

# Brexit – related reorganisations and transitions

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# Introduction

- As a result of Brexit:
  - EU banks/other regulated entities passporting into the UK will likely need to separate out UK business into a UK entity
  - UK and other banks/other regulated entities using their FCA/PRA regulated status to passport into the EU from UK headquarters will need to set up an entity registered in an EU-27 state, and transfer into it the relevant business

# Overview

- Three key options
  - Business Transfers
  - Statutory Transfers (under Part VII of FSMA)
  - Cross Border Mergers

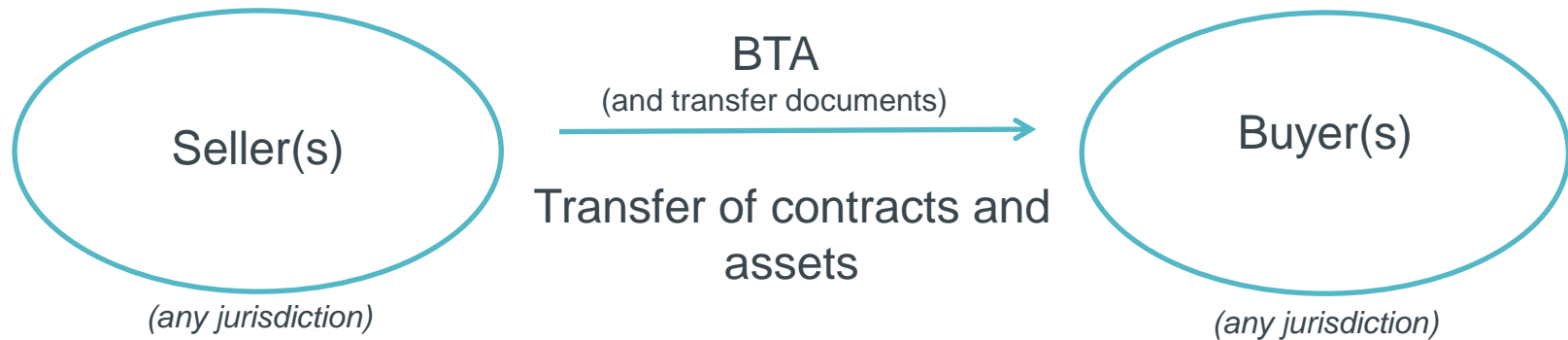
# Options: Business Transfer

- Can be used to transfer all or part of a business in any jurisdiction or jurisdictions
- Business Transfer Agreement (BTA) (plus local law contracts?)
- Due diligence
- Perfection of transfer of individual assets and liabilities, and contracts/rights:
  - specific formalities e.g. transfer of land in writing, assignments of leases requiring landlord consent

# Options: Business Transfer (cont.)

- Perfection of transfer of individual assets and liabilities, and contracts/rights:
  - contract transfers
    - consent needed?
    - benefit vs burden
    - novation / novation by conduct
    - timing / number of counterparties
    - customers likely to withhold consent or renegotiate?
  
- Employees – in Europe, automatically transfer with the business (UK – TUPE)

