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Navigating Brexit: What Funds Should Look Out for as the Dust Begins to Settle

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As a result of Brexit, UK-regulated firms will already have grappled with loss of passporting and equivalence measures, and the need to navigate national regimes and relocate staff. As of today, EU firms operating in the UK have a temporary permissions regime with the UK having set out its approach to equivalence, but this remains a one-way street and the EU has made it clear that it will decide its own approach in its own time. 2021 will begin to reveal the full extent of market fragmentation and the resulting impact on liquidity. As of 2021, EU law no longer applies in the UK (save for where elements of it have been expressly incorporated into national law). We can therefore expect divergence in approaches between the EU and the UK in terms of legislation and regulation, especially as the EU's Market Abuse Regulation (MAR) and Market in Financial Instruments Directive (MiFID II) will be updated over the next few years. Funds can therefore expect the regulatory burden to increase.

Even more fundamentally, the basic EU-wide frameworks for the recognition of choice of courts clauses and judgments, and for service of court documents, no longer apply in the UK, such that funds operating in or interacting with UK entities will need to change approaches when contracting to ensure the most efficient and effective dispute resolution forum, and may even consider revising choices in existing contracts. EU jurisdictions will look to seize a greater share, not just of markets and capital, but also of disputes, with an increasing number of English language commercial courts advertising their services. Arbitration is also likely to become more popular, as unlike national court judgments, the framework for cross-border enforceability of arbitral awards is unaffected by Brexit and EU law. The 1958 New York Convention boasts 166 country signatories, including all EU countries and the UK. We have already seem firms increasingly turning to international arbitration for cross border disputes, attracted by the ability to keep disputes private and confidential, the neutrality of the forum, the finality of decisions and – now more than ever – their international enforceability.

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