



BLACK SWAN CAPITAL

BETTER FINANCIAL FUTURES – BY DESIGN

How to manage your EU based clients after Brexit

By Black Swan Capital Europe in association with The Timebank



The Timebank

From January 2021 passporting will cease irrespective of whether the UK leaves with a deal or we see a no-deal Brexit.

That means UK based financial advisers and planners will no longer be able to advise clients who live in the EU.

If you and your clients are affected, this guide will explain your options.

Please note: This guide is intended for regulated financial advisers and planners only, not consumers and/or investors.



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About Black Swan Capital Europe

Black Swan Capital is an award-winning, truly independent financial planning and investment advisory firm dedicated to delivering investment advice for the unique needs of expats and internationals living in Europe.

Black Swan Capital holds a full independent investment firm licence from the Dutch regulator, the AFM, with passporting across all continental EEA markets. Our head office is in Amsterdam.

We are the first firm in Europe that specialises in helping expats and internationals to have a fully independent investment firm licence giving us a clear fiduciary responsibility to our clients.

Black Swan Capital is also independently owned with no ownership by any financial institution.

Our management has extensive global financial services experience and track record of looking after clients and guiding their financial lives. We are driven by our client service ethic above all else, building long-term ongoing partnerships with our clients.

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About the Timebank

As the most established outsource Paraplanning business in the UK, The Timebank is the go-to support services for advisers and planners.

The responsibilities that The Timebank take on for their clients includes processing LOAs, data harvesting existing policy details, acting as a critical friend and sounding board to advisers, producing reports, TVC calculations, periodical suitability reports and reviews and suitability letters, conducting research and due diligence, helping complete compliance functions and producing centralised investment proposition documentation.

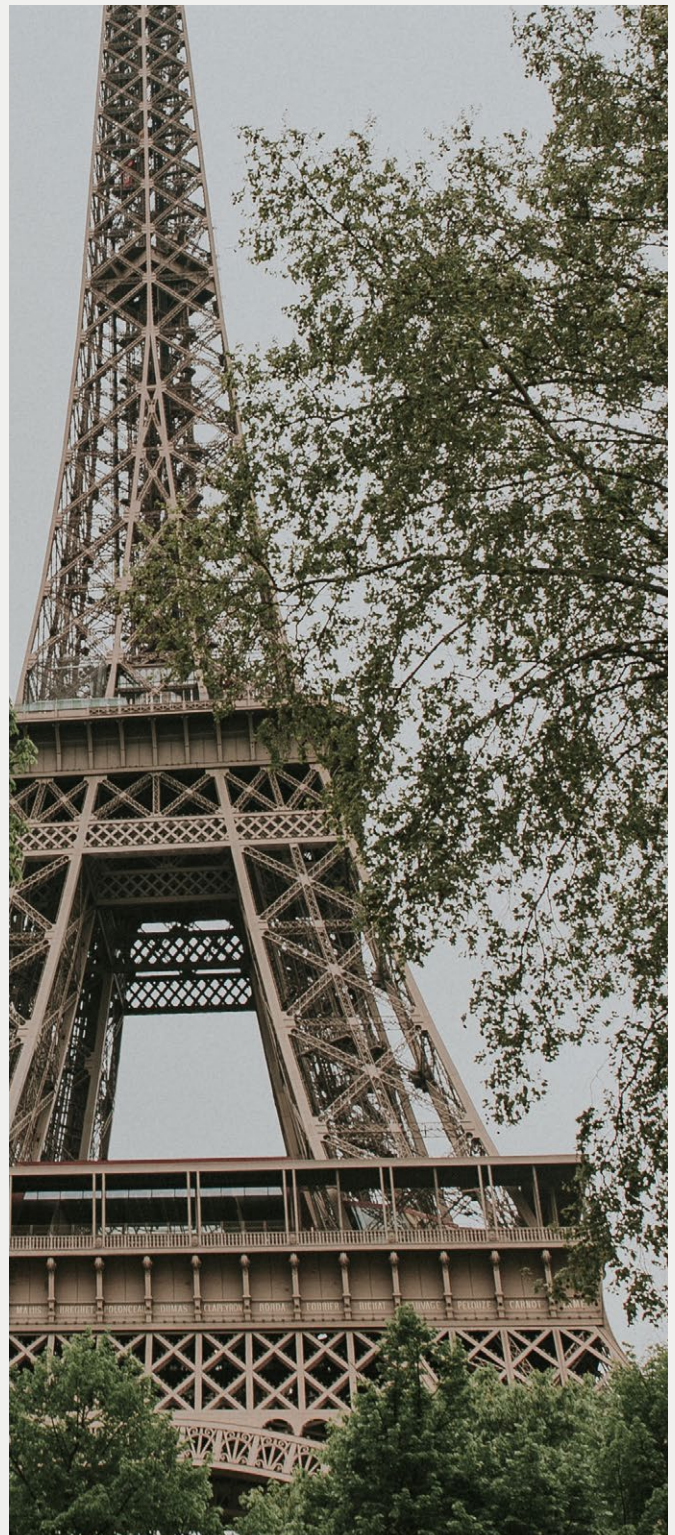
In short, any task that frees advisers up to spend more time with their clients.

