

# Brexit – No Short Term Regulatory Change but Significant Longer Term Implications

**June 24, 2016**

The United Kingdom (UK) has voted to leave the European Union (EU). Although the vote will have long term implications, in the short term there will be no change to the current legal and regulatory status quo; the UK will remain a member of the EU, subject to all applicable laws and regulations arising from this membership, until such time as it has negotiated its withdrawal. In this Client Alert we set out some of the short and longer term considerations arising from the vote as well summarising the legal framework through which the Brexit withdrawal process will likely take place.

## **The Referendum and its result**

In February 2016, Prime Minister David Cameron announced there would be a referendum on the UK's membership of the EU. This was a fulfilment of a promise made in the 2015 general election campaign.

The referendum vote took place on Thursday 23 June 2016. On Friday 24 June, it was officially announced that the UK had voted by 51.9% to 48.1% to leave the EU.

## **Short and Longer Term Considerations**

### *Short term*

The referendum was an advisory referendum and the result has no direct legal effect. Therefore, from a legal and regulatory perspective, the result changes nothing in the short term. The UK remains a member of the EU and continues to benefit from the EU free trade area. From a financial services perspective, firms authorised in the UK and which benefit from an EU 'passport' under one or more EU Directives (such as MiFID or the AIFMD), which allow such firms to carry out cross-border activities (be this the provision of financial services or the marketing of financial products) will be able to continue to do so in the short term. Also, firms that access the UK market from outside the UK under EU legislation, such as AIFMD, may continue to do so in the near term.

From an antitrust perspective, EU competition law will continue to apply to and within the UK during the exit negotiations, meaning that firms will still benefit from the "one-stop shop" principle for mergers falling within the scope of the EU regime, precluding parallel examination of the transaction by the UK Competition and Markets Authority. Equally, the binding nature of EU insolvency regulations will not be affected in the near term but will be impacted in the longer term as the UK exits the EU.

Although there are no immediate legal and regulatory changes, there have already been significant political and financial developments. The Prime Minister has announced his intention to resign and that a new Prime Minister should be in place by October 2016.

#### *Longer term and the legal framework for withdrawal*

There are mechanics in place under EU law for a Member State to leave the EU (these are set out in Article 50 of the 2009 Lisbon Treaty). The first step under Article 50 is for the Member State to notify the other EU Member States of its intention to withdraw from the EU. Activation of Article 50 obligates the EU to try to negotiate a withdrawal agreement with that EU Member State. The withdrawal agreement must be agreed within a period of two years from the activation date unless all other EU Member States unanimously agree to extend the period of negotiation. If a withdrawal agreement were reached, a more comprehensive agreement between the UK and the continuing EU would likely ensue.

It is currently unclear when the UK may activate Article 50. In the Prime Minister's statement on the morning the referendum result was announced, he indicated that this should be a decision for his successor and it is not expected that this successor will be in place until October 2016. Other European leaders, including Jean-Claude Juncker, President of the European Commission, have reacted to the referendum result by calling for the UK to activate Article 50 as soon as possible.

The UK will remain a member of the EU, and subject to all resulting laws and regulations, until such time as the withdrawal agreement is agreed, or the two year period following the Article 50 activation date has lapsed and there is no unanimous agreement to extend the negotiation period.

#### **Next Steps**

Developments following the UK's vote to leave the EU should be monitored closely and firms potentially impacted should consider commencing scenario testing and contingency planning regarding the potential longer-term outcomes to the UK's vote to leave the EU.

Proskauer will keep clients updated on relevant developments. Please contact a member of your Proskauer team if you have any questions.

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