

## A yes vote to Brexit - what should you do now?



The UK has voted to leave the European Union. There will be little immediate change in the legal environment, as the UK has to give notice of its intention to withdraw and then has two years to negotiate its withdrawal.

There will, however, now be a considerable period of uncertainty whilst the UK negotiates its exit as no-one knows, at this stage, what form the exit will take.

### Potential Issues

Set out below are some issues you may want to consider as part of your contingency planning.

#### Financial services

- The requirement for firms to be authorised within a Member State gives the ability to use relevant passports to provide services and/or market funds cross-border. How will authorisations and passports now be affected?
- If we have funds established as UCITS in the UK, what would we need to do to continue benefitting from the UCITS passport and marketing our funds in the EU?
- I have both UK and third country AIFMs within my group. What is the impact on my ability to market to investors?
- We are a MiFID firm, but the amended rules are not yet implemented so what changes will I need to consider?
- Could there be less financial regulation as much of it comes from Brussels?
- Will any payments from the UK to EU parts of the group cease to benefit from EU Directives (for example, the Interest and Royalties Directive) and, if so, what mitigation action is possible?
- Does the business rely on imports from the EU which may suffer import VAT and/or customs duty and, if so, what mitigation action is possible?
- Does the business have any current or potential tax claims for breach of EU law against the UK? If so, consider time limits for bringing such claims.
- If restructuring of the business is likely to be necessary, should any steps be taken in advance to minimise the tax implications of such restructuring?

#### Contracts

- Do you have any contracts with references to EU law or legislation that may be affected?
- Does the Brexit decision trigger any contractual rights, such as force majeure?
- Do you want to reconsider the choice of law and forum provisions in any contracts?

#### Tax

- Will any payments from EU parts of the group to the UK be adversely affected by the UK ceasing to benefit from certain EU Directives (such as the Parent-Subsidiary Directive) and, if so, what mitigation action is possible?

#### Data Protection

- Will any data transfer agreements need to be put in place for EU-UK transfers of data if the UK is not designated as an “adequate jurisdiction”?
- Where will your ‘main establishment’ be for the purposes of the EU Data Protection Regulation (GDPR)? This regulation may also affect your ‘lead authority’.
- How does Brexit impact your GDPR data protection compliance audit process?

## Intellectual Property

### Trade marks

- If you have a UK-based trade mark department, how will you structure your trade mark prosecution and maintenance work as UK citizens, or people with a UK address, will no longer have the right to act as representatives before the EU IPO?
- For which of your EU trade marks will you want to convert the UK part into UK national registrations– for a fee, if possible?
- If you currently rely on use only within the UK to support your EU trade marks, or use outside the UK for marks which will be converted into national registrations, what do you need to do in future to avoid “non-use”?
- Start lobbying to ensure that the UK IPO will have sufficient human and technological resources to handle the increased workload when UK national trade marks become the only available protection for the UK?

### Life Sciences

- Start lobbying to persuade the government to keep UK medicines regulation aligned with EU law so that Brexit does not bring in a requirement to follow a separate and different set of rules?
- Start lobbying now to ensure that the MHRA is able to handle its increased workload when EMA authorisations will no longer cover the UK?

### Dispute Resolution

- Is there any ongoing or likely litigation where you may want to have access to EU courts?
- Is there any likely future litigation which may involve serving English court proceedings on a party located in another Member State, or where you may want to bring proceedings in the courts of another Member State?
- Are there any possible claims based on EU law, which should be pursued before Brexit takes effect?

## How can we help?

Our [Brexit hotline team](#) has comprehensive knowledge of the consequences and considerations for businesses of the UK leaving the EU and is available to answer queries today.

You can find more information on these issues on our [Brexit microsite](#).

- Are there any judgments (current or pending) of EU courts, or the courts of other Member States, that may need to be enforced in the UK?

### Debt/Equity Capital Markets

- Do any disclosures need to be made in public documents about the potential impact of Brexit on your business?
- Does this mean that passporting prospectuses approved by the FCA in the UK will not be permitted?
- What impact does this have on EU regulations which impact capital markets transactions, for example the Market Abuse Regulation which comes into force on 03 July?

### Employment

- What employee communication is necessary (both immediately and longer term)? Will there be a need to reassure employees about the organisation’s plans?
- How might employees be affected by possible changes to visa/permit requirements? Consider also the nationality/immigration status of the employee’s family. Might there also be movement of people in anticipation of what could happen to the British economy out of Europe?
- Will the organisation’s response (e.g. relocation to elsewhere in Europe) to Brexit trigger a cross-border business transfer?
- Will uncertainty created by Brexit require the organisation to implement retention arrangements for key employees? How will such arrangements be structured? In the Financial Services sector, how will such arrangements be reconciled with remuneration rules?
- Do the organisation’s plans in relation to Brexit trigger transnational information and consultation obligations? (This question presupposes that there is a European Works Council in place.)

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