



Debevoise
& Plimpton

Brexit and Your Business

As the UK prepares to leave the European Union, we outline the possible next steps by the UK Government and how to assess the impact that Brexit could have on your business.

If you have any questions on the topics covered in this publication, please get in touch with your regular Debevoise contact, or email brexit@debevoise.com.



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The UK's decision to leave the EU

The UK's historic decision to leave the EU has left the business community with three fundamental questions:

- How do we Brexit?
- Where are we going?
- When do we get there?

The EU is a political and economic union, established by a series of treaties, based on the four pillars of the freedom of movement of people, goods, services and capital within the common European market. These treaties, many EU laws and the jurisdiction of EU bodies will cease to be effective once the UK withdraws from the EU.

The UK has no current intention of leaving the EU without a transition plan or exit arrangement in sight. As we discuss in this brochure, there are a range of possible outcomes in the future of the UK's relationship with the EU, most of which require mutual agreement.

To add to the uncertainty, Scotland's future direction could also raise questions about the integrity of the UK going forward. Given First Minister Nicola Sturgeon's initiative for a second referendum on the question of Scottish independence, there may be a shift in the voting polls to support Scottish independence. The issues are complex and involve many parties with widely

varying interests. Hence, it will be some time before the UK has clarity on its final relationship with the EU or how it will go about getting there.

There are three factors that are influential on what changes will ultimately take place when the UK withdraws from the EU.

First, as a condition of the UK's future relationship and trade with the EU, the UK may be required to maintain existing EU standards. Second, many UK laws originally based on EU requirements may not change because they are now the political norm in the UK. Third, a wide range of EU legislation has been implemented into domestic UK law over the last 43 years. These laws are so enmeshed in domestic UK law that the technical task of repealing them will take a number of years and much effort. Hence, withdrawal may not change the entire legislative landscape, and the changes that are made may not be implemented for some time after the UK's withdrawal from the EU.

This brochure starts by looking at the process and timing of withdrawal, then outlines a range of possible future outcomes for the UK's relationship with the EU, and concludes with our recommendations of what your business can and should be doing now to prepare for Brexit.

What does the withdrawal process entail?

The UK has not yet initiated the formal EU withdrawal process, which is set out in Article 50 of the Treaty on the European Union (the “Treaty”). Article 50 provides that a Member State that has decided to leave the EU must do so “in accordance with its own constitutional requirements.” As we discuss below, it is unclear exactly what steps are required under the UK’s unwritten constitution.

Article 50 requires that a Member State must notify the European Council of its intention to leave. Once Article 50 notification is given, the departing Member State must begin negotiating the terms of its withdrawal and execute a withdrawal treaty. Although nothing prevents informal withdrawal discussions from taking place in advance of the formal Article 50 notification, some EU officials have said publicly that no informal discussions will take

place until after the UK gives the Article 50 notification.

Article 50 imposes a two-year deadline from the date of the Article 50 withdrawal notice for negotiating an agreement on the terms of withdrawal. This two-year period can be extended, but only with the unanimous consent of the European Council – effectively the agreement of all the remaining 27 Member States. If no withdrawal agreement is reached within such period, the Member State simply withdraws and all EU treaties will cease to apply on the second anniversary of the withdrawal notice. This two-year deadline will greatly influence the UK’s decision as to the timing of invoking Article 50, as well as on the negotiating dynamics for the withdrawal arrangement.



When will Article 50 be triggered?

The Treaty does not set a deadline as to when the Article 50 notification should be given. Prior to the EU referendum, the Government promised that the Article 50 notification would be made immediately after the referendum results were announced. However, following the electorate's decision to leave the EU and David Cameron's resignation as Prime Minister, the Government announced that the decision as to when to trigger the Article 50 notification would be postponed until the new Prime Minister was in office.

Theresa May, the new Prime Minister, then announced that the notification would not occur before the end of 2016. More recently, there has been news that the notification would not be made until the start of 2017 at the earliest, and it could be delayed until autumn 2017. This would allow the UK to submit its notification after the French Presidential Elections and German Federal Elections, so that it can begin to negotiate the exit with the newly elected French President and German Chancellor.

