

BREXIT – THE UK’S DECISION TO LEAVE THE EUROPEAN UNION



The UK has decided to leave the European Union (“EU”) with a 51.9% vote to “Leave” the EU against 48.1% to “Remain”. This note briefly sets out next steps over the coming days, weeks and months and highlights some of the key issues that firms will need to address during this time.

WHAT HAPPENS NOW?

As a result of the “Leave” vote, the UK government is about to initiate a procedure to withdraw the UK’s membership of the EU. This is unlikely to happen until a new Prime Minister is appointed in the UK, which is intended to be in October 2016.

The procedure for withdrawal from the EU is set out in Article 50 of the Treaty on European Union (“TEU”), which envisages a two year period to negotiate a withdrawal agreement.

The TEU provides that the EU’s treaties cease to apply to a withdrawing state when a withdrawal agreement is in force, or, failing that, two years after notification of the decision to withdraw. This therefore poses a risk of a unilateral exit of the UK from the EU two years from the date of a withdrawal notice being submitted. However, it is possible that the UK and the continuing members of the EU may agree to extend this period or reach an interim agreement on future relations.

What is clear is that in the coming weeks and months, there will need to be a substantial amount of inward and outward facing leadership and discussion as to what will be the shape and form of the UK’s relationship with the EU going forward.

WHAT TYPE OF RELATIONSHIP WILL THE UK HAVE WITH THE EU GOING FORWARD?

There are a number of options available to the UK on exit from the EU, including:

- Membership of the European Economic Area (the “EEA”) (such as Norway). This allows access to the EU’s internal market without a vote on policy or law-making;
- Customs union (such as Turkey);
- Bilateral arrangements with the EU (such as Switzerland);

- Free trade agreement (such as Canada); or
- Continuing membership of World Trade Organisation, relying on general international trading rules.

At present, there has been no clear indication from the UK government as to which model the UK will seek to pursue.

WHAT WILL BE THE IMMEDIATE EFFECT ON FINANCIAL SERVICES LEGISLATION?

EU membership provides for the freedom of movement of goods, services, capital and people. How the UK’s change in status will affect the financial services markets in the UK is an open question. It is clear, in the short term, that key EU legislation that governs financial services institutions is unlikely to change. Consequently, where firms are currently implementing EU legislation, this process will need to continue.

It should be noted that some of the financial services directives allow “third country” firms to access EU markets, if the EU is satisfied that the third country’s law is “equivalent” to EU law. Much of the relevant UK legislation in the financial services markets is based upon EU law and therefore (at present) it is likely to be able to demonstrate equivalence to allow for access to the EU markets under such EU directives which do allow for third country access.

WHAT TYPES OF ISSUES MAY YOU WISH TO START THINKING ABOUT?

Given that we are at such an early stage, it is likely that much of the practical steps may not be taken until later in the process when the picture becomes clearer as to the ‘direction of travel’ for the UK. Having said that, it is probably appropriate for a firm to begin (if it has not already) to formulate relevant working groups or focus groups to delve deeper into the potential structural and contractual implications for its operations in the UK and the EU. This may include looking at the location of EU operations and the relevant rules and legislation they are subject to, location and roles of employees within the EU and assessing contractual obligations and relevant changes required under a move away from the EU. This could be at a basic level a review of definitions and references to EU legislation to wider issues of interpretation and enforcement of contractual provisions and the relevant laws governing such contracts.

WHAT OFFICIAL STATEMENTS HAVE BEEN MADE TODAY?

Various bodies have made statements today, including:

The Prime Minister

<http://www.bbc.co.uk/news/uk-politics-eu-referendum-36619446>

The Governor of the Bank of England

<http://www.bankofengland.co.uk/publications/Pages/news/2016/056.aspx>

The Financial Conduct Authority

<http://www.fca.org.uk/news/european-union-referendum-result-statement>

The Council of the EU

<http://www.consilium.europa.eu/en/press/press-releases/2016/06/24-joint-statement-uk-referendum/>

TIMELINE

This timeline sets out some of the key dates and factors which are likely to influence the next stages of the Brexit discussion, including the environment in which the UK begins its negotiations to exit the EU.

WHAT HAPPENS NEXT?

