Brexit – The UK's withdrawal from the EU: Next steps

After controversial EU referendum campaigns from both the Leave and Remain camps and despite the indications from the final polls, the expectations of the financial markets and even Nigel Farage, who initially thought Remain had 'edged it', the UK has voted to leave the EU by 52% to 48%.

Now that the outcome of the EU Referendum is clear, the question is what happens next?

Will anything change straightaway?

First of all, although the UK has voted to leave the EU, there is no immediate change to the legal landscape. The UK is still a member of the EU and will remain so until the UK has left. The key point is that at this stage the UK's relationship with the EU has not changed and EU legislation continues to apply as it did prior to the EU referendum while the UK remains a member of the EU.

How and when will the UK government begin the exit process?

Moves to begin the process of Brexit following the referendum began almost immediately. David Cameron stepped down and Theresa May became Prime Minister. She has expressed an intention to trigger Article 50 of the Treaty of the EU by March 2017, although the timing of this may be affected as a result of the ruling of the Supreme Court delivered on 24 January 2017.

Article 50 provides the framework for an EU Member State to leave the EU. It has only been in place since 2009 and has never been used. Under Article 50, the UK would have to give notice to the European Council of its intention to leave and would have two years from the date it gives notice under Article 50 to negotiate the terms of its exit. Any extension to this two year period would have to be agreed by all the remaining EU Member States. In addition, the terms of the exit would have to be approved by the European Council and the European Parliament. Theresa May has also confirmed that the terms will be put to the UK Parliament. If terms are not agreed by the two year deadline, and if there is no agreement to extend the deadline, the UK would automatically exit and EU law would cease to apply. Note that any exit agreement under Article 50 is unlikely to address the UK's future trading relationship with the EU, which may be subject to a separate negotiation.

What are the options for exit?

It is currently unclear what the UK's relationship with the EU will look like after any UK exit from the EU. The Leave camp have discussed a number of different models and the final outcome depends on what the UK government negotiating the Brexit wishes to achieve and ultimately how successful its negotiations are with the EU. We set out below some possible options:

- **The Norwegian model:** The UK could leave the EU but join the European Economic Area (EEA) as a non-EU Member State, like Norway. This model is the closest to the status quo and would minimise the practical consequences of leaving the EU. However, it is unlikely to be politically unacceptable because the free movement of people would continue to apply and the UK would therefore not be able to limit immigration from the EU, which has been a central issue in the EU referendum campaign. In addition, the UK would still be required to comply with much of EU law (Norway has estimated that it complies with 75% of EU law) but it would no longer have a role in the legislative process.
- **The Swiss model:** The UK could leave the EU but join the European Free Trade Association (EFTA) whilst remaining outside the EEA, like Switzerland. By joining EFTA, the UK could enter into bilateral trade agreements with the EU and other countries, however each agreement would need to be negotiated separately which is likely to be complex and time-consuming. Again, the UK is likely to have to accept the free movement of people under this model, which is unlikely to be politically acceptable, and comply with certain EU rules when trading in the single market.
- **The Turkish model:** The UK could leave the EU and enter into a customs union with the EU, as Turkey has done. This would llow the UK to access the single market for goods without customs duties. However, the UK would have to impose the EU-set common external tariff on imports from outside the customs union and the EU would negotiate trade agreements in goods without UK involvement. In addition, the arrangement would only cover goods and not services. UK services providers, including financial services, would not have access to the single market on equal terms with EU members.

- **The Canadian model:** The UK could seek to negotiate a free trade agreement with the EU, as Canada has done (although the deal has been agreed, it is not yet in force). The Canadian deal took over seven years to negotiate and allows tariff free trade in goods and provides for the removal of certain non-tariff barriers in relation to both goods and services, including financial services. The UK may not have access to the single market unless this is provided for in the agreement, and there are indications that the EU would not allow access to the single market without the UK retaining the free movement of people.
- **UK alone:** The UK could leave the EU and rely on its membership of the World Trade Organisation (WTO) as a basis for trade with the EU, which would allow the UK the same access to the EU as the US or China. Under this model, the UK would not be subject to EU law and would not have to abide by the free movement rules.

What are the implications for the legal landscape?

A UK withdrawal from the EU would have implications for different sources of EU law:

- EU treaty provisions and EU regulations are directly effective in the UK and do not need to be implemented by the UK through domestic legislation. However, if the UK leaves the EU then if the UK wants to retain some of these laws, for example in relation to data protection or employment, they will have to be reviewed and implemented into domestic legislation.
- EU directives are not automatically applicable in the UK and need to be given effect in the UK through domestic laws. Where this has been done through statutory instruments adopted on the basis of the European Communities Act 1972, and if this Act was repealed, these statutory instruments would fall away unless there was a specific provision made to retain them.
- The judgments of the Court of Justice of the European Union would no longer apply automatically in the UK. This may well result in a divergence between EU and UK case law. The UK would also lose the ability to seek decisions on interpretation from the Court of Justice.

Depending on which trade model the UK ultimately negotiates with the EU, the UK may still be required to comply with a large proportion of EU law. For example, assuming the UK retains access to the single market, UK businesses would have to comply with a significant amount of EU law in order to continue to trade in the EU. However, if the UK is not part of the EU it would not be involved in the legislative process and would not be able to influence the development of EU law.

We will continue to monitor developments and assess the position so that we are well placed to advise you and your business on any queries you may have. Please get in touch with Gustaf Duhs, Maliha Mahmood or your usual S&B contact if you wish to discuss any issues arising out of the UK's vote to withdraw from the EU.

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This information is necessarily brief and is not intended to be an exhaustive statement of the law. It is essential that professional advice is sought before any decision is taken.

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