Who can trigger Article 50 - what does the Government plan to do?

In the absence of a written constitution, there is no conclusive answer to the question of who has the power to trigger Article 50.

There is wide-ranging debate as to whether the Government can give the Article 50 notification pursuant to the royal prerogative (special rights and powers vested in the Crown at common law which are now exercised by the Government rather than the Queen) or whether an Act of Parliament is required. The Government has publicly announced that it does not intend to seek Parliamentary approval before triggering the Article 50 notification.

The legal uncertainty surrounding the invocation of Article 50 has provoked legal challenges. The key legal challenge seeks a declaration from the courts that Article 50 cannot be triggered without first consulting Parliament.



What is the nature of the legal challenges to the Government's power to trigger Article 50?

The existing legal challenges are confined to the interpretation of the UK's constitutional law requirements relating to the process of withdrawal. They do not attempt to dispute or challenge the outcome of the June referendum.

Several of these legal challenges have been consolidated. One of the lead claims was brought on behalf of a group of businessmen and other interested parties in the High Court in light of the Government's suggestion that it would trigger Article 50 under the royal prerogative.

The applicants claim that any such decision would be "ultra vires" because the invocation of Article 50 will override the European Communities Act 1972. The applicants argue that UK constitutional law does not permit the Government to repeal legislation which was passed by Parliament. Therefore, they argue that an Article 50 notification can only be given by the Government following a full debate and vote by Parliament in favour of the giving of the Article 50 notification.

When will legal challenges be decided?

A full trial of the lead case will take place in October, but it has already been stated by the Government's lawyers that the case is likely to be appealed up to the Supreme Court.

A special process has been put in place to ensure that any appeal can be heard almost immediately after the full trial. It is anticipated that a final decision could be obtained by the end of December 2016.

What will happen if legal challenges are upheld?

If the Supreme Court determines that an Act of Parliament is required, then the question of triggering Article 50 will be put to a Parliamentary vote which could delay Brexit.

It is impossible to predict whether and how MPs who are opposed to Brexit will vote.

It may be that these MPs may feel obliged to respect the decision of the voters to leave the UK. If there is a vote by Parliament and a majority of MPs choose to vote against Brexit, the overall situation becomes highly uncertain.

What will happen if the legal challenges are dismissed?

If the Supreme Court confirms that the Government has the power to make an Article 50 notification under the royal prerogative without a vote by Parliament, the Government will be able to proceed with an Article 50 notification.



Will a second referendum be held?



The Government has made it clear that there will be no second referendum to determine whether the UK should remain in the EU. At a cabinet meeting held at Chequers, at the end of August 2016, Theresa May said “we must be clear that we are going to make a success of it – that means no second referendum, no attempts to sort of stay in the EU by the back door. That we are actually going to deliver on it.”

Who negotiates on behalf of the EU?

There is no precedent for a country withdrawing from the EU – Article 50 has never been tested, so it is impossible to say definitively how the process of approving a new relationship will unfurl. Trade negotiations are very complex, and those can take up to a decade to conclude from scoping to ratification.

Before talks with the EU can begin, the European Commission must seek the approval of the European Council (acting by consensus).

Following the Article 50 notification by the UK of its intention to leave, the European Council, meeting without the UK, would need to agree the guidelines for the negotiation by unanimity. In light of these guidelines, the EU will begin negotiating an agreement with the UK that sets out the arrangements for its withdrawal, taking account of the framework for the UK's relationship with the EU. This agreement would be negotiated following the rules on international agreements in Article 218(3) of the EC Treaty. This means

that the EU Commission would submit recommendations to the Council, excluding the UK, which would then adopt a decision authorising the opening of negotiations. On completion of the negotiations, the EU Commission would then be required to consult with both the European Parliament and the European Council. The European Parliament would give consent to the withdrawal agreement by a simple majority and a qualified majority vote would be required by the European Council (i.e., 20 of the remaining 27 Member States, representing 65% of the EU population) for final approval.

