Commercial

Is your business ready for the consequences of the EU Referendum vote?

On 23rd June 2016, UK voters decided to leave the European Union ("Brexit"). In light of this result some important changes are likely to affect the way you manage your business in the United Kingdom, Europe and globally.

The implications of Brexit for the UK regulatory landscape are not known with certainty at this time. But the following should be considered in a review of your commercial legal position as these areas are the most likely to be affected.

Commercial contracts should be drafted or renegotiated with "Brexit-proof" mechanisms. Examples include clauses on pricing and features such as exchange rate hedges or terms that depend on EEA single market access.

Corporate law: As UK corporate law and the Companies Act have been enacted at a domestic level there are not likely to be many significant changes in this area. Such changes will probably also be limited to provisions on accounts, public disclosures of company information and shareholder rights which have evolved from EU law.

Mergers & Acquisitions: UK law on domestic M&A transactions is largely independent of the EU system and therefore may remain unaffected by the Brexit process, aside from laws on anti-competitive behavior and TUPE relating to asset sales. As to cross-border M&A deals between UK and EU companies the Directive on Cross-Border Mergers of Limited Liability Companies may be renegotiated and replaced by an alternative framework.

Funding: It is important to review whether a counterparty in any financing arrangement is directly or indirectly funded by the EU. Investment and innovation are funded by the European Investment Bank Group and European Commission. It should be ensured that needed finances can continue if funds from the EU are no longer available.

Capital Markets: The EU Prospectus Directive provides for certain disclosure and compliance requirements for companies seeking investor capital in retail or public offerings including for listings on European stock exchanges. Similarly, the EU Takeovers Directive and Market Abuse Directive have been implemented into UK law and while in the short-term these are not expected to change dramatically the legislation could diverge in the future.

Banking, Lending and Financial Regulations: The EU imposes rules on financial services including for capital ratios and passporting across EU Member States. After Brexit it is expected that non-EU financial services institutions will need to open separately capitalized subsidiaries in the Eurozone in order to conduct business there.

Insolvency: As UK insolvency law is not derived from EU law, the effect on businesses domiciled and trading solely in the UK is expected to be minimal. But UK businesses should identify whether they have significant exposure to EU businesses and insolvency related risks under EU rules. This could include a parent or subsidiaries in the EU.

Data Privacy: New data protection rules under the EU General Data Protection Regulation (GDPR) expected to be implemented in 2018 will not now be directly transposed into UK law but adequacy standards are likely to apply.

Intellectual Property: Holders of European Union Trade Marks (EUTM) and Registered Community Designs (RCD) will eventually need to secure their intellectual property rights through national registrations with the UK Intellectual Property Office. For copyrights there should not be any notable changes as UK domestic law applies.

Employees: If free movement of workers is discontinued, visas may be required. Also as the restriction on longer hours under the EU Working Time Regulations could be removed employment contracts should be reviewed.

Taxation: Corporate group structures with subsidiaries in EU Member States may be affected by withholding taxes on dividends or royalties or domestic taxes for cross border payments, which could be impacted by Brexit.

VAT/tariffs: The scope, rates and application of EU consumption taxes and tariffs for UK importers of goods and services will likely change after Brexit. The effects can be lessened by contractual price adjustment mechanisms.

Import/export costs: International supply agreements will need to apportion the costs of import and export duties. It is important to determine which party is responsible for these and, in new contracts, negotiate them accordingly. Many standard terms will have already incorporated and apportioned these costs into the contract.

Customs duties: The UK does not have domestic legislation governing customs duties but uses the EU Directives and Regulations. If the UK leaves the single market, movements of goods to and from the EU will be potentially subject to changes in such compliance obligations. This will depend on the terms negotiated in the Brexit process.

Contact us

If you wish to discuss your requirements in this area or for any other commercial law matter, please contact your usual 3HR consultant or Carol Kilgore, Commercial Legal Services on +44 (0)20 7194 8140 or carol.kilgore@3hrcs.com

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