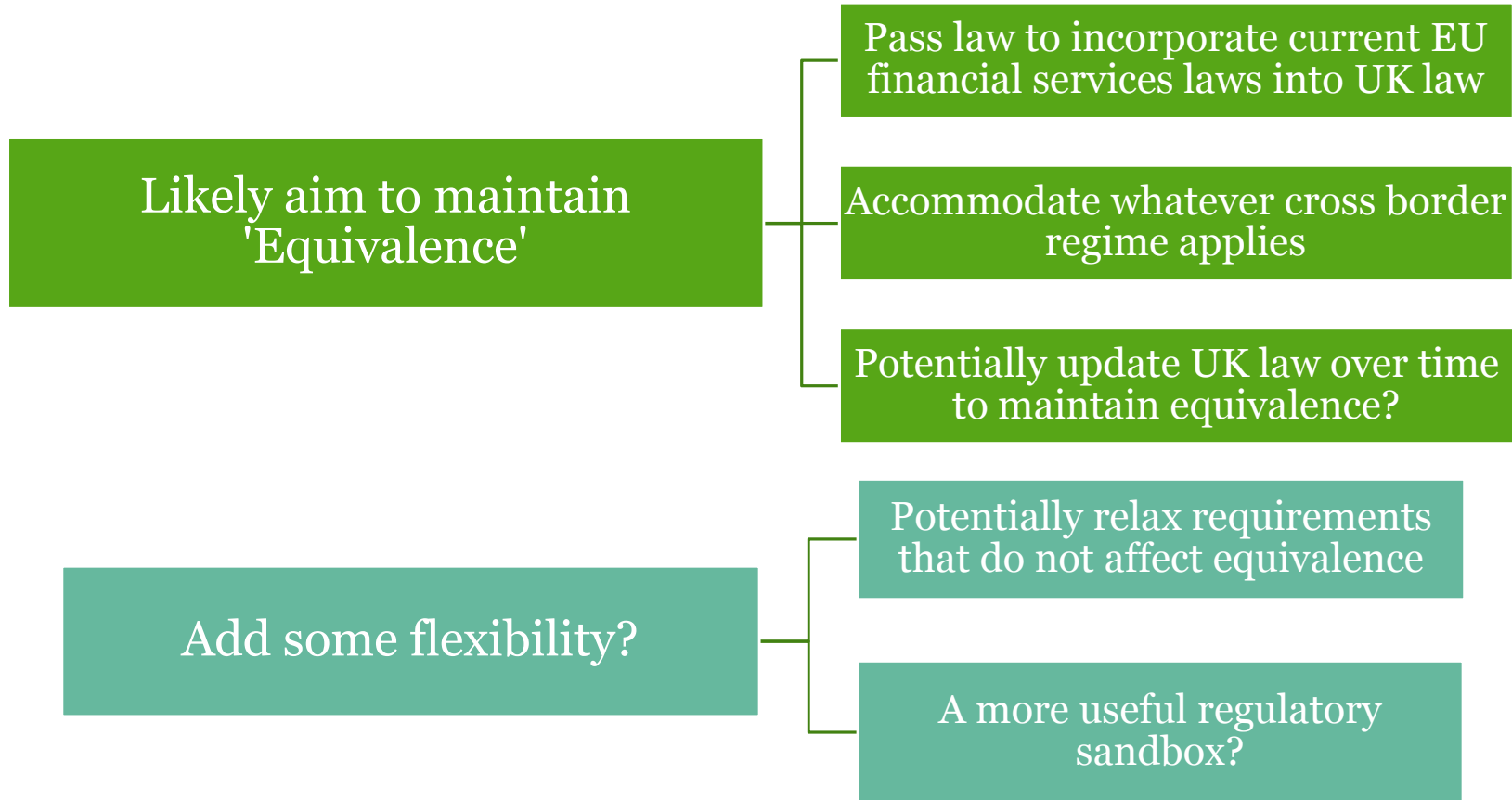
January 2018
PSD II

February 2018
Insurance
Distribution
Directive

What will the post-Brexit environment look like?