If membership of other trade bodies like the European Free Trade Association (the “EFTA”) or the European Economic Area (the “EEA”) is required, then approvals will likely be required from the EFTA Council or the EEA Council (the 28 EU Member States and the three EEA and EFTA states).



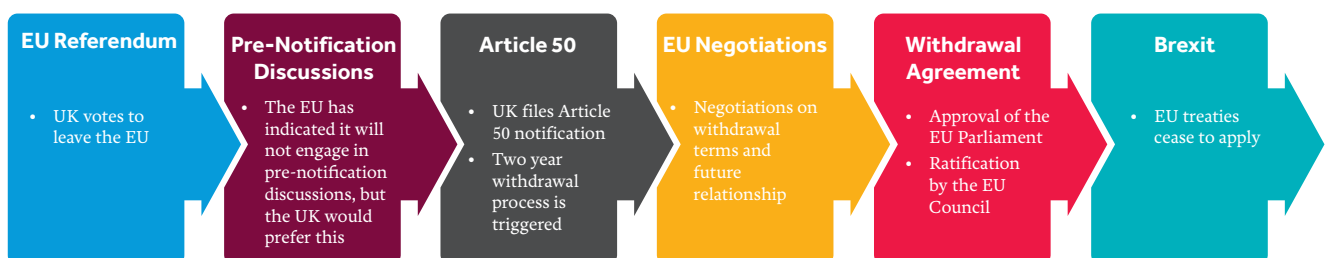


How will negotiations for withdrawal take place?

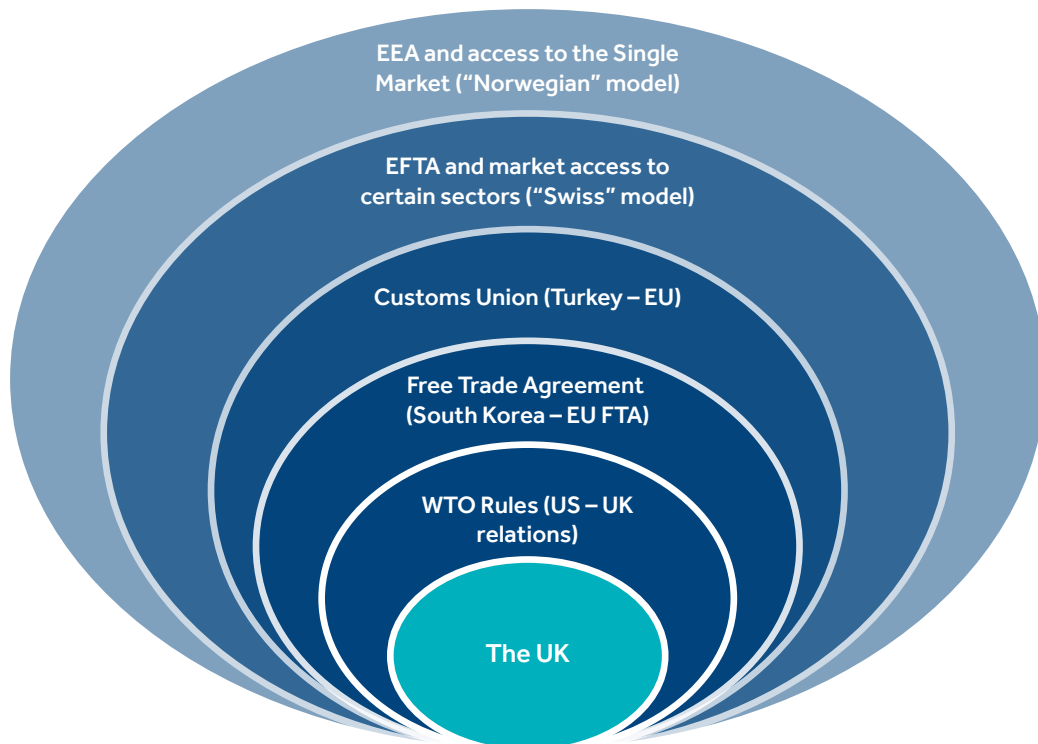
According to Article 50(2) of the Treaty, the negotiations for withdrawal should take account of the “future framework for its future relationship with the Union.” It is not altogether clear whether this means that the withdrawal agreement should include details of the future relationship between the withdrawing member and the EU or whether this would be done in two separate agreements.

