

MOFO BREXIT BRIEFING

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BREXIT: THE IMPACT ON THE EC/VC COMMUNITY

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The process of Brexit and the implications for our clients' businesses will unfold over time. Our MoFo Brexit Task Force is coordinating Brexit-related legal analysis across all our offices and working with our clients on their key concerns and issues. We will continue to provide MoFo Brexit Briefings on a range of key issues.

MoFo has experts in the main EC/VC hubs around world, including in San Francisco, Palo Alto, New York, London, Berlin, Hong Kong and Tokyo. We advise emerging companies and investors including VCs, corporates, sovereign wealth funds and high net worth individuals. We are here to support you in any and every way that we can.

In the run-up to the Brexit vote, the negative impact on access to capital and access to the best start-up talent were two of the most-talked-about topics relating to a 'leave' vote for the UK EC/VC community. Brexit uncertainty had, in fact, contributed to a softening of start-up funding in some of Europe's tech hubs ahead of the referendum.

Now, with the votes counted and the results in, where does this leave EC/VC investment and access to funding and talent for Europe's start-ups?

Into the unknown

It should be noted that the UK currently remains a member of the EU and is likely to do so for some time as it negotiates the terms of exit and its ongoing relationship with the EU - the process is expected to take several years. The full implications of the Brexit referendum are therefore largely unknown and, in practical terms, many businesses, including start-ups and growth companies, may not experience immediate significant impact.

The UK is navigating uncharted territory, and the brief withdrawal provisions of the EU Treaty have never before been applied. What does appear to be more certain is that, while the process of Brexit will take time, companies around the world are rapidly evaluating what the UK's new relationship with the EU might look like and what this will mean for them.

The UK: Open for business? Funding and access to capital and markets

It is too early to assess the impact for EC/VC investment and access to capital and markets in Europe. Anecdotally, many of the planned deals have gone ahead since the “Leave” referendum result but, there have also been instances of investors getting cold feet or companies putting plans on hold to wait for the dust to settle. The VC industry in the UK has been quick to issue assurances that it’s business as usual, with many well-known VCs making public statements to that effect.

Much has been made of the role that the European Investment Fund (EIF) - an off-shoot of the European Investment Bank - has played in the growth of London in recent years to become one of the major hubs for EC/VC activity, particularly in the FinTech space. The statistics vary, but it’s clear that many in the European EC/VC community regard the EIF as a fundamentally important source of capital that has made London a key centre for European tech innovation. Although the EIF has stated that “at present, EIF ... will not change its approach to operations in the UK” the impact of the Brexit referendum on EIF funding into the UK will have to be closely monitored.

Then there are the macro-economic factors: while the vote has sent shockwaves through global financial markets, the impact on EC/VC funding will take longer to become clear. The potentially negative impact of a significantly weaker pound and the consequential increase in the cost of imports for UK businesses has cast a shadow over many businesses and the start-up community is not immune. Another school of thought, however, is that UK tech start-ups are well placed to ride the waves created by the Brexit vote. Technological change is rapid and tangible in the London start-up scene. Disruptive technology start-ups are a typically longer-term play for investors seeking to take advantage of that technological change, so short-term market volatility is of less concern. This will also depend on the specific business model of the respective start-up. Pure technology start-ups should not be affected, whereas start-ups with business models depending on the regulatory environment or on scaling and access to the single market might encounter hesitation from future investors.

A common thread in many of our discussions is that the EC/VC community in the UK is hopeful that the funding opportunities remain available and, more broadly, that the good work done to date at a European and domestic level in promoting and supporting UK emerging tech companies is not undone by the referendum result. As part of the Brexit negotiations with the EU, the EC/VC community in the UK will be hopeful that the UK government will seek to prioritize the stabilization of the emerging companies’ funding eco-system.

Britain’s Got Talent: Access to start-up talent and retention

In an increasingly globalized world with a highly mobile millennial employee base, the ability to hire and retain the best talent and nurture the best ideas has been one of the key features in making London such a successful start-up hub. One of the fears of the EC/VC community in the UK is that London will become a less attractive place for emerging companies. Many of the UK’s tech entrepreneurs are from outside the UK and their immigration status – as well as the ease with which they can hire talent – is clearly of fundamental importance.

Much will depend on the deal that the UK government eventually strikes with the EU for its exit – particularly relating to the freedom of movement of people. Some options on the table would see little change to the concept of free movement of people currently in place: for example, if the UK

remains a member of the European Economic Area. However, immigration was a key battleground on which the Brexit referendum was fought, and it remains to be seen what will be acceptable to the UK government and the EU during the exit negotiations.

In the short term, the EC/VC community expects the current freedom of movement rules to continue to apply, and is not anticipating a rapid outflow of start-up talent from the UK. However, access to talent is high on the agenda of many in the EC/VC community especially those seeking to scale rapidly – the impact of the referendum and the negotiating stance of the UK will have to be watched closely.

Should I stay or should I go? Alternative locations and passporting

Another potential consequence of Britain's vote to leave the EU is that emerging companies and entrepreneurs will be evaluating which country provides the best location in which to base their business going forward. It is widely anticipated that Dublin and Berlin are poised to capitalize on new companies looking for their European base.

It's also possible that some UK companies may choose to pack up and seek a new tech hub from which to operate. In the past two years, Berlin has seen a significant acceleration in the development of its emerging tech company community. Our EC/VC experts in Berlin highlighted that the city has become very attractive to tech companies of all sizes due to tax and other incentives; the availability of grants; a significant increase in funding from both German and non-German venture capitalists; and easy access to talent from around the globe.

The ability of emerging regulated UK companies, particularly in the FinTech space, to “passport” across the EU is another key issue which will need to be addressed as part of the UK's exit negotiations. Passporting allows companies to be regulated by the UK's financial regulator, the FCA, but to offer services across the EU without additional hurdles. This means that companies can keep their staff in the UK while offering those services across Europe, without the need for a physical presence elsewhere. The loss of passporting rights may require companies to have a physical regulated presence in other EU states or prompt a move of staff and headquarters to another EU state.

Further reading

MoFo has prepared a number of additional Brexit briefings which may be of interest to those in the EC/VC community including:

- [Data Protection Implications](#)
- [European Trademark Impact](#)
- [Tax Implications](#)

MoFo contacts

Please do not hesitate to call with any question or concern that you may have. We're here to help.

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