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# NEXT STEPS FOR OUT – HOW WILL THIS AFFECT YOUR BUSINESS?

**The UK has made its choice and is to leave the European Union.**

## **What next?**

Thursday's vote to leave the EU does not automatically mean the EU Treaties and legislation will no longer apply in the UK. It is merely the first step in a long series of negotiations to determine the shape of the separation process, assuming that the UK Parliament follows the vote. This process will begin with UK Government discussing and deciding when to notify the European Council of its intention to withdraw from the European Union in accordance with Article 50 of the Treaty on the European Union (TEU). The exact timescale within which this notification will take place is unclear. However, the UK Prime Minister, David Cameron, indicated on his resignation that it would be for the new prime minister to carry out negotiations with the EU and invoke Article 50.

Article 50 TEU provides that the European Council will agree by consensus the guidelines by which the European Commission will negotiate the withdrawal agreement. Every Member State, excluding the UK which cannot participate, must vote in favour of the guidelines. Once agreed, the EU and the UK will have two years, starting on

the date that the UK notified its intention to leave the EU, to conclude an agreement setting out the terms of withdrawal and the framework of the UK's future relationship with the EU. This period can be extended by the European Council with the unanimous consent of the remaining Member States. For an agreement to come into force it must be approved by the UK, the European Parliament and an enhanced qualified majority of remaining Member States, meaning in practice 20 out of 27 Member States, representing 65% of the population of the EU.

From the date the agreement enters into force, the EU Treaties and accordingly all EU legislation, will no longer apply to the UK, unless otherwise agreed, but UK business could still be liable for infringements of EU competition law having effects on trade between Member States. It is likely to take the UK Government a considerable time to decide which EU-originated legislation to retain, which to amend and which to revoke. Despite this, English commercial law will remain largely unchanged as leaving the EU will not impact on the precedents established under



English common law and the way in which business-to-business contracts are interpreted by English courts. Therefore, Brexit is not likely to impact the day to day application of English business-to-business law. However, the enforcement of English judgments, questions over jurisdictional issues, service of English court documents in EU Member States and the regulatory regime and markets in which our businesses operate will be affected and may pose challenges for those wanting business as usual.

Impact areas to consider, in light of the regulatory upheaval likely to be generated by Brexit, include:

### **Review of contracts**

Markets predict that the value of the pound may be very volatile in the short term due to the widespread uncertainty created by Thursday's vote and this has been borne out already today. In addition, the standing of the Euro may continue to be impacted, much in the same way as it has been in the run-up to the referendum. This large scale volatility of exchange rates may affect the future commercial viability of existing contracts. Contracts particularly affected may be those concluded in US Dollars or requiring conversion between multiple currencies and longer-term contracts. Market Disruption Event provisions may be triggered in financial agreements. HFW can assist in reviewing such contracts, and for variations of existing contracts, in drafting 'Brexit clauses' to govern the status of contractual obligations in light of the decision to leave the EU.

### **Possible issues in choice of jurisdiction, enforcement of judgments and service of proceedings**

The legislative negotiations between the EU and the UK following Brexit are likely to involve an agreement to continue the current regime for choice of jurisdiction and the enforcement of judgments within EU Member States, the Recast Brussels Regulation<sup>1</sup>. However, in any interim period where such an agreement is being negotiated, or if the UK does not become an independent signatory to the Lugano Convention 2007<sup>2</sup>, an alternative way of ensuring the continuity of the current enforcement regime, enforcement of judgments between the UK and EU Member States will no longer be automatic. The enforcing party will need to bring proceedings to enforce the judgment in the relevant local court which may result in the reappearance of the "torpedo" action. HFW can help businesses to circumnavigate these issues by enforcing judgments whilst the UK is still formally part of the EU.

On the service of legal proceedings, if a reciprocal agreement is not agreed in place of the current EU Service Regulation<sup>3</sup>, claimants would have to apply to the UK courts for permission to serve English court proceedings on a party located in an EU Member State. To ensure timely service of litigation proceedings, HFW can assist your negotiations to amend existing contracts and ensure new contracts include an agent for service of process clause to avoid this issue.

Arbitration will fall outside the issues Brexit may create especially on enforcement, due to the UK's membership of the New York Convention 1958, which will continue to apply to the other 155 signatories, including the EU Member States.

### **Fluctuation in import and export tariffs**

It has been suggested that Brexit will lead to a rise in UK import tariffs, not the unilateral tariff reductions some have promised. Thus, the UK could obtain some leverage in trade negotiations with the EU and WTO countries. EU import tariffs for UK exports to the EU could be imposed. This would make imports and exports more expensive. Therefore, importers and exporters should consider taking advantage of current arrangements which are tariff free.

### **Passporting**

Brexit may also disrupt the current passporting regime in respect of certain services, particularly financial services such as banking and insurance. If an agreement is not concluded between the UK and the EU, those companies which currently have a passport to provide certain regulated services on a cross-border basis in other EU Member States without being authorised in those other jurisdictions, would no longer be permitted to do so. Such businesses would have to register a subsidiary in a Member State and obtain authorisation there in order to continue to provide services within the EU. These changes could impact

1 Regulation (EU) 1215/2012 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters

2 Convention on Jurisdiction and the Recognition of Enforcement of Judgments in Civil and Commercial Matters 2007

3 Council Regulation (EC) 1393/2007 on the Service in the Member States of Judicial and Extra Judicial Documents in Civil or Commercial Matters



considerably UK producers and service providers, particularly the banking and insurance industries and other firms in the financial services sector.

HFW can assist UK-authorized service providers operating on a cross border basis within the EU to register and obtain authorisation in another EU Member State, or migrating or restructuring to ensure the continuity of service supply to customers. We can also assist EU businesses currently providing services to the UK under passporting rules in registering and obtaining authorisation in the UK, should that become necessary.

**Our dedicated team of specialist lawyers have considered how Brexit will impact across your sector. And our sector-specific publications can be found here:**

<http://www.hfw.com/Brexit>.

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As the new legal landscape begins to take shape we can help you to steer your business through the challenges and new opportunities that these changes will inevitably bring. Please contact our team of sector specialists for further information and support:

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