

BREXIT AND ITS IMPLICATIONS FROM THE PERSPECTIVE OF SINGAPORE

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A question on the minds of many people is the possible impact of the UK leaving the European Union (“EU”) (more commonly known as “Brexit”) in light of the referendum passed in favor. This article seeks to explore the implications of Brexit from the perspective of a lawyer in Singapore.

Before delving into the implications of Brexit, it would be useful to understand the benefits/ advantages the UK enjoyed as a member of the EU and the possible repercussions post-Brexit. As part of the EU, the UK is part of a single market, which is underpinned by the pillars of free movement of goods (no tariffs and duties or equivalent measures), services (freedom to provide cross border services), persons (freedom of workers to move freely across the EU to seek and take up employment in another member state) and capital (no restriction on movement of capital between member states).

Much of the discussion in the aftermath of the referendum concerns the extent to which Brexit would affect trade and services between the UK and the EU and also the rest of the world and what compromises the UK will make in relation to the free movement of people in order to maintain access to the EU single market. This could be a particularly thorny issue as it seems commonly accepted that a key motivation for voting to leave was the idea of regaining control of the UK’s borders and restricting the number of people entering into the UK and taking jobs and using welfare services there.

It is envisaged that there may be no drastic changes in the early stages of Brexit as, first, there the UK has to invoke the departure process under Article 50 of the Lisbon Treaty and, subsequently, it needs to reach agreement on the terms of the split. The Article 50 process has been subject of much debate recently, both

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in the English courts, where the Supreme Court heard an appeal against a High Court decision that triggering Article 50 required an Act of Parliament and was outside the domain of the executive's royal prerogative, and in Parliament, which recently passed a non-binding motion to support the UK government's intention to trigger Article 50 by March 2017 on condition the government agree to publish a "plan" for Brexit before that point. The Article 50 process envisages the departing member would exit the EU at the end of 2 years, absent any unanimous agreement otherwise among the member states, which would mean by March 2019, if the UK government sticks to its timetable to trigger Article 50. Michel Barnier, the EU's chief negotiator, has said that, in practice, given political constraints, a negotiation would need to be concluded by October 2018 in order for the agreement to be in place by March 2019. The appreciable effect of Brexit has been the devaluation of the sterling pound, which has opened up investment opportunities into the UK as investments become more affordable. However, the prevailing sentiment has been to defer any investment decisions until such time that there is some form of clarity on the economic, political and legal landscape post-Brexit.

This state of uncertainty does raise possibilities for the legal sector as clients' responses to Brexit would involve understanding how the application of EU law to the UK would change, and how that may impact them, particularly those who currently have their European headquarters based in the UK and who may need to relocate some jobs out of the UK into other EU countries. The financial services sector, in particular, fears being shut out of the EU if the UK leaves the single market and some have called on the UK government to negotiate a transitional arrangement that would avoid a "cliff effect", where the UK exits the EU after 2 years before any new arrangements for cross border trade and services have been agreed. Although some politicians on both the UK and EU sides of the negotiation have shown little appetite to complicate the outcome of negotiations with such half-way houses, the concept has the backing of the UK Chancellor and the Governor of the Bank of England, and seems to be gathering political momentum. One way to soften the impact of the loss of the single-market "passports" for financial services might be to see the City of London obtain "equivalence" treatment as a way to continue selling its services into the EU. This would not require the UK to replicate the EU rule book for domestic business going forward but, as things stand today, Britain's rules being identical, are equivalent to EU ones. There has been talk in Brussels of making it harder for non-EU jurisdictions to gain access and, in principle, equivalence can be withdrawn on 30 days' notice, so some political support for this approach and some institutional safeguards would be needed to make it work. However, a compromise like this could avoid damaging both parties' interests by keeping the main financial centre in Europe integrated into the framework of EU financial services regulation. On a wider scale, clients are simply figuring out the best course of action to take in light of the impending changes to the legal and regulatory framework. This examination could cover a wide spectrum of legal issues relating to trade, immigration, competition regulation, data protection, financial services, IP, tax and dispute resolution, for example, the enforcement of English court judgements in the EU, etc. which lawyers should be well equipped to deal with as the developments become more apparent.

There are some who subscribe to the belief that the apprehension and uncertainty over Brexit has been exaggerated and are of the view that the new arrangement post-Brexit will allow the UK to flourish

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economically and will provide stability as it will remove the UK from potential uncertainties, political or economic, of the Eurozone. The attractions of sectors such as the UK's thriving high-tech industries with applications in Asian markets, such as bio-tech, environmental, smart-energy, advanced machinery manufacturing and the continued willingness of the UK to allow foreign investment into real estate and long-term infrastructure even in key sectors like nuclear power may make such investment less dependent on the UK's place within the EU and here the impact of Brexit could be limited. On the other hand, Britain has long been a favoured destination for Asian investors as a base of departure into the rest of the EU and the issue of maintaining seamless access in regulatory and tariff terms to a single market of 500 million consumers is an important one in a foreign investor's decision making. This implies that a "hard Brexit" which removed such easy access could damage future investment plans and might favour Asian businesses prioritising other landing points in the EU. Should clients need to adjust their investment plans, Singapore lawyers will be keeping abreast of developments and able to assist the client with the transition.

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