

ABI Submission - Financial Services Bill Public Bill Committee

Introduction

We welcome the opportunity to submit evidence to the Public Bill Committee on the Financial Services Bill. The end of the transition period and the departure from the EU provide an opportunity for the UK to review the Financial Services regulatory framework to ensure it is fit for purpose. The ABI welcome the Government's ambitions for the Financial Services Bill to re-establish the UK's position as a global leader and ensure competitiveness post-Brexit. It is important that the Government seize the opportunities presented by the UK's withdrawal from the EU and develop a regulatory framework that meets the needs of industry, consumers and is able to be agile in responding to market changes.

The measures in the Bill aim to ensure market access for Gibraltar based firms, implement the Overseas Fund Regimes and onshore the PRIIPs regulation. They are all welcome measures that will ensure markets work effectively once the transition period ends.

We also welcome the Government's commitment to the work of the international standard-setting bodies, such as the Basel Committee for Banking Supervision (BCBS) and the International Association of Insurance Supervisors (IAIS). Without the work of these bodies, it is likely that the regulation of financial services would fragment along national lines, leading to inefficient use of capital. However, the international regime for insurance (the Insurance Capital Standard of the IAIS) is much less well developed than those for banking and the financial markets. It would be unwise for the UK to place too much reliance now on a regime that will only be implemented in 2025. We also have reservations in principle about the setting of retail conduct rules at international level. Consumers' expectations and preferences vary hugely, and retail conduct rules should be set with the needs of local consumers in mind.

Future of Financial Services

The ABI welcomed the statement on the Future of Financial Services from the Chancellor of the Exchequer on Monday 9 November. The statement made important announcements on the Government's equivalence decisions as well as on the TCFD framework and set up of the Government's first Green Bond in 2021. The industry has also strongly welcomed HM Treasury's Future Regulatory Framework Review and Solvency II Review. Alongside the Financial Services Bill, the Reviews are crucial in ensuring regulations are fit for purpose for UK based firms as well as realising opportunities for insurers to invest in green assets and the economic recovery, through Solvency II matching adjustment reform.

While the legislation and the detail of the future regulatory framework are important, it is vital that there is a robust system for political accountability established between Government, Parliament, the regulators and the industry post Brexit. Both Government and regulators will have significantly more control over our regulatory future and Parliament has a pivotal role to play in providing scrutiny. We look forward to working with Government and Parliamentarians on these reviews, which will be key to ensuring competitiveness, and making financial services regulations work effectively and appropriately for the UK context.

Clauses 8-19 Benchmarks (LIBOR Transition)

- The transition away from LIBOR is a complicated process for financial services firms with legacy contracts that reference LIBOR which may have been written decades ago. These contracts could be at risk of frustration in the event of LIBOR cessation. Cessation could result in widespread legal

disputes between parties to these contracts, including where a party is dissatisfied with the operation of an inappropriate fallback.

- We welcome amendments to the Bill that provide the FCA with additional powers to compel the submissions of critical benchmarks. This would provide for LIBOR's availability for tough legacy contracts exempted from the prohibition on its use for a longer period.
- LIBOR currently serves as the underlying benchmark used in the insurance prudential regime Solvency II. This means that the more insurers currently do to transition away from LIBOR-referencing instruments in line with regulatory expectations, the greater the amount of capital they need to hold. This acts as a barrier and disincentive to transition for insurance firms. The ABI therefore supports the Solvency II regime being reformed as soon as possible in 2021 to reflect SONIA, the Bank of England's chosen benchmark, rather than LIBOR to hasten and further enable transition efforts.

Clauses 22 & 23 – Gibraltar Market Access Arrangements

Currently firms based in Gibraltar service a large retail consumer base in the UK, particularly in the insurance sector, where more than 20% of motor insurance policies in the UK are written by Gibraltar-based insurers. It is therefore vital that market access arrangements are put in place in order to allow these firms to continue to service their customers once the transition period ends.

The Financial Services Bill sets out the Gibraltar Authorisation Regime (GAR), which cements a legal framework to ensure that Gibraltar financial services firms can continue access the UK market. The Bill also establishes a regulatory and supervisory arrangement to support this framework.

