

Client Alert

Business Litigation Practice Group

June 24, 2016

The Brexit

The result of yesterday's vote of the UK electorate is in favour of the UK leaving the European Union.

This is merely the first step in a very long road (up to two years) which begins with the UK serving notice of its intention to cease membership. This begins the withdrawal process which will then see the UK spending the notice period negotiating the terms of withdrawal with the EU. At the same time, the UK will negotiate the terms of any new agreements with third parties and other countries.

What we have seen today and will continue to see for the immediate future is a very volatile financial market and so much of the immediate focus will centre on the European financial markets and the impact on the pound against world currencies. If your business is exposed to currencies and interest rates, you will want to take urgent financial advice on hedging strategies.

Your other immediate priority will be to reassure your staff many of whom will undoubtedly be perturbed even if not by the result by the financial markets and by the announcement by the Prime Minister of his resignation. At the same time your legal teams will need to identify any "Brexit" type provisions in your contractual arrangements with third parties.

In its Framework for Taking Back Control, the Vote Leave "Road Map" indicated that its immediate priorities by way of legislative change will be controlling immigration, abolishing VAT on a number of items (including household energy bills) and a free trade bill. The latter will determine trade policies, and the UK will need to re-engage more directly at the World Trade Organisation, rather than working indirectly through the European Commission. Whilst the Vote Leave campaign promises such legislative change by 2020, it is also clear that there will be no automatic legal consequences immediately following the leave vote. However, domestic legislation may be implemented before the final deal and withdrawal is agreed with the EU.

All businesses will want clarity about their commercial and contractual rights and remedies. Rather than a knee-jerk reaction to the vote result we suggest, to the extent that you have not already done so, forming a working party to work through and consider your dependence generally on the EU and its legal structure.

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Whilst we expect legislative change, this is highly unlikely to have any retrospective impact and as soon as proposals are published we will, of course, advise you accordingly. For now, we suggest the following steps:

- Evaluate dependence generally on the Internal Market - for example EU free trade or raising capital in a free market.
- Will withdrawal from the European Union impact on your credit ratings?
- Do your existing contractual arrangements contain Brexit provisions or exclude Brexit from force majeure clauses?
- Do you rely upon subsidies or grants from the EU?
- Conduct an audit of current staffing arrangements in the UK and Europe. Which employees will be required to apply for a work permit/visa and when do current arrangements expire?
- Review existing contractual arrangements to assess whether EU derived rights have been woven into commercial agreements and any territorial definitions - e.g. 'to the EU'?
- If your business uses the UK as a base to 'passport into Europe' you are likely to have already developed a relocation plan to another state within the EU. You will now need to take steps to flesh out that relocation plan and, in particular, consider the impact on staff in terms of relocation and/or place of work redundancy within the UK. Appropriate staff status consultation vehicles will need to be put in place.
- Are your business contracts subject to English law and do you want to change that and litigate or arbitrate disputes elsewhere during any period of uncertainty post-Brexit?
- Do you have an existing Works Council Agreement and/or any pan-European employee consultation vehicle? Do you intend to continue with this model or replace it?
- Assess in what currency are your employees paid or pegged to and do you want/need to change them?

Having a working party to answer these important questions and undertake this sort of assessment will put you in a state of preparedness to respond to the major legislative changes which have been promised before 2020. We are here to help.

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