

July 26, 2019

NEW UK PRIME MINISTER – WHAT HAS HAPPENED?

To Our Clients and Friends:

1. Boris Johnson has won the Conservative leadership race and is the new Prime Minister of the UK. Having been supported by a majority of Conservative MPs, this week the former mayor of London won a 66% share (92,153 votes) in the ballot of Conservative party members. Although there is some criticism of the fact that the new Prime Minister has been elected by such a narrow constituency, it is the case that most political parties in the UK now select their leaders by way of a members ballot.
2. As things stand, the UK is due to leave the European Union (EU) at 23:00 GMT on 31 October 2019. Boris Johnson's new Cabinet, and the 17 related departures, has set a new tone of determination to leave the EU by that date with or without a deal – “no ifs or buts”. Although only 12 of the 31 members of the new Cabinet originally voted to leave the EU, these “Brexiters” MPs now dominate the senior Cabinet positions. The newly elected President of the European Commission, Ursula von der Leyen, has however indicated she is willing to support another extension to Brexit talks.
3. In Parliament the Conservatives govern in alliance with the Northern Irish DUP and can only stay in power with the support of the House of Commons. Following defections earlier in the year and the recent suspension of a Conservative MP facing criminal charges, the Government now has an overall working majority of only two MPs (and if, as expected, the Conservatives lose a by-election on 1 August, the Government's working majority will fall to one). A number of the members of Prime Minister May's Government who resigned before Boris Johnson took office have made it clear that they will do everything they can to prevent the UK leaving without a deal including voting against the Government. There is therefore a heightened prospect of a general election. This theory is supported by the appointment as Special Adviser to the Prime Minister of political strategist Dominic Cummings who was the chief architect of the campaign to leave the EU in 2016.
4. There has been some debate about whether the new Prime Minister would prorogue Parliament (effectively suspending it) to prevent it stopping a no deal Brexit. That would undoubtedly trigger a constitutional crisis but, despite the rhetoric, it feels like an unlikely outcome. Indeed Parliament recently passed a vote to block that happening.
5. It is difficult to tell where the mood of the House of Commons is today compared to earlier in the year when Prime Minister May's deal was voted down three times. Since then both the Conservative and Labour parties suffered significant losses in the EU election in May. The new Brexit Party which campaigned to leave made significant gains, as did the Liberal Democrats who have a clear policy to remain in the EU. The opinion polls suggest that, if an election was called

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today, no party would gain overall control of the House of Commons. It is just possible, however, that some MPs on both sides of the House who previously voted against the May deal would now support something similar, particularly to avoid a no-deal exit from the EU.

6. It may be the case that Boris Johnson, who led the campaign to leave the EU, is the last chance those supporting Brexit have to get Brexit through Parliament. If he fails then either a second referendum or a general election will probably follow. It is not clear what the result of a second referendum would be but it is likely that Labour, the Liberal Democrats and the SNP would all campaign to remain.
7. The EU has consistently said that it will not reopen Prime Minister May's Withdrawal Agreement although the non-binding political declaration is open to negotiation. The so-called "Irish backstop" remains the most contentious issue. The backstop is intended to guarantee no hard border between Ireland and Northern Ireland but Boris Johnson is concerned it could "trap" the UK in a customs union with the EU. Boris Johnson claims that technology and "trusted trader schemes" means that checks can be made without the need for a hard border. Others, including the EU, remain to be convinced.
8. Parliament has now gone into recess until 3 September 2019 and then, mid-September, there will be another Parliamentary break for the two week party conference season. The Conservative Party Conference on 29 September – a month before the UK's scheduled exit from the EU - will be a key political moment for the new Prime Minister to report back to the party supporters who elected him.

Finally, it is not clear what "no deal" really means. Even if the UK leaves without adopting the current Withdrawal Agreement, it is likely that a series of "mini deals" would be put in place to cover security, air traffic control, etc. A new trading agreement would then still need to be negotiated to establish the ongoing EU-UK relationship. And the issue of the Northern Irish border will still need to be resolved.



This client alert was prepared by Charlie Geffen, Ali Nikpay and Anne MacPherson in London.

We have a working group in London (led by Patrick Doris, Charlie Geffen, Ali Nikpay and Selina Sagayam) addressing Brexit related issues. Please feel free to contact any member of the working group or any of the other lawyers mentioned below.

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