



Preparing for Brexit

What will Brexit mean for you and your business

Background

On June 23 2016, the British voted to leave the EU. Some 9 months later, on March 29 2017, the British Government invoked Article 50, signifying the highly anticipated commencement of a two year period for the UK to negotiate its withdrawal from the EU.

The UK remains part of the EU until its exit terms are confirmed. It is unclear what will happen if a withdrawal agreement is not reached within the two year time line. An extension may be granted, but only if the remaining 27 EU Member States are in unanimous agreement. The possibility that an agreement will not be reached on the exit terms also cannot be discounted.

The potential impact of Brexit on businesses operating in the UK or EU markets cannot be predicted with accuracy. The European Council has reiterated that it wishes to have the UK as a close partner going forward however, until the exact nature of the UK's exit arrangement is agreed, there are no certainties.

In the interim, businesses should assess the potential areas which may be affected and formulate long-term contingency plans in order to mitigate the risks and exploit opportunities post Brexit.

In terms of contingency planning, there is no consistent "one size fits all" formula; different organisations and sectors will be impacted in different ways and to varying degrees.

How we can help

We have established a dedicated multi-disciplinary team to advise and represent both Irish and international clients on the possible legal and regulatory implications of Brexit.

Each of our lawyers have significant international experience, travelling regularly to the UK, US and other international markets, advising local business and law firms around the legal implications of doing business in Ireland.

Some of our lawyers have also qualified in the UK and have practised under the local legal system, and are therefore well positioned to be able to consider the key aspects of doing business after Brexit.

Our knowledge and expertise

- Corporate & Commercial
- Data Protection
- Employment Law
- EU, Competition Law & Regulation
- Trade
- Financial services
- Intellectual property
- Litigation & Dispute Resolution
- Mergers & Acquisitions
- Property
- Tax

We set out overleaf key areas businesses should consider when assessing the potential legal implications of Brexit.

Key implications for business

FINANCIAL SERVICES

Assuming Brexit results in the UK falling outside of the EEA:

- UK MiFID firms are likely to avail of 'equivalence' provisions to continue dealing with professional clients but will likely lose access to passport services to retail customers.
- UK E Money and Payment Institutions will lose passporting rights under the Payment Services Directive.
- UK Insurance firms will benefit from 'equivalence' regime under Solvency II but will lose EEA passport.
- UK banks will lose EEA passport and will need to consider establishing a subsidiary within the EEA.

We are assisting several firms in their Brexit contingency engagements with the Irish Central Bank.

TRADE, IMPORTS & EXPORTS AND REGULATION

- Real risk of border controls, tariffs and excise duties on trade with UK.
- Possible restrictions on the free movement of goods and services by UK businesses within the EU.
- Certain industry sectors may be more adversely affected than others such as food & beverages which is heavily reliant on UK export market.
- Possible divergence and dual regulatory burdens in regulations relating to trading standards, consumer protection, energy and environmental matters between the EU and UK, leading to an increase in the compliance burden and costs.
- Possible cessation of or amendment to the application of EU Competition and State aid rules in the UK post Brexit. This may allow the UK Government to provide financial assistance, to various sectors, that is currently prohibited without the assessment and approval of the EU Commission.

DATA PROTECTION & IP

- Possible restrictions on the free flow of personal data between the UK and EU countries.
- Possible divergence in data protection standards which would impact warehousing data and compliance between jurisdictions.
- Possible loss of protection rights for IP and patents.
- Possible impact on companies with pan-European protections if changes are made in the UK to Community design rights and European Trademarks and, to a more limited degree, patents.
- Uncertainty as to whether the unified patent court will apply to UK based patent infringement cases.
- Risk of divergence in the EU rules of construction in the treatment of trademarks, and design rights.

LITIGATION AND DISPUTE RESOLUTION

- Risk of the Brussels regime governing the mutual recognition of judgments ceasing to apply raising uncertainty as to the application of jurisdiction and reciprocal enforcement rules in litigation.
- No certainty that the EU Insolvency Regulation will continue to apply to the UK as the Brexit process evolves.
- Possible parallel investigations and divergent decisions emanating from the EU and UK in relation to abuse of dominant position and anti-competitive arrangements involving UK undertakings, where there is an effect on trade in the EU. Potential for companies to be penalised by both regimes.
- Legislation governing actions for damages for infringements of competition law based on EU Directive 2014/104 may be amended or repealed thus creating a different regime for cartel damages claims in the UK.

COMMERCIAL CONTRACTS

- Unclear how it will affect interpretation of certain clauses in existing contracts.
- Parties may consider terminating contracts which were entered into under the expectation that UK would remain in EU.
- Going forward, contracts may include references to Brexit and the interpretation of "EU" will be subject to close examination.
- The choice of English law as governing law clause may be less attractive to use due to uncertainty of what English law now means.
- Businesses with contract terms of more than two years will need to consider how withdrawal will impact on the commercial fundamentals underlying the arrangement.

MERGERS & ACQUISITIONS

- Possible M&A slow down due to uncertainty as investment and recruitment is deferred.
- Transactions postponed or delayed due to currency fluctuations impacting valuations of businesses based in or with UK operations.
- Possible impact of dual regulation - transactions may require approval from both EU and UK competition regulators thus leading to increased costs and delays.
- In certain M&A transactions involving UK businesses or Irish businesses with UK operations, EU driven rules concerning protection of employee rights on a transfer of undertakings may no longer apply.

EMPLOYMENT

- Restrictions on the free movement of labour - EU citizens may lose right to work in UK and UK nationals may lose right to work in other EU countries. Work permits may be introduced.
- Possible divergence in labour laws if the UK repeals or amends certain areas of social and employment law derived from EU legislation. May result in the UK appearing more attractive to employers given greater flexibility to remove certain workers' rights. Businesses in Ireland and EU with operations in the UK and vice versa may need to navigate conflicting approaches leading to increased compliance costs.
- In certain M&A transactions involving UK businesses or Irish businesses with UK operations, EU driven rules concerning protection of employee rights on a transfer of undertakings may no longer apply.

PROPERTY

- "Brexit" clauses may become a more common feature of property contracts.
- Potential downward pressure on property prices as slowdown in transactions.
- The liquidation by funds of properties to accommodate withdrawal requests may lead to such assets being sold at distressed price levels.
- Commercial and residential property values may decrease in London and elsewhere in the UK as international businesses may seek to relocate to the EU potentially having an upward effect on property prices in suitable EU locations.
- Possible increased demand for commercial property and consequently residential property which may increase property values, particularly across key EU cities including Dublin, in the medium term.

Meet the team

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