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# 3HR Legal Weekly

Commercial

## Corporate Law Implications of a Possible Leave Vote in the Upcoming Referendum



The Referendum on whether Britain remains in the EU raises issues that are likely to significantly impact the legal position of companies organised under UK law as well as requirements and risks faced by companies doing business in the U K and EU, particularly if the result is a 'Leave' vote.

Should British voters determine to leave the EU, a two-year period of negotiation will follow to decide how to separate UK statutes and regulations from the EU framework in order to set forth the parameters for Britain to operate independently from EU rule. This would include a re-examination of all Acts of Parliament that have wholly or partly implemented EU obligations and a change in the legal landscape involving transitional arrangements, secondary legislation and the formulation of new

domestic policy in certain areas. Mechanisms will need to be established following a departure from the EU in order to ensure sufficiently independent policy-making capability for legislators in the United Kingdom in areas where EU laws have dominated over the past several decades. Not only will new UK legislation have to be formulated but methods of making laws will need to be developed that are independent from the EU current process.

There are three main types of relationship that the UK could have with the EU in the event of a 'Leave' vote. These include: (i) staying in the EEA and maintaining European Free Trade Association (EFTA) membership (what Norway, Iceland and Liechtenstein have done) involving free movement of goods, services, capital and workers for access to the single market; (ii) as Switzerland whereby the UK would leave the EEA but join EFTA and negotiate bilateral trade agreements in order to obtain single market access; and (iii) complete exit from the EU and the single market which would mean that the World Trade Organisation would be the means by which the UK would continue to trade with European countries or involving the negotiation of a new free trade agreement (similar to that of Canada with the EU). The consequences of a departure from EU membership for the UK would depend on which of these exit strategies is followed.

Under (i) above or the 'Norwegian model' the UK would still need to comply with all of the EU laws and regulations currently in place under the EEA regime. Under either (ii) the 'Swiss model' or (iii) total exit, the UK could negotiate which of these laws it would like to continue to observe through an agreed exit arrangement. This third exit option means that certain aspects of UK law that originate from the EU will need to be re-examined, as to whether the UK will incorporate into domestic law the substance of the relevant EU rule (such as on health and safety, employment law and consumer protection measures) or completely alter the legal landscape to enact new substantive rules and regulations. A total exit gives the greatest flexibility to British lawmakers since under the first two options a decision to remain in the EEA means mandatory acceptance of EU legislation.

Regardless of which of the above three options is adopted under a 'Leave' vote, some EU laws will continue to impact UK business. These include rules concerning sales of products into EU member states and regarding anti-competitive behaviour towards EU businesses.

If the result of the Referendum is a vote to 'Remain', the agreement reached between David Cameron and the European Council on 19th February 2016 will inform the terms of the relationship between the EU and UK going forward. This will involve a new settlement for the UK within the EU, including management of the banking union and further possible integration of the Eurozone. Other areas covered by the new settlement will include competitiveness, child benefits for workers and the right of free movement of persons. Consequently either Referendum outcome will have important effects on businesses seeking to trade and market their products or services in the UK and the EU.

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