HERBERT SMITH FREEHILLS

Real estate

SEPTEMBER 2019

The commercial and legal focus on Brexit-related risks will sharpen as 31 October 2019 approaches, enhanced by the current volatility and uncertainty of the future outcome of the process. Although Brexit will have little impact on the fundamentals of UK land law legislation, the real estate sector includes a diverse community of business interests and real estate is a fundamental building block of the UK economy so the impact of the UK exit from the EU will be felt in many different ways.

Much of the law relating to pure real estate, planning and construction is domestic in its nature and the overarching concerns for the sector are commercial and market related. The diversity and flexibility of the sector should provide a buffer against dramatic consequences of a Brexit-related risk. However, until the nature of the new UK-EU relationship is resolved, related uncertainty and political instability may impact appetite for inward investment and prompt relocation decisions.

As a no-deal scenario becomes an increasingly discussed proposition, this brings its own challenges. However, aside from some negativity around specific sub-sectors, commentators are largely optimistic about the underlying fundamentals of the UK property market. Whether the UK is in or out of the EU, it is likely to remain a safe-haven investment destination.

The implications for clients will be predominantly commercial. Key considerations for UK real estate projects facing a hard or no-deal Brexit, particularly those involving construction, include:

- **Tariffs on imports of equipment, plant and materials**: Imports originating from non-EU member states, as well as EU member states, may be affected by a hard Brexit. Where it is not practicable to avoid tariffs by buying goods/services before Brexit (noting that payment for off-site materials or advance payments may in turn be sought), attention will shift to identifying and assessing the risk of exposure to new tariffs. Where the UK trades with a third country now on the EU's WTO (World Trade Organisation) terms, commentators suggest that the UK may use tariff rates notified by the EU initially. Over time the UK may depart from those tariffs for some goods, particularly those which cannot be produced commercially in the UK.

The section is part of our Brexit Legal Guide.

No Deal

- If the Withdrawal Agreement endorsed by the EU Council on 25 November 2018 or the Political Declaration, or some version of both, are not approved by 31 October 2019 and there is no change to the exit date, the UK will cease to be a member state on that date without any transitional period
- The body of EU law in force at that time will be imported into UK law (with necessary amendments) under the European Union (Withdrawal) Act 2018 and UK legislation made to implement EU law will be retained, with suitable amendments – this is called 'retained EU law'
- A lot of the secondary legislation to adjust retained EU law for the post- Brexit world has already been made, see the accompanying section: The UK's new legal order post-Brexit
- The Government has published a series of 100+ practical no-deal notes with advice for

- **Labour shortages and access to suitable workers**: As the UK construction industry regularly employs EU nationals working temporarily in the UK, immigration restriction measures (eg, visa restrictions on EU workers) could impact on availability or productivity of labour, particularly for specialist trades. Where it is not practicable to avoid impact through mitigation measures (eg, through timely applications for visas or utilising appropriate UK alternatives), some projects may consider fluctuations provisions or additional programme relief. For further analysis, see accompanying section: Migration.
- **Consents licences and permits**: the imposition of new rules, restrictions and border controls could lead to delays in importing plant or materials. Whilst managing out this risk entirely might not always be possible (eg, due to uncertainties or unforeseen delays while transitioning to a new border control regimes), projects are expected to look at measures through which delays could be minimised due to goods becoming stuck in a customs clearance process such as via early ordering, management of supply chain importers or substituting goods with UK alternatives, if available.
- **Exchange rate risk**: The cost of imports from anywhere in the world could be affected by currency fluctuation between sterling and other currencies resulting from economic uncertainty. Alongside conventional hedging arrangements, some projects may consider denomination of prices in multiple currencies or, where practicable, the purchase of goods/services ahead of time.

See also our Corporate Law section for issues relating to corporate governance and structures, cross-border mergers and more general information on the impact of Brexit (good or bad) on companies and their businesses.

"Reducing transactional volumes reflect investor concerns around short term uncertainty and volatility. However in the medium term, transparency and liquidity and the weight of global capital chasing yield means the UK will remain a key investment destination."

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companies. The Government's Brexit guidance landing page searchable by organisational activity and other criteria is available here.

Deal/transitional period

- If approved by the UK Parliament, the Withdrawal Agreement, or some version of it, will set out arrangements for the UK's withdrawal from the EU – when the UK will cease to be a member state
- A transition period will follow the date of the UK's EU exit up till at least the end of 2020, possibly the end of 2021 or 2022
- During transition, EU law will continue to apply in and to the UK and the UK will continue to trade as part of the Single Market
- The Withdrawal Agreement will be accompanied by the Political Declaration on the future relationship between the UK and the EU. This will comment on the future trading relationship between the EU and the UK
- Whether or not the Withdrawal Agreement or the Political Declaration, or some version of both, are approved by 31 October 2019, the UK will cease to be an EU member state on that date, unless the date for the UK to leave the EU is extended again by agreement between the UK and the EU27 or the Article 50 notice is withdrawn. If there is an approved deal and the UK enters transition, as explained above, the legal position during transition will be very similar for businesses as if the UK were still an EU member state

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