What will the UK regime look like?

UK will have a choice to maintain equivalence with EU law or to diverge.
Lack of equivalence would likely negatively affect UK access to the EU single market



How will EU firms access the UK?

If no "passporting" regime is agreed for incoming EU firms – the UK has a choice

Fall back on Regulated Activities Order requirements?

Authorisation unless exemption or activity is not "in the UK"?

Open Door Policy?

Relax authorisation requirements for incoming EU firms?

Reciprocity?

Apply equivalent barriers to those applied by EU to UK firms?

How will UK firms access the EU market?

- The regime governing access to EU markets will depend on what deal is proposed and negotiated with the EU.

Regime	Passporting	Influence over EU measures	Comment
EEA (Norway Model)	Yes	Consultation rights – no veto	Retains access to Single Market Requires free movement of persons Potentially quickest to implement
Co-operation Agreements (Swiss Model)	Depends on what is negotiated	No	Passporting conditional on free movement of persons? EU restricting Swiss agreements
Comprehensive Free Trade Agreement	Depends on what is negotiated	No	Time consuming to negotiate Passporting conditional on free movement of persons? Such agreements typically do not cover services well
Reliance on WTO rules	No	No	Not suited to financial services

How will UK firms access the EU market?

If there is no "passporting" arrangement, some firms may still be able to rely on the "Third Country" regimes under various EU measures.

However:

Coverage is patchy

It is not a passport

Works in different ways under different measures

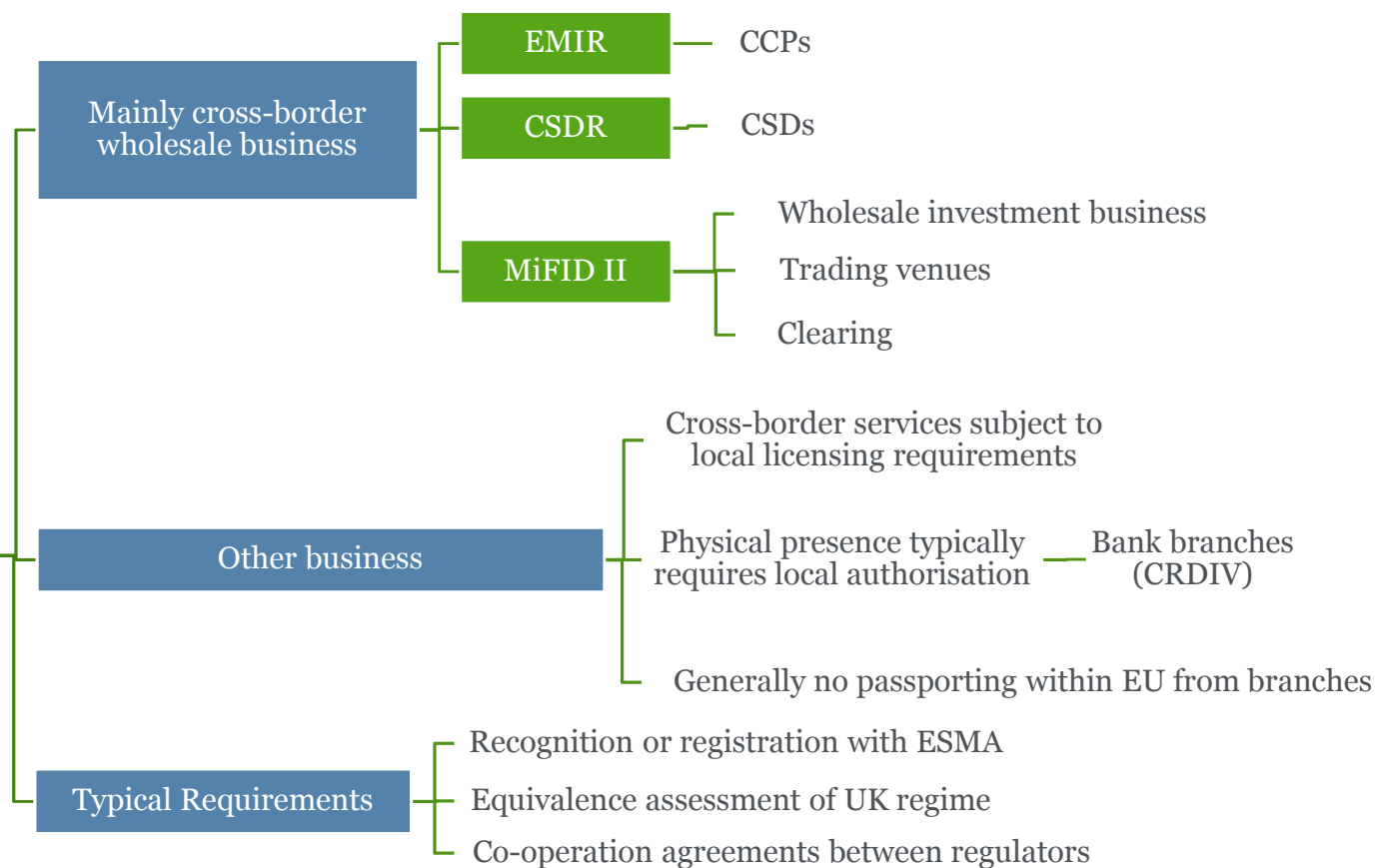
Timing is a consideration – Equivalence assessments