The team at The Timebank include support staff qualified up to level 4 and Paraplanners qualified between level 4 and level 6.

Advisers can engage with The Timebank on a bespoke basis, meaning the right service is available for every firm.

The Timebank helps advisers and planners spend more time with clients by selling the most valuable of commodities – TIME.

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Current Situation

The United Kingdom has left the EU. We are now in a transition period and, at the time of writing, in the final negotiation stages to determine whether the UK will have an exit transition agreement or will proceed with a no-deal exit.

The implications of the exit and the risks of a no-deal exit are already being felt. Many UK citizens resident in the EU are being told by their UK banks that they must close their UK accounts and cancel their credit cards. This is in anticipation that, from 1 January 2021, there will be no passporting of UK FCA licences to the EU markets.

This is particularly relevant to **all UK financial planning and advice firms** which have **connections to the EU** because they have passported their licence to one or more of the markets in Europe opportunistically, practically to manage clients that have moved, or strategically to grow their business.

From January 2021 passporting will cease irrespective of whether the UK leaves with a deal or we see a no-deal Brexit.

That means all UK advisers will have to decide how they will manage their clients in Europe.

The three ways UK firms currently manage EU domiciled clients or clients with EU assets up to 31 December 2020: ■

1. By passporting your UK FCA (Financial Conduct Authority) licence to some or all EEA markets to compliantly manage your clients' assets.

In this structure, firms have passported their FCA licence to EEA markets to provide advice and manage their clients. Some firms have extended the passporting to a branch model where they have local branch offices in key locations in Europe. Most firms have passported their licence under the single market provisions without a physical presence or branch office. This has allowed them to continue to manage their clients in Europe compliantly.

2. You have an agreement with a strategic partner in the EEA to manage your clients' international assets for which you may or may not receive a fee or other remuneration.

This step down from passporting is a strategic agreement that allows you to provide coordinated and joined-up advice for your clients that have assets both in the UK and Europe.

3. You do nothing and let your clients find their own solution

The 'do nothing' solution is perfectly viable for some businesses and, from a compliance perspective, it allows the client, domiciled in Europe, to find the most appropriate local advice for them.

What do you have to change from 1 January 2021? ■

If you are following paths two or three above, the 31 December 2020 date will have little to no impact on your business or your clients. In most instances, you will not have to make any changes.

If you are passporting your licence to EEA markets, your right to do this will cease from 1 January 2021.

You then have three options:

1. Stop managing your clients and their assets in the EU
2. Obtain your own separate MiFID compliant EU licence
3. Partner with an appropriate EU based firm. American clients.