Legally, there is nothing to prevent the UK commencing negotiations over the terms of its withdrawal and any future relationship before

it makes the formal Article 50 notification. However, Angela Merkel and Jean-Claude Juncker (President of the EU Commission) have stated that there can be no negotiations until an Article 50 notification is made. The EU Trade Commissioner, Cecilia Malmstrom, has taken an even harder line, stating that the UK cannot begin negotiating the terms of doing business with the EU until after it has left: “there are actually two negotiations. First you exit, and then you negotiate the new relationship, whatever that is”.



What will the UK's post-Brexit relationship with the rest of the EU look like?



The nature of the UK's relationship with the rest of the EU post-Brexit is unclear. One possibility is that the UK may seek to maintain its membership in the EEA by negotiating a Norwegian style agreement. Alternatively, the UK may choose to negotiate a bilateral agreement (either along the lines of Switzerland's European Free Trade Agreement or as a member of an EU Customs Union, as in the case of Turkey).

It has also been suggested that the UK could choose to rely on the World Trade Organization (the "WTO") rules for trading access, although the UK's accession to the WTO appears to be on the basis of an agreement in which the Member States of the EU are obliged to act together. This calls into question whether

the UK can rely on its WTO membership remaining unchanged upon leaving the EU.

The problem with these models is that if the UK no longer accepts the EU principle of freedom of movement, it may not be possible for it to be a member of the EEA and it is also unlikely that the EU would allow the UK access to the single market.

The Government has suggested that Britain will seek a "unique" model that will "confirm its place as one of the great trading nations in the world". The precise details of such a model have not yet been announced and it remains to be seen whether any such proposed model would be accepted by the other EU Member States.

What will the UK's post-Brexit relationship with third countries outside of the EU look like?

There is similar uncertainty surrounding the UK's relationship with countries outside of the EU post-Brexit. The UK currently benefits from trade agreements that the EU has negotiated with a number of countries, including Turkey, Mexico, South Korea and Chile. Following Brexit, the UK would no longer be a party to these agreements and would need to re-negotiate trade agreements with non-EU countries.

The EU is the world's second largest exporter and second largest importer. It therefore has a strong bargaining position in trade negotiations and is able to negotiate favourable trade conditions. The UK alone is a much smaller market and, therefore, has much less bargaining power in international trade negotiations than the EU. This may mean that the UK will be unable to negotiate as favourable trade agreements with third countries post-Brexit.

Conversely, however, any trade deal that the EU negotiates has to take into account the interests of all Member States. Such interests may not

necessarily be aligned with all Member States' interests. After Brexit, the UK would not need to take account of the conflicting interests of other States in its trade negotiations.

In addition, following Brexit, the UK would be able to negotiate free trade agreements (FTAs) with third countries that the EU does not currently have FTAs with, for example China, United States, Japan, Brazil and Australia, (although the EU is in the process of negotiating an FTA with Japan). Under EU rules, Member States are unable to agree free trade agreements with countries in their own right.

As well as trade agreements, the EU has also negotiated a number of treaties with third countries covering a wide variety of important issues, including Government procurement, air service agreements, security and intelligence cooperation and data protection. These agreements would also need to be re-negotiated post-Brexit.

