

BRIEFING

BREXIT:  
POTENTIAL IMPLICATIONS FOR THE  
MARITIME SECTOR  
JULY 2016

WHAT IS THE POTENTIAL  
IMPACT OF BREXIT ON THE  
MARITIME SECTOR IF ARTICLE  
50 IS INVOKED?



While the nature of the United Kingdom's future trading relationship with the European Union ("EU") will take some time to become clear, it is important to realise that in the immediate aftermath of the result of the UK's recent EU referendum, nothing has changed in terms of the trading relationship and the movement of people and goods between the EU and the UK and the laws which apply to your maritime business and contractual arrangements.

As the political machinations play out, it is clear that Article 50 will not be invoked until a new Prime Minister is in place, which will not be until at least September. Once invoked, the UK has an extendable period of two years to negotiate new trade arrangements with the EU. During this negotiating period the UK remains a full member of the EU and subject to all the related rules and regulations. While trade relationships of various forms between the UK and EU have been suggested as possibilities by different people, organisations and publications, ultimately it is difficult at this stage to know what form that relationship will take, or to be able to advise in detail on the full potential impact of a Brexit from the EU for the maritime sector.

**English law: a favourable contractual & dispute resolution regime for maritime contracts?**

Whatever the outcome of the UK's trade relationship with Europe, we are of the belief that English law will remain a favourable legal regime for the documentation of international contracts and transactions. The choice of English law is due to the certainty of its long established legal precedent and court system, not because the

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UK is part of the EU. Generally speaking other elements of law that directly regulate the maritime sector are international in scope and incorporated into English law so the status quo would largely remain in place.

As regards England as a jurisdiction for disputes, Brexit should not have any effect on the pre-eminence of London and its arbitral institutions in the resolution of international arbitrations. The current worldwide enforceability of London awards should remain.

As regards court litigation, the various EU regulations in respect of jurisdiction, applicable law, enforceability of judgments and insolvency should be applied by English courts, and by the courts across the EU in respect of UK matters, until such time as the UK has left the EU. Nothing should change during this period, although it remains to be seen how different courts in fact deal with matters as the date of departure approaches.

As regards the situation after the UK leaves the EU, we consider it too early to draw conclusions on what the landscape might look like for dispute resolution and insolvency. However, we do not consider it a necessary or probable outcome of the UK leaving the EU that the English courts and those of the remaining Member States will lose a common framework for ruling on jurisdiction or applicable law or that the reciprocal enforcement of judgments or recognition of insolvency proceedings will cease.

#### **UK Tonnage Tax & UK flag**

Whilst the UK Tonnage Tax regime currently needs to comply with EU State Aid Law, the regime itself is not derived from EU law.

The legislation that governs tonnage tax is domestic legislation and, accordingly, Brexit does not need to have any impact on the UK Tonnage Tax regime. If the UK is able to operate without the need to comply with the EU State Aid Law, then there could even be the possibility of relaxations to the rules, for example, on the limits on time chartered in tonnage.

It is to be hoped that the UK Government will retain its current support of the tonnage tax system, and continues to recognise the important role it has in contributing to the UK economy and attracting shipowners to set up businesses in the UK.

#### **Employment & Immigration law in the maritime sector**

In terms of employment law implications, the position is very uncertain. One view is that the Government may seek to deregulate this area in order to make the UK appear more competitive compared with countries remaining within the EU. However, laws underpinning employment on board ships arises from the ILO Maritime Labour Convention, 2006 (the “Convention”), which the Government ratified on 7 August 2013, and a number of enforcing EU Regulations.

The overriding aim of the Convention was to set decent, minimum global standards for seafarers’ living and working conditions and to help create conditions of fair competition and a level playing field throughout the shipping industry. In order to comply with the Convention, UK legislation (insofar as it was necessary) was brought in line with its standards and in our view it is unlikely that the UK will in any way seek

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to deviate from its Convention obligations not least because of the international repercussions. However, many believe that there will be some watering down of certain employment law rights, such as rules relating to the calculation of holiday pay, which could be relaxed allowing employers to reach their own decisions on the appropriate level of pay, and also on the ability of employees to carry forward leave in cases of long term sickness absence. It is also unlikely that the anti-discrimination laws will undergo a radical change but we agree with the views expressed by the UK Chamber of Shipping that the Government may seek to introduce a cap on the damages awarded in such claims.