We consider each of these three paths in more detail below:

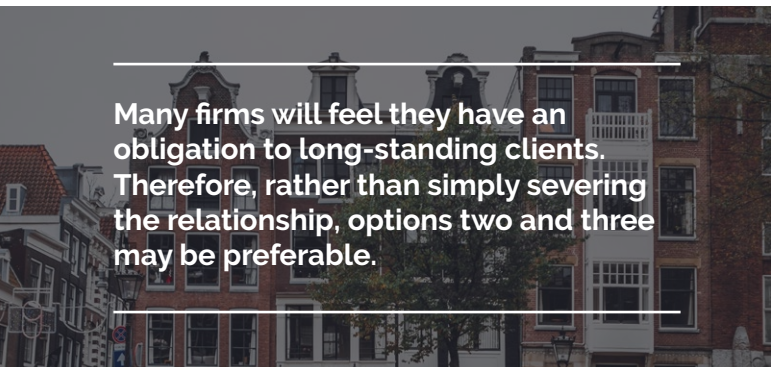
1. Cease supporting your EU clients and their assets ■

Under this option, your firm will no longer provide support to your clients based in Europe. You will have to inform your clients that you can no longer provide financial planning, ad-vice.

Consequently, you will not be able to receive ongoing revenue or charge fees to these clients.

This is a clean and simple option. However, it breaks your ongoing relationship and may run contrary to the client service proposition that you have built your business around.

It also offers you a zero return on investment on the business you have built up.



Many firms will feel they have an obligation to long-standing clients. Therefore, rather than simply severing the relationship, options two and three may be preferable.



2. Apply for a separate EEA licence in an appropriate reputable jurisdiction ■

Taking the path of obtaining an EEA investment firm licence sits at the opposite end of the scale to option one. This is a feasible option if you are committed to the European market. It will take some commitment, time, and money, but is potentially an effective long-term solution.

You will need to consider several factors:

- **Company formation and jurisdiction:** The choice of jurisdiction for the licence and the office will be important considerations. You will need to weigh up where your clients are located plus the trade-off between the perceived ease of obtaining a licence from a particular regulator, versus the relative perceived reputation of that jurisdiction.
- **Office:** You will be required to establish and maintain a physical presence, to act as your local office. As a minimum that will need to be a serviced or virtual office and registered address.
- **Company formation:** Furthermore, you need to consider the specific requirements for company formation in the chosen country. For example, some countries allow a new company to be formed with €1 of capital, others require €30,000 or more.



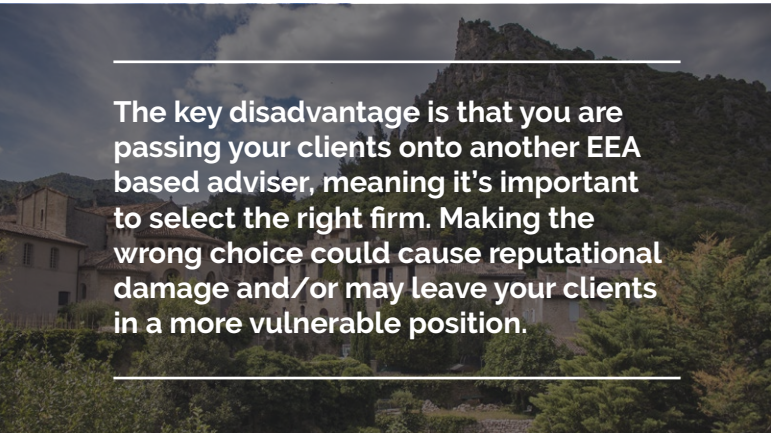
- **Tax:** You will have some tax obligations in the country where you choose to be based. It's important to take expert advice about your EEA tax obligations and understand how these interact with those in the UK.
- **Local directors:** You may also be required to have resident directors so that you can form your company and meet regulatory requirements. That means, in most cases, you cannot just have directors or regulatory-appointed responsible officers based in the UK.
- **Staff:** You will be required to have locally based staff including advisers that will fall under the regulator's supervision to demonstrate that the core regulatory functions are being addressed in the market.
- **Capital adequacy:** If you obtain an EEA licence, you will also need separate capital adequacy, typically starting from €50,000.
- **Licence application cost:** There is a cost for the licence application that needs to be factored into the decision-making process.
- **Other costs:** There are functional considerations including the requirements to spend on infrastructure, compliance support, legal, accounting, and auditing services.
- **Communications:** Language is a key issue that cannot be ignored as you will likely be corresponding with a regulator and local services including tax office in a language other than English.
- **Timing:** expect it to take six to nine months from preparing for a licence to a licence being granted.

