

CLIENT ALERTS

UK High Court: Brexit On Hold Until Parliament Decides

11.11.2016

Companies Consider Negotiating Assurances with UK Trade Ministry or Local Governments

On Sunday, October 2, the United Kingdom's (UK) Prime Minister, Theresa May, announced plans to trigger Article 50 of the Treaty of Lisbon by the end of March, 2017, starting the two-year clock for withdrawal of Britain from the European Union (EU). May identified the goal of making Britain a "sovereign nation again," in control of its own immigration and with its own laws. As the world's fifth largest economy, Britain will become "truly global," May said, looking beyond Europe as its largest trade partner and naming China, India, Canada, Mexico, South Korea, Australia, New Zealand and Singapore among the nations prepared to sign major free trade deals with the UK.

Since then, however, the High Court issued a judgment barring the Prime Minister from launching "Brexit." The Government has appealed the judgment, and the Supreme Court will hear the appeal in early December. If the Supreme Court reverses the High Court judgment, then the Prime Minister will likely proceed with her original plan to start Brexit next March. If, however, the Supreme Court sustains the lower court judgment, then the referendum approving Brexit will effectively become moot, and Parliament will have to debate and vote on the issue. With many in the British electorate having "buyer's remorse" about Brexit, it is quite possible that the initiative will fail in Parliament, with the result that the UK will remain in the EU.

In the face of such near term uncertainty over the vitality of Brexit, companies with operations in the UK and United States are faced with new strategic investment and planning decisions that are of the utmost importance.

In the last Brexit Alert (August 5, 2016), Butzel's Brexit Team recommended that businesses review pending and executed contracts with respect to numerous terms, e.g., data protection,

Related People

James C. Bruno
Shareholder

Related Services

International Business

CLIENT ALERTS

merger and acquisition, tax, industry-specific regulation, marketing authorization, research and development, manufacturing and supply chain, patent and trademark, fair competition, antitrust, employment, intellectual property, real estate and incorporation, dispute resolution, jurisdiction, governing law, enforcement of judgments, debt and equity capital markets, securities listing and prospectus regimes, employment, real estate and corporations laws, etc.

In the meantime, Sterling just fell to a 31-year low against the dollar. US companies with current investments in the UK or which are contemplating new investments, may consider actions to reduce the uncertainty of the Brexit outcomes. The UK automotive industry is largely foreign owned, and includes manufacturers, suppliers and dealers. Eighty percent of cars produced in the UK are exported to the EU. In the EU, trade between Britain and the EU is tariff-free. There is uncertainty regarding whether a post-Brexit trade deal between the UK and EU would result in new tariffs to export UK assembled cars to the EU, which would increase the cost of doing business and affect the competitiveness of automotive products produced inside and outside of the EU. However, the EU will be mindful of the fact that the UK is a net importer of goods from the other EU member states, so the imposition of EU tariffs on UK goods could lead to retaliatory tariffs by Britain. With this in mind, it is in both sides' interest to settle on mutually beneficial trade arrangements, and it is worth remembering that trade arrangements with the EU were not catalysts for the Brexit vote.

Actions being considered within the auto industry and within other industries that export products from the UK to the EU, include policy and planning decisions on whether to relocate operations from the UK to other countries within the EU—with zero tariffs—with Ireland commonly cited. "Uncertainty" will be in the driver's seat until the UK Supreme Court rules and, as is likely, Parliament votes on Brexit. If Parliament approves Brexit, then the Government will negotiate new trading arrangements with the EU. If Brexit is reinstated, whether by the Supreme Court or Parliament, uncertainty could last 2-3 years, when Brexit would be complete. Of course, the effect on UK trade will become more apparent during negotiating period.

To reduce the financial consequences of any outcome, some companies with substantial investments in the UK are also looking to the UK government for assurances, in the form of pledges, guarantees and commitments for any tariffs that may be imposed on exports from the UK to the EU, in exchange for keeping operations on UK soil and making new investments. Industry trade associations and other special interest advocacy groups might be tapped to sponsor remedial legislation, including new tax and/or customs measures, to protect industries in the UK that would be vulnerable to possible tariff consequences as a result of Brexit negotiations. Compensation might take the form of direct payments or changes in tax structure, among other forms of consideration.

Again, if the UK proceeds with Brexit, then, depending on the outcome of the negotiations with the remainder of the EU, job losses are likely to follow if employers do eventually decide to pull operations and investments out of the UK. Indeed, the UK Society of Motor Manufacturers and Traders, the UK trade association for the auto industry, estimates that 814,000 people are involved in the industry. That is anti-Brexit argument that will surely be raised in the House of Commons in any Brexit debate.

CLIENT ALERTS

In the meantime, the process of future deal-making with the UK government, whether with the trade ministry or with local governments protecting local manufacturing plants and workers, will likely accelerate. Prime Minister May's government has reassured industry that it would have an open ear to their concerns and would fashion Brexit negotiations in response to them. Although it is understandable that the British government has not committed to the shape and nature of a Brexit deal at this stage, the hope that a blank canvas will enable it to negotiate terms that will be favorable to the UK and capitalize on its inherent strengths. Indeed, negotiators from both sides will be sure to recall that, although the UK did not join until 1973, and it is likely that they will look to the treaty arrangements that Britain had with EU's original members – France, (West) Germany, Italy, and the Benelux countries – as guideposts for at least some of the Brexit negotiations.

In the face of such short term uncertainty, companies doing business within the UK will benefit from the guidance of attorneys experienced in international law, customs, tariffs, treaties, finance as well as subject matter expertise in specific industries. They will also need guidance on how to benefit from any opportunities that may arise from the UK's negotiated Brexit deal, if it should occur.

In addition to our Brexit team, Butzel Long is a member of Lex Mundi, a global network of 160 premier law firms located in more than 100 countries with access to more than 21,000 lawyers worldwide. With Lex Mundi, Butzel Long can help our clients meet their legal needs anywhere in the world. We offer our clients indigenous insight, local market knowledge and industry sector experience, innovative solutions, smart resourcing and cross-border connectivity.

Contact a member of our Brexit team to discuss how the UK's decision to leave the EU might impact your business.

Ira E. Hoffman

202.454.2849

hoffmani@butzel.com