

July 19, 2016

K&L Gates Brexit Task Force

Clients can contact the firm with questions about the consequences of Brexit by email at brexit@klgates.com

K&L Gates LLP. Global legal counsel across five continents. For more information, visit www.klgates.com.



Authors:

Derek N. Steingarten
+1.212.536.4024
derek.steingarten@klgates.com

Jacob N. Ghanty
+44.(0)20.7360.8211
jacob.ghanty@klgates.com

Philip J. Morgan
+44.(0)20.7360.8123
philip.morgan@klgates.com

D. Deniz Aktas
+1.617.951.9099
deniz.aktas@klgates.com

BREXIT: Guidance for Fund Directors

What to Know and What to Ask

On June 23, 2016, the UK held a referendum in which 52 percent of voters elected to leave the European Union (EU). While there is a great deal of uncertainty about the EU withdrawal process that will remain unresolved for a considerable period, a fund's directors have duties of oversight and responsible inquiry regarding matters relating to the fund. This alert will guide fund directors of both privately and publicly offered funds organized in various jurisdictions as they assess the immediate impact of the Brexit vote and identify questions for their fund's management and service providers.

Brexit's Immediate Impact:

Directors will benefit from learning about specific industries and asset classes already affected by the Brexit vote and from asking fund management to determine whether their fund's investment strategy, liquidity characteristics, or risk management processes should be adjusted.

1. Directors of funds with an investment strategy focused on the UK may wish to actively focus on any possible negative short-term impacts on performance and other portfolio characteristics, such as illiquidity. For example, in the immediate aftermath of the Brexit vote, certain open-ended UK property funds that had invested heavily in commercial property imposed limits or suspensions on redemptions.
2. Funds with significant investment exposure in continental Europe may also find short-term impacts, particularly in industries tied to trade with the UK. Directors may wish to review their fund's investment strategy and portfolio with fund management to assess any such issues.
3. Directors may consider the possibility that a fund's disclosures to investors may need to be revised or supplemented. Certain funds have begun to make changes to their prospectus risk disclosures to highlight special risks associated with Brexit.
4. Directors may benefit from receiving updates from management as to changes in counterparty credit or risk profiles for entities with whom the fund transacts in reliance on the creditworthiness of the counterparty (e.g., derivatives counterparties). For more information on this topic, see our [previous alert](#) about Brexit's impact on asset managers that trade derivatives.
5. Directors may also inquire about currency hedging strategies, the effectiveness of such strategies, and the fund's flexibility to engage in such activity given the wide fluctuations in the market.
6. Directors may seek confirmation that valuation procedures and sources for UK-related issuers continue to be appropriate, particularly for assets that are more difficult to value and may now be less liquid.

Brexit's Longer Term Impact:

Although Article 50 of the Lisbon Treaty contemplates a 24-month timeline for the UK's exit, the UK may agree to exit earlier (or possibly later) depending on how negotiations progress. Information about agreements between the UK and the EU will likely become available or known prior to the UK's official exit. As a result, it is important that fund directors ensure that they have open communication lines with fund management as new developments take shape.

Special Considerations:

1. The "Big Picture" - Fund directors will benefit from receiving analysis about post-vote developments and what these suggest regarding Britain's future trade relationship with the EU and the U.S. and how this may affect the fund's strategy.
2. For funds that rely on passporting, Directors may consider the implications of the potential end of passporting and whether the fund can still provide services and rely on marketing throughout Europe in the wake of Brexit. See the [K&L Gates Brexit flowchart](#) for more information if your fund has adopted a business model based on passporting to conduct EU-wide operations.
3. The UK's legal landscape is changing. The UK may choose not to adopt or maintain EU legislation that once bound it. Directors may inquire how this will affect their fund, especially if the UK enacts laws that contradict those of the EU.

Questions Fund Directors May Ask Fund Service Providers:

1. What do you see as being the key Brexit-related risks in your business?
2. How will Brexit affect the fund's pre-Brexit contractual obligations to comply with EU law, if any?
3. To what extent does your business rely upon the use of EU passporting privileges and are these important in the context of the services you provide to the fund?
4. Do you have any EU personnel in the UK, or UK personnel in the EU, who could be affected by any restrictions on the free movement of labor post-Brexit? To what extent do you see this as a significant problem for your business?
5. What, if any, new Brexit-related tax issues might affect the fund?

By taking an active role in communications with fund management and other stakeholders and maintaining an overall familiarity with Brexit developments, fund directors can better position themselves to respond to fund needs as they arise.



[Hotline](#)

[July 20th Q&A Conference Call](#)

[Task Force](#)

[Brexit Bites](#)

[Six-Point Action Plan for Asset Managers](#)

[A First Look at the Impact on Asset Managers That Trade Derivatives](#)

[Implications for Financial Services Firms](#)

[Implications and Issues for Firms in the Financial Services Sector](#)

K&L GATES

Anchorage Austin Beijing Berlin Boston Brisbane Brussels Charleston Charlotte Chicago Dallas Doha Dubai
Fort Worth Frankfurt Harrisburg Hong Kong Houston London Los Angeles Melbourne Miami Milan Munich Newark New York
Orange County Palo Alto Paris Perth Pittsburgh Portland Raleigh Research Triangle Park San Francisco São Paulo Seattle
Seoul Shanghai Singapore Sydney Taipei Tokyo Warsaw Washington, D.C. Wilmington

K&L Gates comprises approximately 2,000 lawyers globally who practice in fully integrated offices located on five continents. The firm represents leading multinational corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit www.klgates.com.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

© 2016 K&L Gates LLP. All Rights Reserved.