

Brexit

8 February 2019

Dear CEO

The Government of Jersey (**Government**) and the Jersey Financial Services Commission (**the JFSC**) are writing to draw your attention to the growing importance of No Deal Brexit planning.

We write for two reasons: firstly, to flag information and resources available to you and your firms to assist you with your Brexit preparations; and secondly, to outline our expectations of firms regarding Brexit preparations. This message has become particularly important in light of the growing likelihood of a No Deal Brexit.

Information and resources

Government has placed major resources into planning for Brexit. It is important that you acquaint yourself with this planning, and take it as your lead for your own preparations.

Jersey's financial services

Jersey is positioned outside of the EU for the purposes of financial services, and therefore Brexit does not directly affect the way in which our financial services firms interact with EU markets. In addition, due to the UK policy of 'onshoring' EU financial services legislation and decisions, Jersey's relationship with the UK on financial services will also remain unchanged, although there may be some operational adjustments.

This does not mean there are not challenges. Government and the JFSC have reviewed Jersey's financial services legislation and regulation, which in places is designed with the consideration that the UK is a member state of the EU. Government has brought forward proposals to ensure legislation is amended to account properly for Brexit, including for the way in which the UK 'onshores' various pieces of EU legislation.¹ These amendments do not make policy changes, they merely ensure the continued functioning of the legislation post-Brexit. This will ensure the smooth running of our regulatory framework regardless of the outcome of Brexit.

Data flows

Jersey has been assessed by the European Commission as an adequate third country for EU data protection purposes. As a result, it is lawful for data to flow freely between Jersey, any EU member state and any other adequate third country.

In a No Deal scenario, there may be a period of time when the UK does not hold a position as an adequate third country. In order to preserve data flows between Jersey and the UK, Government has lodged proposals to amend the Data Protection (Jersey) Law 2018 to preserve Jersey's treatment of the UK.² Therefore, data flows between Jersey and the UK will be able to continue as normal.

¹ <https://statesassembly.gov.je/assemblypropositions/2019/p.11-2019.pdf>; A further set of similar amendments to Jersey's AIFMD related legislation will be lodged imminently.

² <https://statesassembly.gov.je/assemblypropositions/2018/p.148-2018.pdf>

EU Nationals

Jersey is subject to UK immigration and nationality laws. The UK government will operate a scheme known as the 'EU Settlement Scheme', which will allow EU citizens to remain in the UK after Brexit. Jersey will be operating our own version of this scheme to ensure that EU citizens who live in the Island, making a valuable contribution to our community, are able to stay. You are encouraged to direct any EU nationals you employ towards Jersey's settled status regime for more information.³

Other Government departments

Government has taken a number of other actions to ensure the impact of Brexit on Jersey is mitigated. These range from signing the Jersey-UK Customs Arrangement, which establishes a customs union between Jersey and the United Kingdom, to ensuring contingency plans are in place to minimise disruption to supply chains and transport links. For further insight, please see Government's Brexit website hub.⁴

Expectations of firms

Introduction

Rather than relying upon Government, the JFSC, trade associations, parent or group companies, or others, firms are encouraged to undertake their own No Deal Brexit preparations. As with any risk, the JFSC would expect the possibility for a No Deal Brexit to be monitored by firms and if necessary appropriate contingency arrangements to be considered. Government has worked with Jersey Business and the Jersey Chamber of Commerce to provide general advice for businesses, which financial services firms may find helpful.⁵

No Deal specific

There is an expectation of firms to plan specifically for a No Deal Brexit. At Government level, just as in the UK, Brexit preparations are entirely focussed towards readiness for the possibility of a No Deal Brexit. This means considering the impacts on your business of the UK leaving the EU with no formal arrangements in place. The UK has a central collection of documents on how to prepare for a No Deal, and this might be an excellent starting place for your considerations.⁶ Government has in turn published over 100 technical notices on those topics most relevant to Jersey.⁷

Jersey specific

A core expectation of firms is for you to have Jersey-specific No Deal plans. It is not enough to rely on the analysis of a UK group firm or the UK/EU arm of the business. Jersey, thanks to its constitutional and geographical position, has a unique set of Brexit challenges, and your Brexit contingency plans should reflect this.

Business continuity

There are many business continuity issues that should be considered which are not necessarily financial services specific. Firms should ensure important decision makers are in the right place around the Brexit period. Firms should consider business continuity under circumstances of disrupted travel. Firms should consider supply chains, contractual arrangements and the position of businesses they themselves rely upon and that rely upon them. Firms should consider their

³ <https://www.gov.je/Government/Brexit/Pages/BrexitEUCitizens.aspx>

⁴ <https://www.gov.je/Government/Departments/JerseyWorld/Pages/BrexitandJersey.aspx>

⁵ <https://www.jerseybusiness.je/get-advice/brexit/> - including a Brexit Checklist.

⁶ <https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal>

⁷ <https://www.gov.je/Government/Brexit/Pages/UKTechnicalNoticesResponses.aspx>

particular circumstances and areas where they may be more susceptible to No Deal related disruption.

Bank specific

Both Government and the JFSC have had discussions with the Jersey Bankers Association and individual banks about Brexit readiness. Banks have a position of responsibility within the financial system and need to act accordingly. We have stressed that banks should be prepared for the potential heightened use of consumer services. Banks should check contingencies for payments services provisions. Banks should stay in close contact with their Supervisory contacts at the JFSC during the Brexit period.

Funds specific

Government and the JFSC have discussed Brexit planning with the Jersey Funds Association. The funds industry will in some respects be unaffected by Brexit by virtue of many structures having no nexus with the EU. However, the industry is still expected to properly plan for a No Deal Brexit and give consideration to the impacts on third parties, particularly those with a UK or EU element. The JFSC is updating its MOU with the FCA concerning cooperation and the exchange of information in the alternative investment funds industry.

Trusts and company business (TCB) and Investment Business (IB) specific

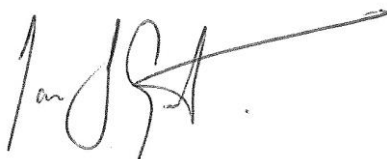
Many firms in the TCB and IB industry operate multi-jurisdictional businesses, with members of the group sitting in the UK or the EU, or at the very least with clients in those jurisdictions. TCBs and IBs need to consider the impact of a No Deal Brexit on their relations with such parties. Although true of much of Jersey's financial services business, TCBs and IBs in particular rely heavily on transport and travel links in order to conduct business as usual. Firms should closely inspect travel contingency plans.

Where firms have responsibility for customer assets or investments that may be impacted by a No Deal Brexit, it is expected that such firms will have developed appropriate approaches to mitigate risks and to communicate with customers who may be experiencing additional concern due to the present state of uncertainty.

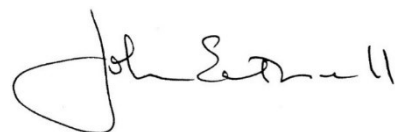
Conclusion

Hopefully this letter acts as a useful signpost for your Brexit preparations and outlines the work undertaken to date by the Government and the JFSC. If you would like to discuss any of these issues further, please contact either Tom Wherry, Lead Policy Adviser for Financial Services and Brexit at Government (t.wherry@gov.je) or your usual Supervisory contacts at the JFSC.

Yours faithfully



Senator Ian Gorst
Minister for External Relations and Financial Services



Lord Eatwell of Stratton St Margaret
Chairman, JFSC