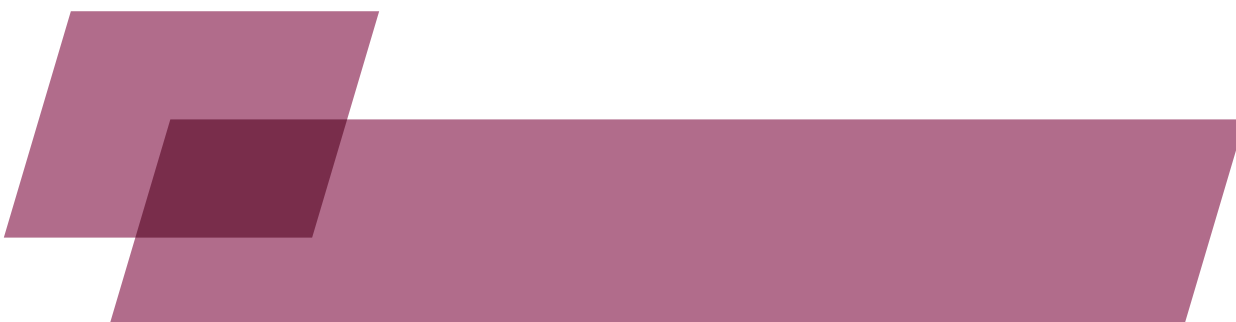


Table showing key relationship models

	Norway	Switzerland	Turkey	Canada	WTO
EU freedoms	<ul style="list-style-type: none"> Member of EFTA and EEA Single Market: considerable access (not fisheries, agriculture) No Customs Union for all goods 	<ul style="list-style-type: none"> Member of EFTA, not EEA Single Market: Preferential but not full access; most access to trade in goods; limited access to trade in services (including accountancy, auditing and legal) No Customs Union 	<ul style="list-style-type: none"> Economic agreement Partial access to Single Market; no access for services Customs Union agreement 	<ul style="list-style-type: none"> EU - Canada Comprehensive Economic and Trade Agreement, negotiated, currently pending EU approval Limited access to the Single Market; limited trade in services; more liberalised trade in goods; compliance with rules of origin No Customs Union 	<ul style="list-style-type: none"> Restricted access to the Single Market Without a FTA, there is no possibility of applying a different tariff with the EU than with other WTO countries (EU imposes a common external tariff)
	<ul style="list-style-type: none"> Free movement of people via Schengen 	<ul style="list-style-type: none"> Associated member of Schengen area Dispute over migration 	<ul style="list-style-type: none"> Limited migration rights 	<ul style="list-style-type: none"> No free movement of people; trade agreement will provide for temporary movement of skilled professionals 	<ul style="list-style-type: none"> No free movement of people
	<ul style="list-style-type: none"> EEA: slow progress in incorporating EU legislation on financial services 	<ul style="list-style-type: none"> No general access to EU financial services market 	<ul style="list-style-type: none"> No general access to EU financial services market 	<ul style="list-style-type: none"> No general access to EU financial services market 	<ul style="list-style-type: none"> No general access to EU financial services market
Influence and costs	<ul style="list-style-type: none"> No representation or vote in EU decision making Subject to EU rules Contributes to EU budget 	<ul style="list-style-type: none"> No representation or vote in EU decision making Not subject to EU rules Contributes to EU budget Subject to European Court of Justice (ECJ) jurisdiction in some areas 	<ul style="list-style-type: none"> No representation or vote in EU decision making Subject to EU rules where it has access to the Single Market No contribution to EU budget 	<ul style="list-style-type: none"> No representation or vote in EU decision making No contribution to EU budget 	<ul style="list-style-type: none"> No representation or vote in EU decision making Compliance with certain rules in order to have access to the Single Market No contribution to EU budget
Accessibility of model	<ul style="list-style-type: none"> Cumbersome Agreement of all remaining 27 EU countries, together with Iceland Liechtenstein and Norway 	<ul style="list-style-type: none"> Cumbersome Complex network of bilateral agreements built over time, in consideration of Switzerland's tradition of neutrality 	<ul style="list-style-type: none"> Feasible but relationship based on Turkey's status as an emerging market 	<ul style="list-style-type: none"> Feasible Negotiations took five and a half years 	<ul style="list-style-type: none"> Feasible
Other EU benefits	<ul style="list-style-type: none"> No access to EU external agreements 	<ul style="list-style-type: none"> No access to EU external agreements 	<ul style="list-style-type: none"> No access to EU external agreements; Turkey's tariffs must coincide with EU's tariffs 	<ul style="list-style-type: none"> Most Favoured Nation (MFN) access 	<ul style="list-style-type: none"> No access to EU external agreements
	<ul style="list-style-type: none"> Separate negotiations and agreement for European Asset Warrant (EAW) and police data sharing 	<ul style="list-style-type: none"> No EAW and police data sharing 	<ul style="list-style-type: none"> No EAW and police data sharing 	<ul style="list-style-type: none"> No EAW and police data sharing 	<ul style="list-style-type: none"> No EAW and police data sharing

What does this mean for you and your business?