Third Country Regimes

Third country regimes facilitate non-EU firms providing services into the EU

Cross Border Access under Third Country Regimes

Not contingent on free movement of people



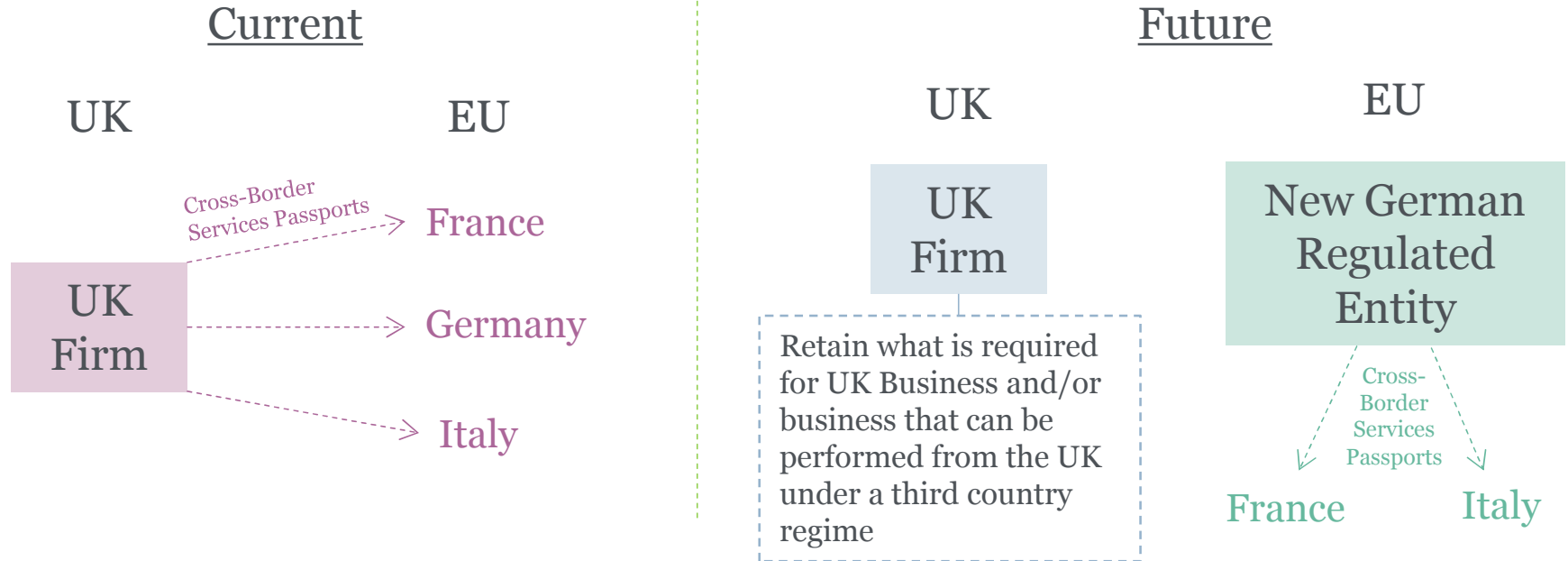
Examples of Third Country Regimes for Certain Firms

