

## Banks, Insurers Eye The Door As UK Reaches Brexit Deadlock

By William Shaw

*Law360, London (January 16, 2019, 2:33 PM GMT)* -- Britain's financial services have lost patience with the stalled political process and are transferring assets out of the U.K. regardless of what kind of Brexit deal, if any, the government seals with the European Union, their legal advisers said Wednesday.

Banks, insurers and other businesses with cross-border exposure have been asking for more than two years for details on how to adjust their business and trade models to fit Britain's new relationship with the EU after March 29.

But Parliament overwhelmingly rejected, by 432 votes to 202, Prime Minister Theresa May's withdrawal agreement with the EU on Tuesday. Now businesses are accelerating plans to avoid a legal and regulatory limbo if Britain leaves without a deal in 72 days time, lawyers say.

“Due to the vote, clients will continue to spend time, money and resources in contingency planning, rather than developing their businesses,” Daniel Shurman, financial partner at Allen & Overy LLP, said. “All businesses can do is continue to implement their hard Brexit contingency plans to ensure they are prepared for any outcome.”

May was handed a crushing defeat on Tuesday by MPs, including nearly 120 from her own Conservative party. Lawmakers rejected her compromise plans that they believe would tie Britain to the EU for years yet offer it no say in how rules in Brussels are made.

Corporate Britain is now facing “an unparalleled situation of unrivaled complexity,” said Robert Weekes, managing partner of Crowell & Moring LLP’s London office. “It is essential that politicians from across the political spectrum work together as never before to address this crisis.”

The lawmakers' rebellion against May's proposals was a blow for financial services, which had cautiously backed the deal because it included a transitional period until the end of 2020 that kept all regulations



With the U.K. Parliament overwhelmingly rejecting Prime Minister Theresa May's withdrawal agreement with the European Union, corporate Britain is facing "an unparalleled situation of unrivaled complexity," said Robert Weekes, managing partner of Crowell & Moring LLP's London office. (AP)

in place. The package would also have enabled the EU to grant equivalence decisions to help banks and businesses continue trading with the bloc.

Britain must now hurry to introduce key Brexit legislation designed to keep financial markets functioning if there is a cliff-edge Brexit. This will entail transferring supervisory roles traditionally handled by EU regulators to Britain's Prudential Regulation Authority and the Financial Conduct Authority.

As the clocks ticks down to March, Parliament will also have to pass new laws on scores of other legislative changes that will be hit by Britain's departure from the EU, from trade and immigration to security and agriculture.

And pressure is mounting for the government to push back the date of Britain's divorce from the bloc. This would mean extending the two-year countdown triggered by the prime minister in March 2017, and some believe the best solution could be to kick Brexit into the long grass.

“Even at this late stage there is still a lot of legislation that will need to be passed, including amendments to EU law that is being retained by the U.K.,” said Lucy Fergusson, a financial partner at Linklaters. “Without an extension of the Article 50 we are running out of time.”

Bank of England Governor Mark Carney helped fuel these expectations on Wednesday when he told MPs that sterling had risen after the vote because financial markets now anticipate a delay to Brexit.

The U.K. government had been working before this week's setback to prevent Britain from dropping out of the EU's free trade agreements, according to Lorand Bartels, senior counsel at Linklaters. But it has succeeded in signing a transitional trade agreement with just one country, Switzerland. The U.K. government announced the continuity agreement in December.

“The resulting uncertainty means that companies should check their supply chains to make sure they are not exposed,” Bartels said. “The same goes for their customers, whose products might no longer qualify as ‘EU’ products under the EU's free trade agreements if they contain too much U.K. content.”

The Bank of England has similar concerns, and warned in June that legal continuity is vital for £29 trillion (\$37.3 trillion) in cross-border derivatives contracts after Britain leaves the bloc. Millions of cross-border insurance contracts could also be thrown into legal uncertainty in a disorderly exit without a transition arrangement.

London's banks have made the firmest preparations as a hard Brexit looms, followed closely by the insurance industry, said Rob Aird, partner at Ashurst LLP.

“People are taking things into their own hands,” Aird said. “Clients are saying, ‘we’re not going to wait for the government, which seems to be in some kind of paralysis, to say what that deal should look like.’”

U.S. banking giants Goldman Sachs Inc. and JPMorgan Chase & Co. are moving staff to Frankfurt, while Lloyd's of London has set up a European hub in Brussels.

American International Group, another insurance giant, is among those that have picked Luxembourg as a new base. Asset managers, meanwhile, recognize that they are more flexible, because they do not have large infrastructure that they need to transfer into the EU.

Legal experts say the momentum is unlikely to be reversed by a last-minute deal. If Britain secures parliamentary approval and gets a transitional arrangement, businesses are likely to use this opportunity to transfer some services into Europe, rather than remaining in London.

“They consider the latest issues in Parliament as a sideshow, but they are pressing ahead with their plans because [Brexit on March 29] is the only current certainty they have,” Aird said.

Meanwhile more financial services lawyers in London are also likely to register with the Irish Bar to make sure they can continue to handle European business, said Seamus Hoar, partner with legal recruiting company Major, Lindsey & Africa. Ireland will remain in Europe, providing a stepping stone into the EU market.

Lawyers “are trying to be able to provide agile advice whatever the circumstances are,” Hoar said. “It’s affecting the entirety of the legal market in London to a greater or lesser extent,” he said of Brexit.

--Additional reporting by Joanne Faulkner. Editing by Ed Harris.