



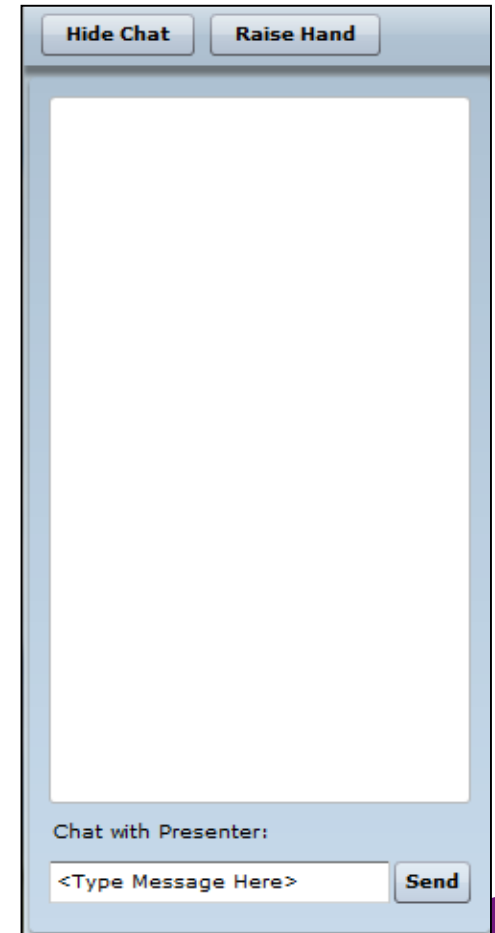
**Brexit The Constitutional Legal Hurdles to leaving the EU and
Some Practical Legal Solutions in Drafting Provisions to Provide
for Brexit**



howard kennedy

Housekeeping Items

- Audio will be broadcasted through your computer speakers
- To listen through your telephone dial:
 - (US & Canada): +1-866 740-1260
 - (International): +1-303 248-0285
 - Enter Participant Code: 6040090
 - Your phone line will be muted
 - Dial *0 at any time for technical support
- Questions may be submitted to the presenter via the chat feature on the left-hand side of your screen



Brexit Means Brexit: - Or Does it Really?

What is Brexit decision as a matter of law?

- 23rd June Referendum decision to leave the EU was merely advisory;
- The UK remains a full member of the EU until it has given notice under Art 50 Lisbon Treaty;
- Notice is effective 2 years after being given by the Government;
- Are there impediments/hurdles prior to giving Art 50 notice?
- European Communities Act (1972)
- What happens between Art 50 notice and leaving?

The Political Ramifications & Realities

- 140 pro-Brexit MP's
- 650 MP's in the House of Commons – the lower house
- What position will the Upper House – the House of Lords - adopt?
- Legal challenges?
- Parliamentary scrutiny of any deal with the EU?
- Extension to the Art 50 two year notice period?
- Still time to change their mind?

European Union Law – What Happens to the Law Now?

- Existing Laws
- Laws between now and the date of departure?
- Laws post-Brexit?

Brexit Clauses

- Think about them now?
- What are the key issues?
- What are the legal/financial/economic implications for contracts that continue past Brexit?
- Sample Clause – merely a starting point...

Brexit planning – its not too soon to start...

- What will the UK's future relationship with the EU be?
- Risk Assessments – including economic risk;
- Risk Registers;
- Contingency planning for corporates;
- Choice of Law clauses;
- Forum for dispute resolution clauses;

Jurisdiction

- The determination of jurisdiction for disputes by operation of EU Law and EU laws continuing impact on questions of jurisdiction
- The role of UK and EU Courts in determining questions of jurisdiction in dispute resolutions; and
- Enforceability of contractual provisions on jurisdiction

Brexit Clause – example: things to think about

"Article 50 "

Article 50 of the Treaty of European Union

"Brexit Event"

Any one of the following events:

- the date that the government of the United Kingdom gives confirmation in writing[on either the website of the:
 - Parliament of the United Kingdom at <http://services.parliament.uk/bills/>;
or
 - government of the United Kingdom at <https://www.gov.uk/>

Brexit Clause – example: things to think about

in either such case,]that any bill proposing new legislation of the United Kingdom[the primary purpose of which is to confer] / [conferring] on the government of the United Kingdom the right and/or authority to be able to[lawfully] invoke the rights of the United Kingdom to withdraw from the European Union pursuant to the rights conferred on the United Kingdom pursuant to Article 50 (such a bill hereafter referred to as an "Article 50 Bill"), is, or is deemed to be, "final" (being where the terms of such Article 50 Bill have been agreed without further amendment and prior to such Article 50 Bill receiving royal assent by the monarch of the United Kingdom, by:

