May 2016

Alert
Life After Brexit?

By Andrew J Wilkinson and Peter King

This short note sets out our view on what organisations might do to prepare for a possible Brexit. An enormous amount has already been said, written, tweeted and blogged about the implications of a Brexit. One of the most striking features of the debate is the mixture of polemic and assertion without much detailed analysis.[1] Organisations may be forgiven for feeling overwhelmed by the material on offer and may struggle to develop an appropriate corporate response. If the UK does vote Leave there will be implications for businesses from all over the world which have operations in, or trade with, the UK or the rest of Europe.

What should you do to prepare now?

- In the period from now until the vote on 23 June there is little that can be accomplished beyond preparing for some market volatility. Markets and investors dislike uncertainty, and, if only one thing is certain about Brexit, it is that a vote for Leave will produce a prolonged period of uncertainty which is expected to be reflected in continued market volatility.
- Although it is difficult to accurately assess the effects on exchange rates, interest rates and the FTSE[2], corporates should start thinking about how they would respond internally and externally to a Leave vote by putting in place a communications plan and assembling a working group to assess the consequences of a Brexit for their business.

What should you do if the UK votes Leave on 23 June?

If the UK votes to leave, a legal process will start towards completion of a Brexit. It is estimated that dismantling the UK from the European Union (EU) will take between two to five years. It is our strong view that two years is the bare minimum for a complete Brexit – and we believe it is likely to take much longer.

There will be some milestones to watch out for on the path towards a Brexit, including the commencement of the Article 50 withdrawal process, the repeal of the European Communities Act 1972 and completed negotiations around the terms of exit. For corporates, uncertainty will persist, and there will be a lengthy period in which to assess the likely outcome of withdrawal and to implement a plan to adapt your business.

A further complication of the exit timetable, often overlooked, is the effect of political uncertainty within the UK following a Leave vote. There will likely be senior governmental changes, and it may take time for a political consensus to emerge around the terms to be sought in exit negotiations. Further, there could be demands for another Scottish independence referendum.

After a Leave vote, affected corporates will need a task force, or working group, to make Board-level recommendations – the most affected sectors of the economy will likely be financial services including banking, insurance and risk management, and manufacturing.

Broadly, businesses affected will be those which:

- are regulated via a European framework;
- import directly from the EU or indirectly from non-EU countries via a Free Trade Agreement;
- deal directly with EU markets or to non-EU countries via an EU trade agreement;
- rely upon EU employee mobility; and
- obtain grants and subsidies from EU institutions such as the European Investment Bank.

Will you be affected?

It is expected that most businesses will be affected – the only question is to what extent. Financial services businesses that rely on the "single passport" system will be deeply affected.

Some corporates will conclude that they are likely to be reasonably unaffected and can maintain a watching brief. Others will decide that the range of outcomes could affect them profoundly and consider options from COMI[3] shifting, new business plans, change to contract terms, acquisitions or disposals, alterations to corporate structure and so on. Our strong advice for corporates is to take a measured approach. Complacency is often dangerous and the issues arising from a Brexit may be profound for some businesses. However, there will be sufficient lead time for corporates to plan and take deliberate, considered actions, following thorough analysis of any likely outcomes, in order to mitigate any effects.

Corporate planning for change following a Brexit must rely upon good information and intelligence. For the most affected businesses, gathering the best intelligence on a range of outcomes is important. Some businesses will be able to source their information internally; others will need to rely upon external sources. Most companies will need outside help in assessing the structures and mitigating steps needed to adapt to the challenge.

What should you expect?

The task facing the UK Government in achieving a mandated Brexit will be twofold. In simple terms, a new agreement with the EU will be required to establish the terms by which UK entities will trade with Europe, and, in parallel, a decision will have to be taken on how to address, within the UK, laws which currently arise directly or indirectly because of EU membership. Which models will be adopted and on what terms? Of course they will be complex – the Treasury analysed possible outcomes using three models: membership of the European Economic Area (like Norway); a negotiated bilateral agreement (like Switzerland, Turkey or Canada); and World Trade Organisation membership (like Russia or Brazil). Whilst there are others, these seem amongst the likely outcomes.

The process of negotiating with the EU and the consequent UK implementation of EU laws will create a challenge and an opportunity for affected corporates. The challenge is to try to predict the likely outcomes and in light of the change, analyse what steps will be taken and when to meet those changes.

For all of us, a Leave vote will create uncertainty without any real parallel seen in the UK and across Europe in recent times.

---

1 There are some examples of more thorough attempts to analyse issues arising from Brexit, for example, various Bank of England and HM Treasury papers.

2 FT: What will Brexit do to the FTSE, UK property and the pound?, 2 March 2016

Sky News: IMF Warns Brexit Could Force Up Interest Rates, 13 May 2016

3 Centre of Main Interests (COMI): A term that describes the jurisdiction with which a person or company is most closely associated for the purposes of cross-border insolvency proceedings. The term is used in the EC Regulation on insolvency proceedings (Insolvency Regulation) and the UNCITRAL Model Law on Cross-Border Insolvency (Model Law). Source: PLC

Please contact Andrew Wilkinson or Peter King, authors of this alert, or your contact at Weil for more information.

Andrew J Wilkinson	Bio Page	andrew.wilkinson@weil.com	+44 20 7903 1068
Peter King	Bio Page	peter.king@weil.com	+44 20 7903 1011