

Stakeholders' Newsletter

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Update on Brexit-related Statutory Instruments ("SIs")

The FMLC has drafted a paper examining the legal uncertainties arising from the changes proposed by the [draft Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#).

[\(Read / download the paper here\)](#)

If you or a colleague would like to be involved in the FMLC's review of these SIs—or indeed express your prospective interest in volunteering to join our review of any of the usual dossiers (collateral, clearing, credit ratings, etc.), please do contact Venessa Parekh at: research@fmlc.org.

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FMLC Paper on the U.K. Data Protection Act ("DPA 2018")

Rapid and substantial developments in technology and the way organisations collect, store and use data have resulted in a series of efforts in the E.U. to modernise and harmonise the current legal and regulatory framework for the protection of rights of data subjects. The E.U.'s new General Data Protection Regulation and the U.K.'s Data Protection Act 2018 are representative of such efforts.

Given the importance of the continuing international flow of data to businesses and authorities, this paper focuses on issues of legal uncertainty potentially hindering the continuation of the lawful flow of personal data between the U.K., the European Economic Area and/or Third Countries following Brexit. The FMLC also examines the framework and mechanics for supervision and enforcement of the data protection regimes post-Brexit. This is of particular importance as the day-to-day operations of many businesses rely on the free movement of data to and from the U.K. under certain processing arrangements. The paper outlines the ways in which these arrangements will be significantly impacted by Brexit and touches on the capacity of legal uncertainty to undermine risk management, the adequate pricing of financial products, operational continuity and the prevention of fraud. The FMLC also proposes solutions and/or mitigants to these uncertainties. [\(Read / download the paper here\)](#)

FMLC Letter on the Proposal for a New National Security and Investment Regime

On 24 July 2018, the U.K. Department for Business, Energy & Industrial Strategy published a White Paper setting out the proposal for a new national security and investment regime (the "**Proposed Regime**"). This will be a component of HM Government's plan to reform its powers to protect national security and guard against hostile actors' acquisition of control over entities or assets. The White Paper sets out circumstances in which a loan relationship and/or an associated enforcement of collateral might lead to concerns that a lender, who is hostile to the UK, might gain "significant influence or control" over one or more obligors or one or more assets of national security interest.

The FMLC submitted a response to the consultation, highlighting the complexities in the financial markets on which additional clarification would be helpful, such as the positions of multiple lenders in syndicated loans or the impact of unwinding a transaction on third-party sellers. The FMLC also observes that, as and when HM Government responds to comments on the White Paper or publishes the Bill, the FMLC may have further remarks to offer. [\(Read / download the letter here\)](#)

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