3. Partner with an EU based firm to share client management ■

The third option is to partner with an existing EU regulated advisory firm to ensure the ongoing management and service of your EU based clients in a compliant manner.

The advantages of this option include:

- Your clients will continue to receive the planning and advice they need without interruption
- It requires considerably less effort, cost, and time than obtaining your own licence and may permit you to continue to receive some revenue



The key disadvantage is that you are passing your clients onto another EEA based adviser, meaning it's important to select the right firm. Making the wrong choice could cause reputational damage and/or may leave your clients in a more vulnerable position.

This is an important decision, and you should consider:

- **The type of licence held by the EU based firm:** Is it restricted or independent? Is it an investment or an insurance licence? These are fundamental questions which will drive several of the subsequent questions below.
- **Client service proposition:** Do your client service propositions align? This is a core question that will help you understand the fit between your firm and the business in the EU. It has implications for your reputation with your clients, in the industry, and across the community. How you are perceived will be influenced by who you partner with.
- **In which country is their licence obtained?** What is the reputation of that country and how do its standards compare to others in Europe and those in the UK?
- **Availability:** Which markets in Europe are they passported into? Do they operate in the markets where your clients live?
- **Type of services provided by the firm:** Are they comprehensive financial planners? Do they deliver ongoing service to their clients? Is it a defined and documented proposition?
- **What investment solutions do they use?** Check where their existing clients' investments are placed and via which custodial structures. Are there exit fees or other lock-ins? Do they have a documented process for approving investments, platforms, and other structures?
- **Knowledge:** What are the qualifications and experience of directors and advisers within their business?
- **Compliance:** Do they have a clean record with their and other regulators? Is there a record of complaints or fines?
- **Remuneration:** How can you be remunerated? In most instances, you will want to receive a remuneration from the arrangement. What does this look like? What are the obligations of all parties? You will need to make sure that whatever structure you agree upon is allowed both by the regulations in the market they are based as well as the UK. For example, if the relationship is considered an introducer relationship, it is not allowed, under EU law, to receive a payment that is a percentage of revenue earned on the referral. Therefore, the nature of the agreement is important as is the remuneration structure.
- **Service:** What type of service will your clients receive? Will it be comparable to the service you previously delivered?
- **Alignment:** Do your existing client profiles align? Is the partner you are considering used to working with the types of clients you might refer to them?



Risks to you and your clients:

We mentioned the reputational risk above. This is one of the most important risks you face if you select a partner firm that does not adhere to the same standards as your firm.

That risk could spread back to the UK too, if clients who have moved to your EEA partner report issues back to your UK clients. Clients also face risks. There is a risk their new adviser will not have the same expertise, or that they may exhibit a lower duty of care. It is important to check that the chosen company can maintain client best interest in their actions.

This extends to making sure they can deliver an ongoing client service.

Depending on the jurisdiction in which the partner firm is licensed, they may still be able

to receive commissions. Commissions are not bad per se, however, if they are undisclosed or difficult to understand in relation to costs of an investment structure, it could mean clients are placed into higher cost structures. Ideally, it will be preferable to look for a partner firm that is licensed in a market where commissions are banned and where a transparent fee for service solution is offered.

Linked to this risk for clients is a potential loss of liquidity. It's one of the principles we maintain is most important for expatriate clients. As we have seen over many years, as client circumstances change, they need the option to access their investments without restriction or exit or penalty charges.

Summary ■

You will need to decide in the coming weeks and months.

We, at Black Swan Capital (Europe), are very well placed to partner and coordinate with UK firms that will no longer be able to manage their EU based clients.

Likewise, The Timebank can offer guidance and assistance to UK firms who face some difficult choices.

We have a full independent investment firm licence from the Dutch regulator (the AFM), probably the highest standard in Europe, and are overseen by the Dutch central bank, the DNB. We are passported to all 27 EEA markets in Europe.





We established Black Swan Capital Europe because we felt international professionals in Europe - anyone living outside their home country - deserved a better deal.



We offer a fee for comprehensive financial planning especially for expats and internationals in Europe. Our directors have decades of experience.

Contact us to learn more about how we can help you make the right choice and ensure your clients in Europe continue to receive the same high standard of service that you have previously provided.



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