Type of firm	Would a third country regime facilitate cross-border services without an EU branch or entity?	Requirements	Relevant EU Measure
UK MiFID wholesale trading firm	Yes. Allows cross-border services to eligible counterparties and per se professional clients	<ul style="list-style-type: none"> - Registration of firm with ESMA - Firm authorised in jurisdiction of head office - UK assessed as equivalent, reciprocal access for EU firms - Co-operation agreement between ESMA and UK regulators 	MiFID II
UK AIFM	Eventually. A non-EU passport may be introduced by AIFMD, but it is unclear when or if it will happen (unlike UCITS, for which no such regime applies)	<p>For a non-EU AIFM marketing a non-EU AIF:</p> <ul style="list-style-type: none"> - Notification to EU member state - Co-operation agreement with UK regulator - Third country is not a NCCT for money laundering purposes - Agreement for exchange of tax information 	AIFMD
CSD	Yes. CSD services to issuers and market participants Links with EU CSDs	<ul style="list-style-type: none"> - Recognition by ESMA - Assessment of equivalence of UK regime - Co-operation agreements with UK regulators 	CSDR
UK CCP	Yes. Allows EU-recognised CCPs to clear for EU clearing members	<ul style="list-style-type: none"> - Recognition by ESMA - ESMA consultation with various regulators - UK assessed as equivalent (including reciprocal access) - UK has equivalent anti-money laundering systems - Co-operation agreement between ESMA and UK regulators 	EMIR
UK CCP	Yes. UK CCP could request access to EU trading venue	<ul style="list-style-type: none"> - CCP recognised under EMIR - Reciprocal access for EU firms 	MiFID II
UK Trading Venue	Yes. UK trading venue could request access to EU CCP	<ul style="list-style-type: none"> - Assessment of equivalence of UK regime for trading venues - Reciprocal access for EU firms 	MiFID II

What are the options if there is no passport or third country access?

Establishing a Regulated EU Presence

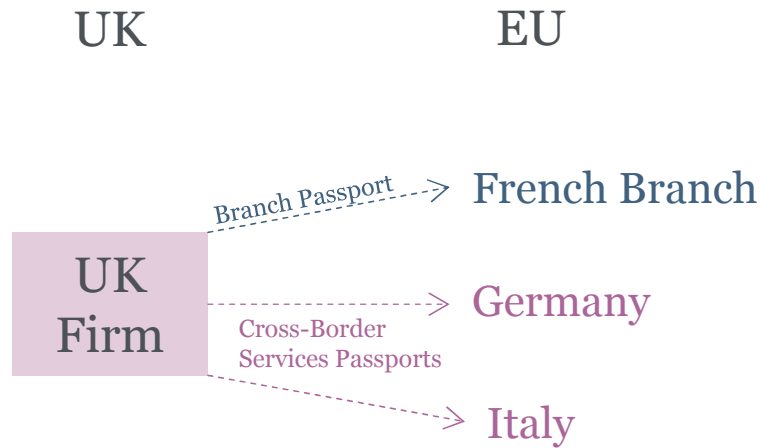
Example 1:
UK firm without a current EU presence establishes new EU entity



- Likely to require an asset transfer to the new entity of assets required to operate the EU business
- Possibly also outsourcing back to the UK