- The GAR will allow certain Gibraltar-based financial services firms to access the UK markets as "authorised persons" under the Financial Services and Markets Act 2000.
- HM Treasury will specify the UK regulated activities for which market access is available, and the corresponding activities in Gibraltar's law that a firm be authorised to carry on by the Gibraltar regulator, the Gibraltar Financial Services Commission (GFSC).
- However, as is already the case currently, the UK regulators have certain powers available, for example, to protect UK consumers and/or the UK's financial stability if concerns arise in respect of an incoming Gibraltar-based firm.

We welcome that Government will work with the FCA to ensure that, once the GAR comes into force, individuals and eligible small businesses using financial services sold in the UK by Gibraltar-based firms can refer disputes to the UK Financial Ombudsman Service (FOS).

The ABI and our members welcome the continuation of market access arrangements for Gibraltar. We believe this framework is necessary in order to continue to provide products and ensure protections are in place for consumers.

Clauses 24 & 25 – Overseas Funds Regime

- The ABI supports the measures in the Bill regarding the Overseas Fund Regime, which ensure UK investors will continue to have access to a large selection of funds, domiciled in Europe, after the implementation period is over. Funds domiciled overseas remain popular with UK customers and providers alike and these customers should not have their options limited.
- However, we do have certain reservations about the use of such equivalence as a political tool. It is a formal mechanism that is not used by any jurisdiction other than the EU and a less rigid approach would minimise the temptation of regulators or politicians to take action against a foreign jurisdiction in terms of 'negotiating' advantage – especially when the cost is borne by companies and consumers. In the EU, the equivalence process has occasionally been used as a political weapon to wield against third countries. It is vital that this does not happen in the UK. UK investors, retail investment firms and fund manufacturers need long-term certainty and the ABI is encouraged by the flexible process set out by HM Treasury for this regime.
- While the regime states that investors can stay invested in funds if equivalence has been withdrawn, they do not spell out the practicalities of the situation an existing investor may face if a fund they are invested in has been suspended, for example if additional money is invested after a fund suspension. For the regime to fully work for consumers, situations such as this need to be clarified.

Clause 31 – Money Laundering

- We welcome measures to clamp down on money laundering included in the Bill. However, we would caution that it is vital that the Government adopts a proportionate interpretation of ‘business relationship’, in order to maintain the competitiveness of the UK as a leading financial services sector. There could be perverse outcomes where, for example, UK rules required registration of certain express trusts and other EU countries did not, having come to differing conclusions.
- This would fundamentally place the UK at a competitive disadvantage to other EU countries as where there was a choice of location the one with the lesser compliance burden would become more attractive. The implementation of the Fourth Money Laundering Directive has shown that typically the UK has implemented stronger rules more quickly than many other EU members.

Clause 34 – PRIIPs Regulation Amendment

- The Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation has not delivered on its aims to help investors to understand and compare the different investment options. In fact it has had the opposite effect, as widely accepted even by the regulator. The current functioning of the PRIIPs Regulation is unhelpful and misleading, with the methodology for calculating performance scenarios resulting in overly optimistic projected growth figures, which are materially different from providers’ own reasonable expectations of future investment potential.
- The measures in the Bill will improve the functioning of the PRIIPs Regulation, giving the FCA powers to amend the PRIIPs regulations and remove this reference to performance scenarios. Onshoring the regulations will allow the FCA to correct the current flawed performance scenarios and to develop a methodology that is more accurate and works for the UK market, or rely on providers own expectations for investment potential. It is important that the FCA is given these powers to make amendments through this Bill and that they subsequently take urgent action to correct the current situation. We will be working with the FCA to ensure that the amendments work for the UK insurance market and that they can empower investors to better compare different investment options.

About the Association of British Insurers

The Association of British Insurers is the voice of the UK’s world-leading insurance and long-term savings industry. A productive and inclusive sector, our industry supports towns and cities across Britain in building back a balanced and innovative economy, employing over 300,000 individuals in high-skilled, lifelong careers, two-thirds of which are outside of London. The industry has a crucial role to play in the economic recovery from COVID-19, continuing to provide a vital final safety net for customers, providing high quality jobs and as large scale investors in infrastructure and green assets, as we look to decarbonise the economy.

The UK insurance industry manages investments of over £1.7 trillion, pays nearly £12bn in taxes to the Government and supports communities across the UK by enabling trade, risk-taking, investment and innovation. We are also a global success story, the largest in Europe and the fourth largest in the world.

The ABI represents over 200 member companies, including most household names and specialist providers, giving peace of mind to customers across the UK.

Association of British Insurers
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