

So after all the shouting, the half-truths and the speculation, there it is, a vote to leave. What does this mean for your business? What will your Board need to know today?

Let us be clear – no one knows all the details of what happens next, and that includes all the people who said that they did. But there is still plenty of reassurance available for many months, potentially years, into the future. In immediate legal terms there is much less to this than meets the eye.

Remember that the vote is just a vote. By itself it does not alter our legal relationships with Europe at all. Even if Parliament follows the stated wish of the people and formally petitions to leave the EU, the constitutional procedures for an exit will potentially take years to run their course. There are unlikely to be material changes to UK law during that time.

But that does not mean that you should not now be proactive in reviewing how the vote may or may not affect your legal obligations and best practice. In this note we summarise by topic some of the more immediate considerations which may arise in your business.

Employment

- Leaving the EU does not by itself change our domestic employment law, either from today or from when we do actually leave, even if that law is based on an EU decision or Directive. That means no immediate changes to TUPE, the Human Rights Act, Works Councils, collective information and consultation rules, the Agency Worker Regulations, the Working Time Regulations or any of our EU-derived health and safety rules.
- Your existing EEA national workers will not automatically have to leave the country or stop working for you, though they may choose to do so. They will still be able to get back into the UK if they go abroad on holiday or business.
- You can still recruit EEA nationals without work visas for the time being, but if your business relies heavily on relatively unskilled labour from the EEA, start to consider whether it will be practicable to source such workers from within the UK market.
- The UK may feel itself no longer obliged to implement into domestic law the forthcoming EU Trade Secrets Directive, but will probably do so anyway to minimise the damage to inward investment from EU countries.

- Your existing UK workers based in Continental Europe will not have to come back home immediately. Longer-term (two years at least) their position will depend on what stance the EU adopts towards its own UK-facing immigration controls.
- It will remain discriminatory to hire EU staff in place of UK nationals (or vice versa) on racial or needs-a-visa grounds.
- The vote will probably mean a weakening of Lock-type holiday pay claims, and of any other legal arguments or proposals which are based on EU law but not yet incorporated into domestic UK statute. Whether the UK Government feels it necessary to pass such statutes before the formal point of exit remains to be seen – our view is that this is unlikely.

Pensions

- The immediate focus for pensions will inevitably be on investment, not legal issues. Optimists before the vote acknowledged the market shock that is already occurring to sterling and equity markets but suggested that if gilt yields rose on the back of Bank of England intervention, that would reduce defined benefit liabilities. If that scenario plays out, it would be a boon for UK corporates who are struggling to fund deficits but the truth will no doubt be more complex and falls in asset values may cancel out any rise in yields. The worst case is that yields don't rise. Longer term the vote will mean institutional investors will be reconsidering their investment strategies.
- These investment consequences will of course affect the values of millions of defined contribution savers too. Sharp falls in asset values there will do nothing for confidence.
- For UK corporates who are heavily reliant on EU earnings, new covenant assessments may be required by trustees.
- European-derived equality legislation that applies to pensions will, as with employment law, remain in place, even though speculation will no doubt continue about whether guaranteed minimum pensions still need to be equalised. In the longer run, arguments about the detail of the draft IORP II Directive may now be academic.

Commercial Contracts

- Termination clauses in contracts are most unlikely to be triggered by the Brexit vote. Even if a contract allows for termination if the obligations under it become more difficult to perform, Brexit is unlikely to mean that goods cannot be delivered or services provided so it is unlikely that automatic termination will occur.
- Force majeure clauses are equally unlikely to be triggered immediately – the leave vote is hardly an Act of God, even if it may have been beyond the reasonable control of the parties.
- Governing law clauses are more tricky to predict in terms of their effect but again nothing will change immediately or automatically.
- Commercial terms, especially where financial instruments are involved and currency hedging is provided for as an option within a contract, may come into play automatically but those provisions will be contract-specific. For longer-term contracts being signed now, consider protection against Brexit consequences such as trade tariffs, exchange rate swings, capital movements, tax changes.

Trade

- In the likely event of a total break from the EU Single Market, the erection of trade barriers (whether by way of direct tariffs, re-establishment of customs processes, or non-membership of EU trade facilitation schemes) will be inevitable. However, for the time being, all current internal market rights will apply. Agreements as they affect trade may be concluded within the two years allowed for a negotiated withdrawal, so companies should begin adjusting to the new situation as soon as possible.
- In terms of customs duty, and unless agreed otherwise with the EU before formal withdrawal, the UK will lose the benefit of the duty rates afforded by being an EU Member State under the existing EU trade agreements with third countries. This would be likely to result in an increase in the landed cost of many goods, which may also be affected by any volatility of exchange rates. From an exporter's perspective, those considerations should be carefully catered for in advance at contractual negotiations stage, starting now.

Financial Services

- Those non-EEA firms using the UK as the base for their offering of financial services into and around Europe will need to assess their options: potentially they will lose their cross-border or branch passports into other EEA countries. This may mean they need to seek licences/authorisation in the other member states in or into which they conduct activities. Whilst it is possible that the UK may seek to agree a replacement passport regime, financial services providers relying on passports may need to look at their contingency plans and relocate or establish new offices in other member states from which the passports are available.
- Parties to contractual documentation referencing EU Directive regulatory status (e.g. "credit institution" and "financial counterparty") as a representation, condition or requirement will need to check whether the consequence of the UK falling outside the jurisdiction of the relevant Directives causes an event of default with immediate termination or right to termination. Consequently, parties may need to agree amendments to that documentation to avoid the potentially material financial consequences of termination.
- As market uncertainty is already upon us firms with market positions will need to have regard to margin and collateral held against trading activity. Firms seeking to exercise rights under trading and security documentation in the event of defaults by counterparties will need to be alive to due process to ensure their enforcement rights can be properly executed

Taxation

- Parties to commercial contracts with EU counterparties which straddle any EU withdrawal will need to consider carefully the VAT and the customs duties consequences of those contracts. Customs duties are particular points of concern. Depending on the nature of the EU withdrawal negotiated by the UK, imports into the EU may give rise to customs duty costs and there is likely to be negotiation between the supplier and the relevant counterparty as to who is to bear the economic burden of those costs.
- Going forward, policy makers will need to consider the interaction of EU law on the UK's tax system as many aspects of the UK's tax system (such as transfer pricing) have been shaped by EU rules. Policy makers will need to consider the extent to which they wish to reshape (if at all) the UK's tax landscape.

Additional Information

We are setting up a series of client briefings across the UK and in mainland Europe to discuss the consequences of Brexit in more detail and will communicate relevant dates and details shortly. In the meantime if you have specific concerns arising from the Brexit vote or otherwise please contact your usual Squire Patton Boggs contact or any of the lawyers below.

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