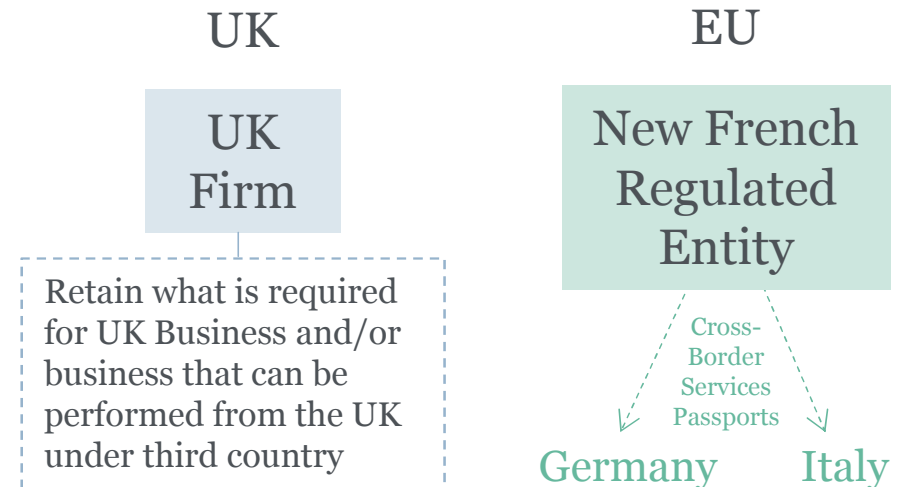
Establishing a Regulated EU Presence

Current



Example 2:
UK firm with a EU branch converts it to a regulated entity

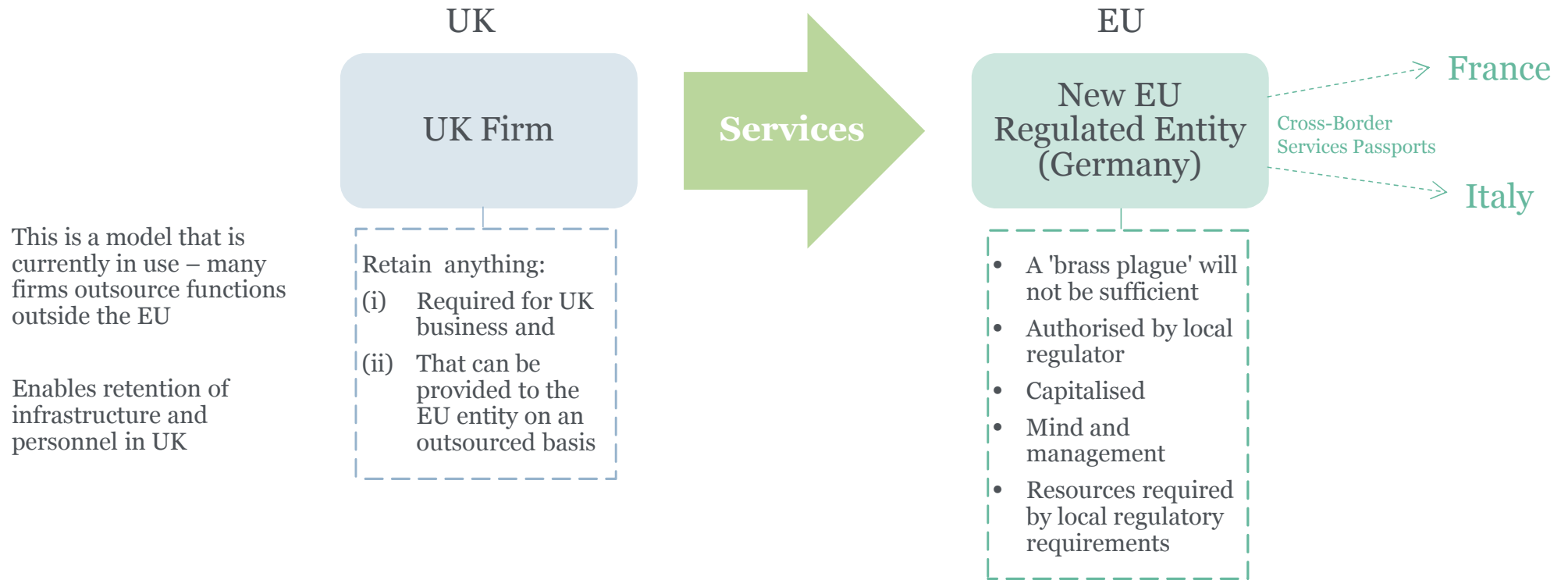
Future



- Likely to require an asset transfer from the old branch (and possibly) the UK firm to the new French entity of assets required to operate the EU business
- Possibly also outsourcing back to the UK