Brexit Clause – example: things to think about

- both the House of Lords of the Parliament of the United Kingdom and the House of Commons of the United Kingdom; or
- the House of Commons of the United Kingdom without the consent of the House of Lords of the Parliament of the United Kingdom pursuant to the provisions set out in the Parliament Acts);
- the date upon which any Article 50 Bill receives royal assent by the monarch of the United Kingdom;
- the date that the government of the United Kingdom gives formal notice to the European Council of the European Union that the United Kingdom wishes to withdraw from the European Union pursuant to the rights conferred on the United Kingdom pursuant to Article 50 (such notice being an "Article 50 Notice");
- the date that the Treaties shall cease to apply to the United Kingdom, being whichever is the sooner of:

Brexit Clause – example: things to think about

- the date of entry into force of a withdrawal agreement negotiated in accordance with article 218(3) of the Treaty on the Functioning of the European Union, as set out more specifically in paragraph 2 of Article 50; or
- the date falling two years after the date that the government of the United Kingdom gives an Article 50 Notice (the "Two Year Date") (unless the European Council and the United Kingdom unanimously agree to extend such two year period pursuant to the provisions of paragraph 2 of Article 50, in which instance the Two Year Date shall be automatically changed to such other date as is so unanimously agreed);

Brexit Clause – example: things to think about

Material Adverse Change

- the occurrence of any fact, matter, event, circumstance, condition or change which[might] [, in the[reasonable] opinion of the Buyer,] materially[and adversely] affect[s][, or[might] / [would] be expected to materially[and adversely] affect,][individually or in the aggregate,] the business, operations, assets, liabilities, condition (whether financial, trading or otherwise)[, prospects] or operating results of any of the Group Companies, individually or as a whole][, including for the avoidance of doubt the occurrence of:
 - an Insolvency Event occurring in respect of any of the Group Companies;
 - [a Brexit Event;]
 - [any changes in stock markets, interest rates, exchange rates, commodity prices or other general economic conditions;]
 - [any changes in conditions generally affecting the industries in which any of the Group Companies operate; or]

Brexit Clause – example: things to think about

- [any changes in any Applicable Laws],
- [but excluding any of the foregoing[directly] arising out of,[directly] resulting from, or[directly] attributable to:
- any changes in stock markets, interest rates, exchange rates, commodity prices or other general economic conditions;]
- [any changes in the conditions generally affecting the industries in which any of the Group Companies operate;]
- [any changes in Applicable Laws;]

Brexit Clause – example: things to think about

- [any matter Disclosed; or]
- [the announcement of the Transactions or the purchase of the Sale Shares by the Buyer]]];],
- provided that the matters in limbs (i) to (iii) of this definition shall be taken into account if[and to the extent that] they have a[materially] disproportionate effect[(either individually or in the aggregate)] on any of the Group Companies when compared to any[direct] competitors of such Group Companies in question in the industries in which such Group Companies operate];]

"Parliament Acts"

together, the Parliament Act 1911 and the Parliament Act 1949;]

"Treaties"

has the meaning given to it in article 1 of the Treaty of European Union;]

Brexit Clause – example: things to think about

"Parliament Acts"

together, the Parliament Act 1911 and the Parliament Act 1949;]

"Treaties"

has the meaning given to it in article 1 of the Treaty of European Union;]

Dispute resolution issues:

- Jurisdiction;
- Enforcement of English Judgments in the European Union and vice versa;
- Service of proceedings outside England and Wales but within the EU;
- The impact on arbitration

Questions?

Further reading:

<http://www.spearswms.com/triggering-article-50-could-be-illegal-despite-brexit-vote/>

<https://www.theguardian.com/law/2016/jul/03/parliament-must-decide-whether-or-not-to-leave-the-eu-say-lawyers>

<http://1exagu1grkmq3k572418odoooy-m-wpengine.netdna-ssl.com/wp-content/uploads/2016/09/Article-50-skeleton-final-redacted-names.pdf>

No.1 London Bridge
London SE1 9BG
T: +44 (02)0 3755 6000
www.howardkennedy.com



howard kennedy