

INTERNATIONAL TRADE

- Dealing with continuity issues e.g. to what extent might businesses be impacted by “innovative” or “untested” systems for customs clearance and what legal considerations arise?
- Do goods need to be rerouted via other countries or do centres of operation need to change? Consider practical challenges / opportunities of working with a UK entity after Brexit.
- Businesses need to deal with discrimination issues pre-Brexit e.g. are you being unfairly excluded from tenders and what is the impact on employees?

IMMIGRATION

- Companies with workers from the EEA or EEA family members should carry out an audit to assess the impact on their workforce / hiring strategies.
- Companies may be able to take steps now to protect their current EEA workforce by making applications to secure residency.
- The sponsor licence regime which allows UK companies to employ non-EEA nationals may be expanded to cover EEA nationals. Companies without a sponsor licence should consider applying for one. Those with one should ensure they are compliant with the UK Home Office’s obligations.

BANKING & FINANCE

- Currently business as usual in terms of pricing and documenting credit transactions although this could change.
- Loss of passporting rights - commercial lending is not a regulated activity in the UK but it is in the EU. UK credit-based institutions may not be able to offer their products in the EU if they lose their EU passports.
- EU credit institutions may also lose their rights to offer some products in the UK.

LITIGATION AND INTERNATIONAL ARBITRATION

- International Arbitration awards governed by the New York Convention will be unaffected by Brexit.
- Rules on service, jurisdiction, governing law, enforcement and recognition of judgments against EU counter parties will go. Unclear what post-Brexit rules (if any) will be.
- EU derived law will stay under the EU Withdrawal Bill. However, the approach to interpretation of EU law in UK courts post-Brexit is unclear.

COMMERCIAL CONTRACTS

- Potential currency fluctuations, tariff changes and loss of ability to trade across borders should be considered in contracts now and dealt with expressly through, change in law or material adverse change clauses.
- UK may fall outside EU regulations e.g. GDPR and sector regimes. What is the worst case scenario impact if such regulations fall away and what will the parties do about it?
- Consider expressly disputes that might arise and how these might be dealt with (e.g. through appropriate arbitration clauses).

CORPORATE / M&A

- No significant changes anticipated to the substantive provisions of the Companies Act. M&A processes may be affected e.g. Due Diligence specific to impact of Brexit on target business and “Brexit clauses” to enable termination of conditional M&A deals due to such impact.
- Companies with a UK incorporated parent might consider pre-Brexit restructuring to ensure their HQ is based in another EU member state (e.g. Formenta case).
- Merger Directive - Brexit likely to lead to greater uncertainty in assessing antitrust implications of post-Brexit mergers.



RESTRUCTURING & INSOLVENCY

- Domestic insolvency is principally a matter of national law. Brexit issues will mostly affect creditors or entities operating within the EU.
- The Recast European Insolvency and Recast Brussels Regulations provide a regime of mutual recognition and enforcement that will no longer apply to the UK post-Brexit (absent an agreement).
- Whilst the UNCITRAL Model Law grants a certain level of recognition and enforcement of foreign insolvency proceedings, none of the other major EU members have so far chosen to implement it.

TAX

- Limited impact on direct taxes (corporation, income) some EU Directives will not be available (e.g. EU Merger Directive).
- VAT, customs duties and excise duties come from EU law currently so new legislation is required. However it is unlikely the EU law will be repealed given the revenue generated by VAT.
- UK will not be bound by Capital Duty Directive therefore it will be able to impose tax on companies raising capital (e.g. on issue of shares).

COMPETITION / REGULATORY

- Potentially greater local scrutiny - the UK Competition Authority may have sole jurisdiction within the UK.
- There may be significant changes to public procurement law and state aid regimes which may impact how businesses interact with government.
- A lack of clarity on how competition law applies and there may be limitations on the ability to bring follow-on damages.



INTELLECTUAL PROPERTY

- UK likely to drop out of unitary EU trade mark and Community design rights.
- Plans are underway at the UK IPO to grant rights holders UK national trade mark and registered design rights to compensate for this loss.
- Uncertainty about whether the UK will be able to take part in the proposed EU Unified Patent Court post-Brexit.

EMPLOYMENT

- Unlikely that existing employment laws will be repealed. Aspects of TUPE may be revisited, (e.g. to enable employers to harmonise terms and conditions post transfer), together with aspects of the law on holiday pay and agency workers.
- For now EEA job applicants should be treated the same way as British applicants but employers should include a clause in contracts/offer letters making employment conditional upon having the right to work in the UK.
- Secondment agreements should include a clause allowing the secondment to end early if the secondee no longer has the right to work in the relevant country post-Brexit.

ABOUT STEVENS & BOLTON

As one of the leading UK national firms we have a dedicated Brexit Working Group to ensure that as we emerge from the current period of uncertainty we are in the best position possible to advise clients in the UK and overseas on the repercussions and the actions that need to be taken.

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