Brexit healthcheck

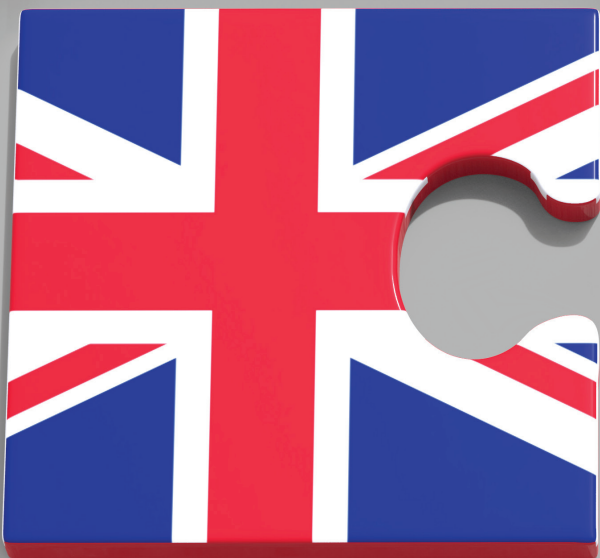
All of the detail on the previous pages add up to an uncertain time for business.

Below are some questions that you should consider to assist you in identifying the challenges and opportunities presented by Brexit.

01

Is your business reliant on cross-border trade between the UK and other EU countries?

- **Start contingency planning:** If there is a substantial risk of reduced cross-border trade, consider the possible models for the future UK/EU relationship and identify options now that would allow you to continue to trade under the most favorable conditions. If any one structure is more favorable for your business, take advice on the feasibility of that structure.
- **Leverage existing expertise:** If you have staff who manage businesses in other jurisdictions where customs tariffs apply, consider how best to leverage that expertise across your organisation, including cross-training personnel. Are there strategies, policies or procedures that could be adapted for use under the possible new trading models?



Is your business reliant on passporting via a UK entity for authorisation to do business in the EU?

02

The EU “single market” directives (CRD, Solvency II, MiFID, IMD, UCITS, AIFMD and the mortgages directive) allow financial services firms licensed in one EEA state to provide their services cross-border into and/or establish branches in other EEA states, without having to be separately licensed in those other EEA states, and subject to supervision only by their “home state” supervisor.

Many UK firms, and global firms with a UK hub for their European business, are structured to take advantage of these “passporting” rights. If, following Brexit, the UK were to cease to be a member of the EEA (instead having “third country” status), passporting rights would be lost.

- **Assess the significance to you of losing automatic passporting access to other EEA states:** Is European business part of your future strategy or can you continue to grow without these customers?
- **Communicate with stakeholders:** If the impact would be significant, do you need to alert shareholders, investors, customers or regulators, or share with them your mitigation plans?
- **Plan for potential restructuring:** Waiting for the final negotiated deal could leave your business underprepared and with limited time to make decisions. You should consider now how best you are able restructure your business to retain the benefits of passporting. Options can include establishing and obtaining licenses for a separate EEA subsidiary, purchasing an existing licensed entity and/or re-locating your European headquarters.
- **Review key contracts:** As part of any potential restructuring, consider the transferability of material contracts and whether any separation issues arise.

03

Do you rely on prospectuses approved by the FCA for offers to the public and admissions to trading in other European Member States, or prospectuses approved by regulators in other European Member States for offers to the public in the UK?

Under the Prospectus Directive, a prospectus which has been approved for use by the regulator in any European Member State is also valid for public offers and for admission to trading in any other Member State as long as certain notification formalities are complied with. This is known as “passporting”. As with other passporting rights, if the UK were to cease to be a member of the EU and not be a member of the EEA and become a “third country” for the purposes of the Prospectus Directive, these passporting rights would be lost.