Establishing a Regulated EU Presence

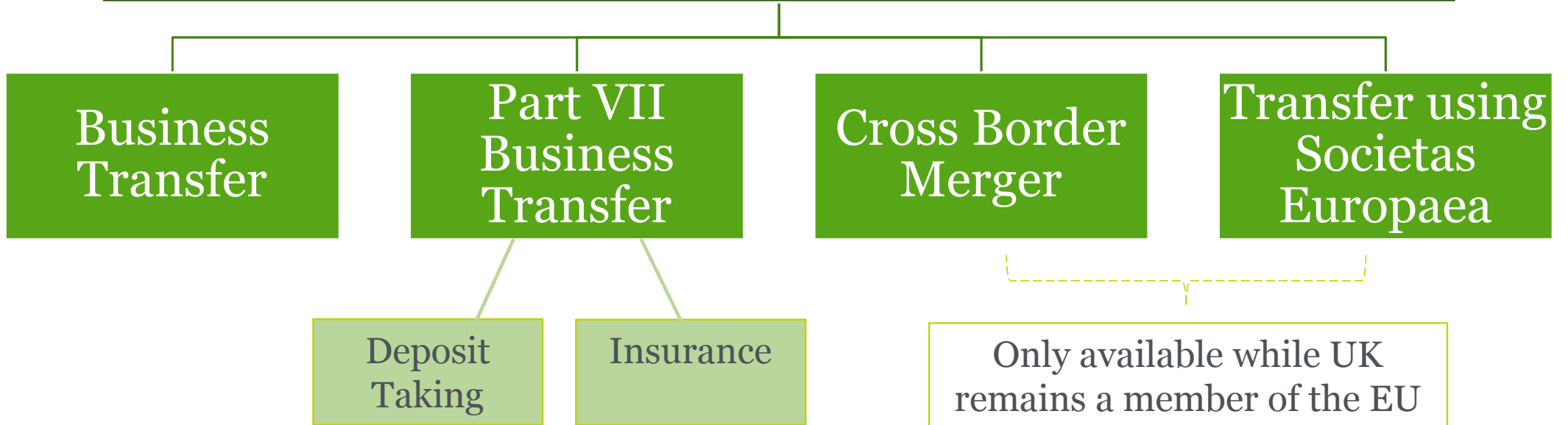
- Outsourcing back to the UK



How would the Transfer be Achieved?

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Main Options to Transfer a UK Business to EU Transferee



The European Perspective on Relocation

The European Perspective on Relocation

FRANCE

Benefits

Paris is a leading financial centre with the ambition to grow

Outsourcing back to UK is possible

Paris is an attractive place to live and work

Disadvantages

Labour laws

Employment costs

The European Perspective on Relocation

LUXEMBOURG

Benefits

Already a banking centre with approx. 150 banks (incl. 5 branches of UK banks)

Located in heart of Europe, truly international, multi-cultural

Stable economic social environment with a business minded and pragmatic regulator