# Business transfer structure



# Business transfers – pros and cons

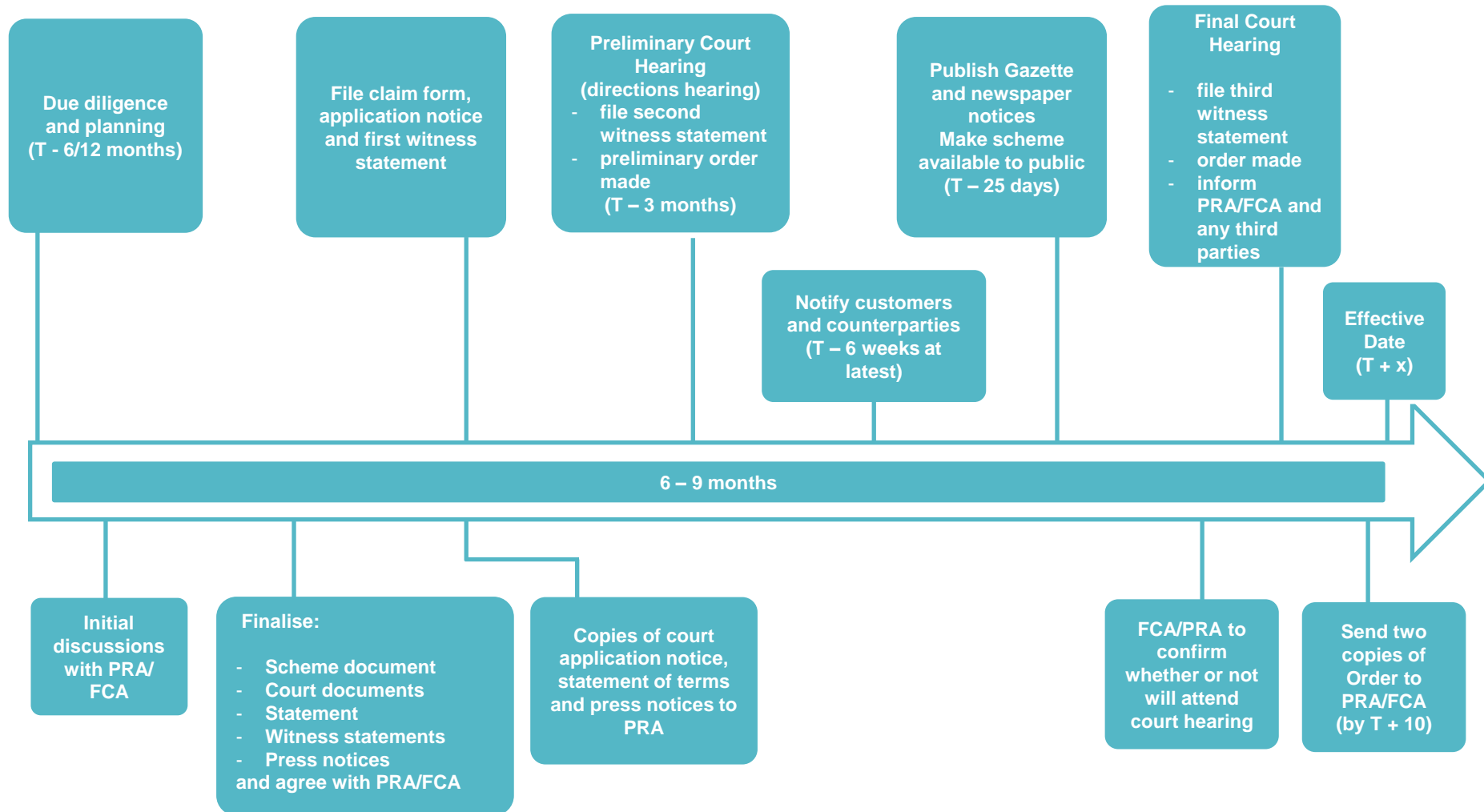
- Pros:
  - only the assets and liabilities selected will transfer (unlike share sale)
  - private process (in most jurisdictions)
  - can (but does not have to) involve more than one jurisdiction
  
- Cons: no universal succession – each asset needs to be dealt with separately

# Options: Statutory transfers under Part VII of FSMA

- Types:
  - banking business transfers – must include deposit taking
  - banking reforms – “ring-fencing” transfer schemes
  - insurance business transfer schemes
  
- Timing:
  - 6-9 months for straightforward transfers
  - 12+ months for more complex schemes
  
- Pros:
  - transfer by operation of law – no need for individual consents
  - scope to transfer other assets / business
  
- Cons:
  - complexity: publicity, regulatory support and Court approval
  - possibility of objections by persons “adversely affected”
  - not generally enforceable in overseas jurisdictions



# Part VII banking business transfer – indicative timetable



## Options: Cross-border merger

- Can be used to merger two or more entities incorporated in different EEA States  
*NB – EasyNet case – shells/dormant entities*
- Assets / liabilities / contracts etc transfer by operation of law
  - due diligence
  - post-transaction notifications and updating of public registers
  - permits do not transfer
- Any non-transferring assets must first be removed
- Employees – automatically transfer