In terms of immigration we expect big changes in this area and we would be very surprised if the UK Immigration Rules and Tier 2 remain in their current form. For example, the government may need to open the Tier 3 “low-skilled” category of the Points Based System (“PBS”) (currently suspended) to fill any void left by EU workers e.g. agricultural workers. In terms of the maritime sector, this could be beneficial by opening up a category to non-EU nationals (e.g. Filipino nationals) who don’t currently qualify under Tier 2. However, if the plan is to move EU nationals into the current PBS system then this will increase pressure on the system and the current PBS problems, which include delay and inconsistency across different jurisdictions, will apply to EU nationals also (although, this, of course, depends on the negotiations).

#### Border controls and customs

Potential changes to border controls are of particular concern to cruise & ferry operators; however, as the UK is not part of Schengen and passport controls are already in place at UK ports no practical changes are anticipated and there will be no immediate changes in any event. Whether there will be changes to applicable customs rules will depend on the negotiations surrounding the UK’s continued access to the Single Market.

#### Environmental and safety regimes

While the EU has done much to advance environmental and safety legislation, there have been thoughts in some quarters that such legislation is at times as much a burden as a benefit. Practically speaking, once the UK leaves the EU we would expect most EU environmental legislation that has shown itself to be of value to be incorporated into the laws of the UK.

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An interesting case that might provide opportunities for the UK concerns the recycling of decommissioned vessels. Recycling activity is currently governed by the EU Ship Recycling Regulation, which takes elements from the 2009 Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships. Once no longer beholden to some of the more onerous elements of the regulations, more ship recycling may be possible in the UK and thus provide a boost to this industry. Metal from a number of already decommissioned North Sea offshore platforms still standing could be recycled if their owners no longer had to abide by the exacting standards of the EU Ship Recycling Regulation.

#### Conclusion

The extent to which changes resulting from Brexit will impact the shipping industry will depend heavily on the relationship of individual companies with the UK and the EU and, ultimately, as for all sectors, where the discussions between the UK and the other EU member states finally come out on the key issues of free movement and access to the Single Market. It is, at present, “business as usual” and, as the maritime

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industry is a global, predominantly US dollar industry many may not directly feel the impact of Brexit.

We will be watching developments closely to determine how they will affect our clients.

## FOR MORE INFORMATION

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Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.

**LINDSEY KEEBLE**  
Partner, Finance and  
Global Maritime Sector Head  
London  
+44 20 7814 8227  
[lkeeble@wfw.com](mailto:lkeeble@wfw.com)

**DAVID OSBORNE**  
Partner, Finance  
London  
+44 20 7814 8152  
[dosborne@wfw.com](mailto:dosborne@wfw.com)

**RICHARD STEPHENS**  
Partner, Tax  
London  
+44 20 7814 8239  
[rstephens@wfw.com](mailto:rstephens@wfw.com)

**JEREMY ROBINSON**  
Partner, EU/Competition  
London  
+44 20 3036 9800  
[jrobinson@wfw.com](mailto:jrobinson@wfw.com)

**RICHARD DIBBLE**  
Partner, Finance  
London  
+44 20 7814 8076  
[rdibble@wfw.com](mailto:rdibble@wfw.com)

**TOBY ROYAL**  
Partner, Commercial  
London  
+44 20 7814 8014  
[troyal@wfw.com](mailto:troyal@wfw.com)

**CHARLES BUSS**  
Partner, Dispute Resolution  
London  
+44 20 7814 8072  
[cbuss@wfw.com](mailto:cbuss@wfw.com)

**SIMON KAVANAGH**  
Partner, Finance  
London  
+44 20 7814 8114  
[skavanagh@wfw.com](mailto:skavanagh@wfw.com)

**ASHA KUMAR**  
Partner, Employment  
London  
+44 20 7814 8182  
[akumar@wfw.com](mailto:akumar@wfw.com)

**ANDREW WARD**  
Partner, Dispute Resolution  
London  
+44 20 7863 8950  
[award@wfw.com](mailto:award@wfw.com)