



Brexit: Early Observations and Impacts

The United Kingdom is still coming to terms with the ramifications of its vote to leave the European Union, and political events are advancing breathlessly. It is too early to know what approach will be adopted by the UK following the referendum and, therefore, what the long-term political, economic and legal implications will be. If and when the exit procedure under Article 50 of the Treaty on European Union is triggered, the UK has two years to negotiate its exit before the EU treaties will automatically cease to apply. The legal landscape will therefore not change immediately.

In the short term, uncertainty is the only given. There will be market disruption and legal repercussions with which businesses need to grapple. We set out below some of the key areas of potential legal impact:

1. Many existing contracts will be affected regardless of their governing law. If they contain clauses referencing, for example, EU territories or laws, there will need to be consideration of how those clauses would be impacted by Brexit, whether amendments are required or how, if at all, the risk of a Brexit has been allocated by the contract. Some contractual relationships may be so severely impacted by events that “force majeure” clauses could be triggered or claims made that the contract has been frustrated.
2. Deals and financings waiting to close may be at risk. There is likely to be focus on Material Adverse Change (MAC) clauses, conditions precedent and draw-stops. Market dislocation, violent exchange or interest rate movements and the deterioration of credit ratings could all potentially generate arguments that termination or other contractual rights have been triggered.
3. Decisions will need to be taken around governing law and dispute resolution provisions in contract negotiations. Although the allure of English law and the English courts will undoubtedly remain strong, expert advice will be required on how Brexit may impact the enforceability of judgments, service of proceedings and treatment of jurisdictional agreements within the EU.
4. There are also likely to be impacts on the insolvency regime whereby EU member states recognise insolvency proceedings underway in other member states and rules governing applicable law and jurisdiction in cross-border insolvencies are harmonised. The relative appeal of the UK as a centre for creditors will be challenged, and, although the UK will surely seek to negotiate the re-application of the EU insolvency regulation (or a similar instrument), the end of the current regime would introduce a range of issues, questions and concerns for those involved in multi-jurisdictional insolvency proceedings within the UK or EU.
5. In light of the above, litigation strategies, whether in respect of ongoing or potential claims, may need to be re-considered. In particular, strategies premised around the recognition and enforcement of judgments in the EU will require careful thought and the expedition of some claims may be prudent.
6. Companies operating in affected markets will need to consider whether public disclosures are required in light of applicable listing rules or whether information should be provided in annual reports or financial statements.

7. In the event of Brexit, EU-wide protection of trademarks and registered designs under the EU Trade Mark Regulation and the Community Designs Regulation would not extend to the UK. Arrangements are likely to ensure that owners of existing EU-wide trademarks and registered designs are provided with protection in the UK, but companies now thinking of protecting new trademarks and designs in Europe should consider making separate national applications at the UK Intellectual Property Office.
8. There will also be an impact on the UK's participation in (i) the Unitary Patent (UP) system, which will provide for single patents to be granted covering all EU countries; and (ii) the EU Unified Patent Court (UPC), which is designed to allow patent disputes involving patents granted in the EU to be settled in a single action in one court. Companies that are gearing themselves up for the introduction of the UP and UPC will need to reflect this new situation in their patenting and patent enforcement strategies.
9. Last but not least, there is the huge question of Brexit's impact on the EU's single market including, importantly, the provision of financial services across member states. This will be heavily dependent on any deal that is struck between the UK and the remaining EU member states. Regulations in the areas of banking, investments and insurance and the "Passporting" arrangements that allow institutions authorised in one member state to operate in another member state are now all a matter for negotiation. Given the large amount of law and regulation emanating from the EU in this area, it is perhaps unlikely that there will be immediate and wholesale change, but change is possible.

The right approach to dealing with these, and the many other issues that will arise from the UK's vote to leave the EU, will be fact-dependent and must be kept under close review as events unfold and the future of the UK's relationship with Europe becomes clearer. Nevertheless, these are issues that will require immediate attention and expert advice.

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