Skilled, multi-lingual workforce

Favourable tax regime for highly skilled workers

Outsourcing back to the UK is possible

Disadvantages

Pro-employee labour laws

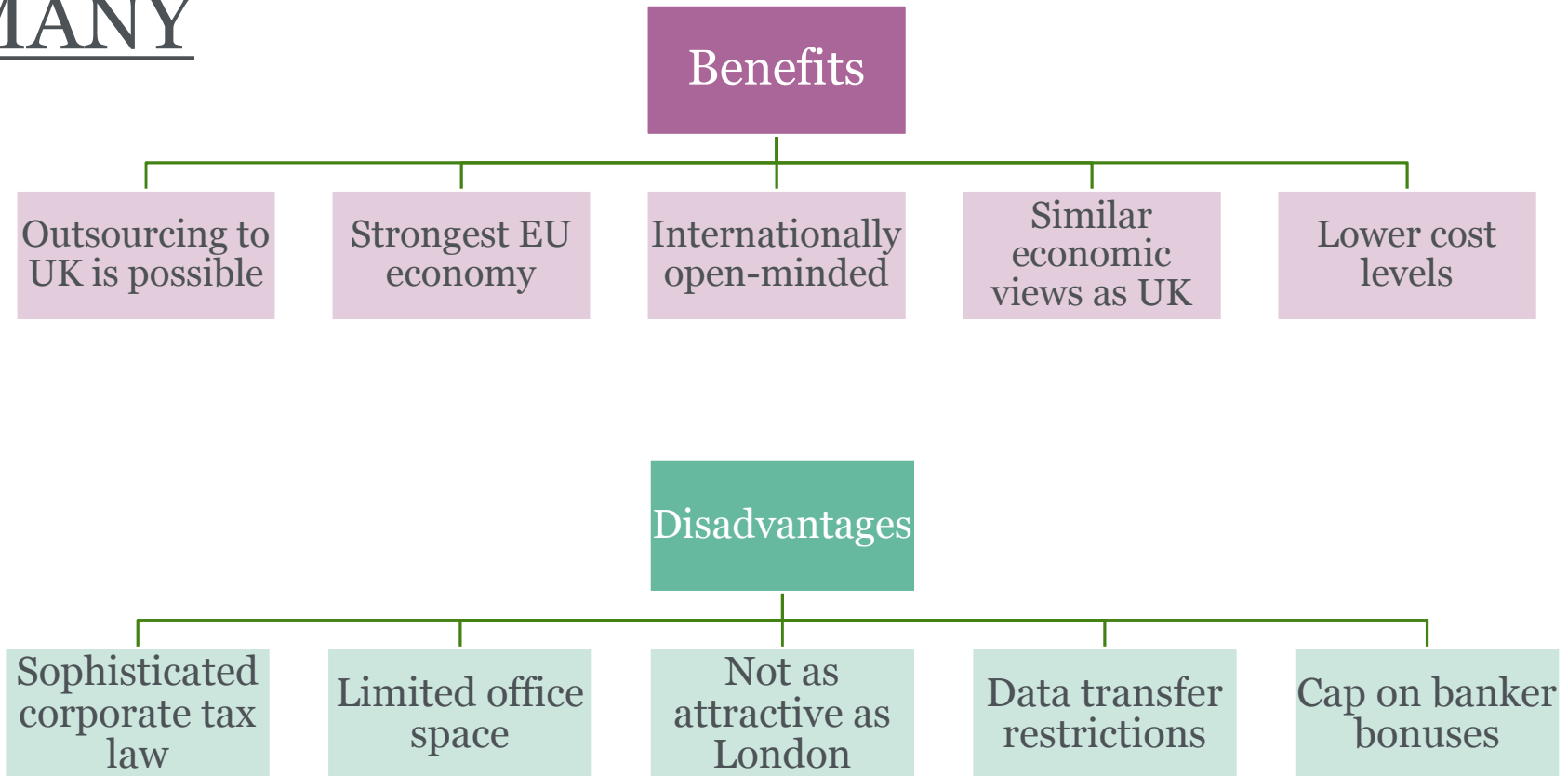
Relatively high employment costs

Limited workforce

Lacking behind in infrastructure

The European Perspective on Relocation

GERMANY



Closing Thoughts

Coming soon

Coming soon

Seminars to follow on Brexit's application to...

- Retail Banking, Wealth Management and Payment Institutions
- Asset Management
- Market Infrastructure
- Capital Markets and Derivatives
- FinTech

Contact Us

- If you have any questions, you can email us on:
FISBrexit@hoganlovells.com



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