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Brexit: What Now?

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The United Kingdom has voted to leave the European Union. The vote is not legally binding but Prime Minister David Cameron has already acknowledged that the will of the people must be followed. We consider the key preliminary questions.

What now?

Once Article 50 of the Treaty on European Union is invoked, the UK has up to two years to exit the EU as, at that point, the EU Treaties will cease to apply to the UK.

For the moment the UK remains in the EU but the influence of the UK on European affairs will already be diminished as the rest of Europe decides how to respond to the Leave vote. Inevitably this will lead to a period of uncertainty as the exit is negotiated and the UK Government, however comprised, determines what relationship the UK is to have with the EU and, by extension, the 53 countries with which the EU has free trade agreements. In electing to leave the EU the British public has decided that something else is better than membership of the EU. The first question to be answered by the UK Government must be: what is that something else?

What are the Brexit models?

The Brexit question was simply "Remain or Leave?". There are no certainties as to what the "Leave" model looks like. The most commonly discussed models for the UK's post-Brexit relationship with the EU are:

1. The 'Norwegian model'—Under this model the UK would leave the EU but join the European Economic Area (EEA) and European Free Trade Association (EFTA), accepting the principles of free movement of goods, services, capital and workers in exchange for single market access.

2. The 'Swiss model'—This would mean the UK leaving the EU and joining EFTA but not the EEA. Consequently the UK Government would need to negotiate a series of bilateral agreements with the EU to secure access to the single market.

3. Total exit from the EU and the single market—The UK would then either rely on the rules of the World Trade Organisation to continue trading with the EU or seek to negotiate a new free trade agreement.

Each of those models, and any others that may be proposed in the coming months, will have a different impact on the UK economy and the legal systems currently comprised within the UK.

Possible Impact on Existing Law

We will not see an immediate impact on existing law or regulation. However we can expect a staged process of repealing EU-derived legislation and replacing it with domestic UK law.

But until a decision is made on the Brexit model we will not know the extent to which existing law can and will need to be replaced or amended. For example, the Norwegian model would see the UK having to comply with EU-derived legislation. Should the Brexit model involve not joining the EEA the UK Government will need to weigh the impact of exercising the freedom to move away from EU standards against the potential impacts on UK businesses. We would however assume that the UK Government will not wish to make it difficult for UK businesses to trade with the EU, and the UK Government will want to maintain relationships with European businesses and European investors.

A consequence will be that some areas of law may be more impacted than others. For example:

- Private M&A transactions ought not to be materially impacted as EU-derived legislation plays little part in the laws governing such transactions.
- There are unlikely to be substantial changes to the UK Takeover Code (Code), which governs public takeovers. The Code is a universally accepted set of rules which pre-dates the EU Takeover Directive and influenced the approach taken in the Directive.
- The laws and regulations of UK equity capital markets are in part based on EU-derived legislation, such as the Prospectus Directive. A move away from the standards and requirements of the Prospectus Directive in favour of lighter touch regulation is unlikely as this would jeopardise the readiness with which other European States and regulators would accept offerings.
- Debt capital markets and securitisations are largely governed by EU-derived legislation and the Brexit model will have a large influence on the changes we might see, as the regulations and directives apply to the EEA but not EFTA.
- Any ability of the UK Government to move to lighter touch regulation of financial services will, again, depend on the Brexit model. The Norwegian model would preserve the ability to access the single market via the "passport", but the Swiss and total exit models will not.
- The nature of intellectual property rights will be affected along with the ability to enforce them. National rights will remain unaffected, but Community Trade Marks and Community Design Rights may cease to apply to the UK.
- The UK data protection laws are derived from the EU regime. If the UK Government elects to stay out of the EEA it has the option to amend the current legislation. However, as with financial services, the UK

will want to ensure that it has a regime which is regarded as acceptable by the remaining EU countries for the transfer of data from the EU to the UK.

- The impact of certain EU-derived employment regulations on labour relations, for example the Working Time Regulations, may be affected over time if the UK adopts a more laissez faire approach to the employment relationship.

The Future of the United Kingdom

With both Scotland and Northern Ireland voting overwhelmingly to remain within the EU we should expect to see pressure for referendums for those countries to leave the United Kingdom and become independent sovereign states. This is a journey that has no certain ending.

For further detail and advice on the potential impact of Brexit on your business please contact your usual Pillsbury lawyer.

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