

AFTER BREXIT: SERVICE OF PROCESS AND LITIGATION FOR MULTINATIONAL COMPANIES



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The world was shocked when the United Kingdom voted to leave the European Union on June 23 of this year. Though the [results were close](#), 52% of the 30 million voters decided it would be in the UK’s best interest to withdraw.

In today’s global marketplace, this decision impacts not only local citizens, but the entire world economy. Businesses with international interests will see a change in the way they deal in Europe, and there may be some negative consequences.

ABOUT BREXIT

The decision to withdraw from the European Union is a complicated one, and it’s difficult for those outside the area to fully understand why they’re leaving. Some say it’s due to a distrust of EU leadership, but others say immigration and the massive chasm between the lower and upper classes is to blame.

WHEN WILL THE UK LEAVE THE EU?

Brexit is currently only a decision. It will take several years to work out an exit strategy. Unforeseen issues are likely because this is the first time a member of the European Union has decided to withdraw.

In order for the exit process to officially begin, Britain has two years from the date of the referendum to submit a request in writing as outlined in [Article 50 of The EU’s Lisbon Treaty](#). Once that happens, there can be up to ten years of exit talks before the process is complete.

WHAT EFFECT HAS BREXIT ALREADY HAD ON THE ECONOMY?

Immediately following the referendum, a global panic caused financial turmoil:

- ▶ The pound hit a 31-year low
- ▶ UK’s credit rating was lowered
- ▶ Wall Street had its worst trading day in 10 months
- ▶ The Federal Reserve didn’t raise interest rates as expected in July because of worldwide economic uncertainty which many believe was partially caused by Brexit

But not all areas of finance were affected. According to the International Swaps and Derivatives Association (ISDA), “the UK vote to leave the EU will not have an immediate impact on the legal certainty of existing derivatives contracts, nor will it require any immediate contractual change or action from counterparties.”

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POTENTIAL LEGAL CHANGES ON THE BUSINESS LANDSCAPE

Brexit will change litigation and [service of process](#). It will be more difficult to serve UK proceedings on EU defendants and enforce judgments. The result will be increased time and expenses of cross-border litigation. The uncertainty of contractual provision will result in increased litigation.

Problems will also appear in the area of contractual agreements with the UK prior to the country's exit from the EU. As previously stated, there is no legal precedent for this since the UK will be the first state to leave the European Union.

Experts can't seem to agree on how much British law was influenced by the EU-UK relationship, and if a UK departure from the EU will signal a serious overhaul to the entire legal code. [Estimates vary](#) between 13% and 65% of British law was directly influenced by the EU.

In addition, the European Union has treaties with each member that spell out five types of [legal acts](#):

- ▶ *regulations* are legally binding for all EU countries
- ▶ *directives* are goals all EU members must achieve
- ▶ *decisions* are legally binding only for the organization or member for who it is written
- ▶ *recommendations* are not legally binding, spelling out suggested best practices for government organizations
- ▶ *opinions* are non-binding legal statements directed at a member or particular organization

JPMorgan & Chase CEO [Jamie Dimon](#) has been vocal about the effect Brexit will have on the company's business. He told National Public Radio (NPR) in an interview:

After a Brexit, we cannot do it all [service companies in other EU countries] here. And we will have to start planning for that. I don't know if it means 1,000 jobs, 2,000 jobs — it could be as many as 4,000.

BREXIT AND YOUR BUSINESS CREDIT RATING

Businesses with significant exposure to the UK economy may find their credit rating adversely affected by Brexit. If doing business between the UK and EU become extremely problematic, this will affect overall trade volume, which will trickle down to individual company revenues and their

creditworthiness. This credit rating change could affect all legal contracts, even outside the European Union or United Kingdom.

The reason for this is some contracts may have triggers that call for changes in collateral obligations upon the decline of a party's credit rating. To be prepared, review all current contracts for any credit rating clauses and if they exist, be proactive in renegotiating contracts, and make necessary operational or structural changes to the business in order to prevent a lower credit rating.



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OTHER CHANGES BREXIT WILL BRING

Because the succession of the UK from the European Union could take two years and up to ten years to finalize details of the exit, the full impact of Brexit is not yet known.

But some changes are imminent:

- ▶ UK domestic companies who operate largely within the UK or non-EU countries are not likely to be impacted as they are not heavily dependent on the EU-UK relationship
- ▶ Large manufacturers such as auto manufacturers will likely be subject to EU Tariffs where none previously existed
- ▶ Food Industry manufacturers' will have new regulatory hurdles to cross and they will not be able to take part in the EU's Common Agricultural Policy which provides subsidies and other benefits
- ▶ Exports and Imports between the UK and the EU members will see an increase in cost and difficulty to do business

WRAPPING IT UP

We've only seen a short-term financial panic due to Britain's unprecedented exit from the European Union. It will take years to see what impact Brexit will have on [process agency](#).

One [UK legal expert](#) states:

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“The inclusion in agreements of an obligation to appoint a process agent within the relevant UK jurisdiction, already usually a sensible option in any event, could become even more important.”

In other words, relying on negotiations and waiting for laws to change is a risky proposition. Save time and expense by appointing an agent in the UK now.

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