## Options: Cross-border merger (cont.)

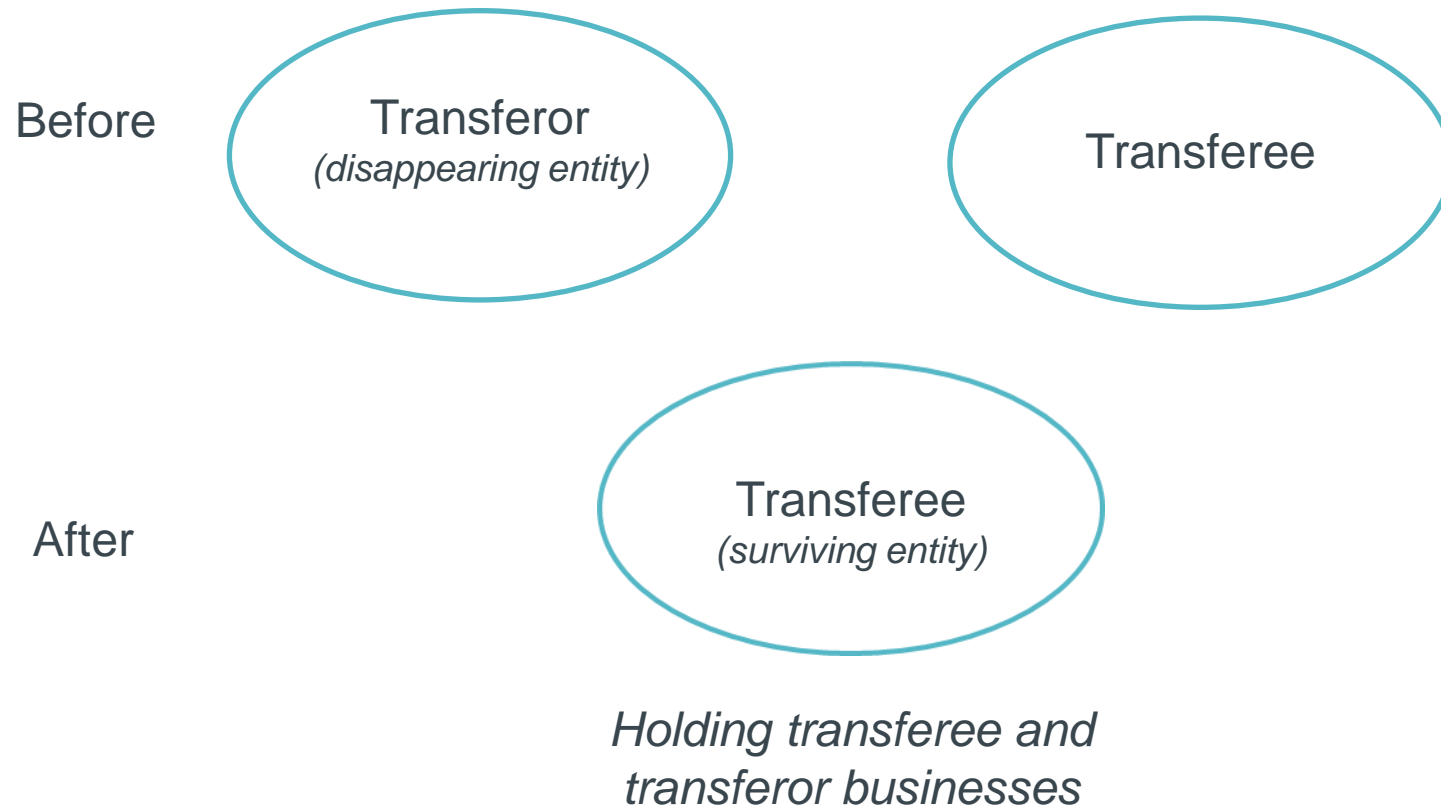
- Court/notarial process with set timelines and formalities
  - merger plan and explanatory statement
  - display of documents
  - employee consultations
  - shareholder approval
  - court/notarial final approval
  - transferee entity struck-off automatically

*NB – branch transfers require new branches to be set up (transferee entity)*

# Options: Cross-border merger – key stages

- First court hearing
- Merger Plan and Merger Report sent to employees and shareholders
- 2 months - Merger Plan and Merger Report available for inspection
- 1 month - Shareholder resolutions
- Second court hearing
- Issue of pre-merger certificates
- 6 month window from pre-merger certificates – final approval
- 7 days – striking off

# Cross border merger structure



# Cross border mergers – pros and cons

- Pros:
  - universal succession
  - certain process
- Cons:
  - at least two (real) EU member state entities required
  - court / notarial process – complicated, public
  - doesn't work to transfer contractual rights and obligations in all cases

# What now? Practical next steps

## How do we get from A (now) to B (Brexit)

- Selection of a transfer option
  - Due diligence
  - Complexity
  - Tax
  - Regulatory
  - Costs, timing, resourcing
  - Proportion of business needing to transfer
  - Contracts and ease of transfer
  
- Implementation of chosen option

# QUESTIONS





# Your speakers



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