BURGES SALMON

Briefing

FinTech

Brexit – a future outside of the EU is too uncertain to call...

Thought leaders in the FinTech sector appear to be as divergent on Brexit as the Conservative Party – for example, Michael Kent of Azimo and Tandem Bank believes that Brexit would be a total disaster for UK FinTech, whilst Chris Gledhill of Secco Bank sees the EU as a burning platform and it's time the UK got off - for the sake of UK FinTech and the UK in general. In our humble opinion, these two articles sum up the business rationale on which UK FinTech growth relies and the entrepreneurial spirit on which UK FinTech has thrived. Whilst there may be some (with hindsight) fairly accurate predictions, it is not crystal clear at the time of writing what the world will look like for UK FinTechs in July.

However, what is clear is that if the UK votes in favour of leaving the EU on 23 June then the terms on which the UK's withdrawal is agreed will be of paramount importance. Until then it is really only possible to speculate on the definitive consequences of a potential Brexit. Though, we have set out in this note two key points of potential impact for FinTechs.

Post- Brexit access to Europe

As has been widely reported, the withdrawal of a member state is unprecedented so we can only speculate as to what the terms of such an exit would be based on existing models such as Norway and Switzerland. The key issues would of course be the extent to which the UK would be able to access the European market (and vice versa), the conditions for doing so (in particular requirements for equivalent legislation) and the extent to which the UK would be able to influence any legislation to which it would effectively be subject under an equivalence regime. Clearly these points will be of less concern for businesses which do not have EU-wide operations.

Inevitably there would also be a period of uncertainty while the terms of the exit were negotiated and it is likely such uncertainty would in itself be problematic for many FinTechs.

Passporting rights

Any UK firm that relies on a passport to conduct its business will be impacted – this would for example include those FinTech businesses providing insurance (under IMD), payment services (under PSD), digital banking services (under CRD IV), robo-advice (under MiFID) and models using "alternative investment funds" (under AIFMD) most recently in the property crowdfunding market. This will also affect non-EEA businesses whose strategy has involved setting up an authorised UK subsidiary as a gateway to access the European market, (which may in part be one of the reasons why the US president has been imploring the UK to vote against an exit).

Of course, this would also go the other way too with EU FinTechs potentially unable to access the UK market, which would undoubtedly be a major factor in the UK's favour in negotiating any exit terms given the size of the UK financial services industry.

What should FinTech businesses be doing now?

With so much uncertainty it is tempting for firms to do nothing until the result is known. However, one practical step would be to review your existing business model and contracts to see how these might be affected by leaving the EU on the worst-case scenario assumption that there is very limited access, in particular given that counter-parties may seek to reassess their current arrangements, business models and contractual commitments in such circumstances.

If you have any questions regarding the potential impact of a Brexit on your business or in respect of your existing contractual arrangements please feel free to speak to your usual Burges Salmon lawyer or send your query to Adrian Shedden or Gareth Malna in the first instance.

Contact:

Adrian Shedden
Senior Associate

+44 (0) 117 307 6813
adrian.shedden@burges-salmon.com

Gareth Malna
Solicitor

+44 (0) 117 902 2799
gareth.malna@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com