- **Assess the impact of losing these passporting rights in relation to capital raising activities.** Are you planning capital raising exercise in the medium term, when the UK may no longer be a member of the EU and the EEA, and if so, would offers into more than one European jurisdiction be important?

Do you have a dual listing in the UK and another EU Member State?

There are certain on-going listing requirements, particularly in relation to disclosure and transparency, that companies with listings in more than one European Member State are currently only required to comply with in the jurisdiction of their main listing. If the UK were to cease to be a member of the EU and not become a member of the EEA, then businesses could become subject to regulatory requirements under a separate UK regime in addition to requirements under the European regime.

- **Review your current corporate structure:** Would a dual listing in the UK and other European jurisdictions still be attractive if this led to a dual regulatory burden?

04

Are you considering mergers and acquisitions or deals within the next year?

05

The result of the EU referendum has so far had a dampening effect on M&A transaction volume. However, many businesses may stand to benefit from current market conditions: the weak pound makes certain targets appealing to offshore buyers. In addition, if organisations decide to restructure as a result of Brexit, a range of assets could become available to buyers.

- **Review your future deal pipeline:** Do single market access issues make certain potential targets or jurisdictions more or less attractive? Does your investment strategy need to be adjusted or adapted? Engage with advisors early as to appropriate deal structures.
- **Model the risk:** For deals that may close following the UK's exit from the EU, consider the effects of the different possible models of the new UK/EU relationship on the business being acquired. Have risks been accounted for in the purchase price, transaction documents and deal structure?
- **Consider whether merger clearances are required:** EU merger regulations, as they apply to parties active in the EEA, are not anticipated to change, however parties may wish to mitigate this risk by running deals to timelines that do not include a "post-Brexit" period.
- **Deal with due diligence:** Due diligence will be crucial for understanding whether Brexit-related risks attach to any target. For sellers, in particular, engaging early with advisors will be key to managing data protection issues. This is further complicated by the fact that the EU Data Protection Directive is being repealed and replaced by a new General Data Protection Regulation which comes into force in May 2018.
- **Update contractual clauses:** Consider whether material adverse change clauses should be redrafted to account for possible negative outcomes of Brexit negotiations, and whether dispute resolution clauses will be fit for purpose following Brexit.
- **Purchase price hedging:** In light of current volatility in currency prices, choose the currency of your deal carefully. Would hedging be beneficial to avoid suffering from cost increases where the purchase price is in a different currency?

06

Do you have contracts that may be affected by Brexit?

If significant economic uncertainties follow, parties may wish to claim a right to terminate existing contracts or to claim that contracts have come to an end because of force majeure.

- **Review key contracts:** Take advice as to whether Brexit or the economic conditions that accompany Brexit could result in breaches of covenants and/or allow you or counterparties the right to terminate or to claim an instance of force majeure. If there are doubts or uncertainties, immediate steps should be taken to clarify the position.
- **Consider renegotiating existing contracts:** In light of fluctuations in the value of currencies and other uncertainties, it may be a good time to renegotiate existing contracts and/or to enter into contractual relationships on revised terms.

Do you have non-UK EU nationals working for you in the UK? Do you have UK nationals working abroad in other EU countries?

07

There is a risk that EU nationals may no longer be able to work indefinitely in the UK. The Government has not given a definitive guarantee about the status of EU nationals currently living in the UK, on the basis that such a guarantee cannot be given in the absence of a similar agreement from other EU members about British nationals living on the continent. Whilst it appears that EU nationals who have lived in the UK for at least five years, and therefore have the right of permanent residence, will be eligible to remain in the UK after Brexit, the position relating to others is less clear.

- **Assess the risk of changes to your workforce:** Whilst it should by no means be assumed that those employees will be required to leave the UK or obtain permission to remain, businesses with key personnel or large numbers of (non-UK) EU nationals (or British nationals if employed in Europe) may wish to assess the impact should they no longer have the automatic right to remain in the UK.

08

Tax issues - do you have group arrangements in place within the EU for intra-group dividends, interest or royalties flowing to or from UK companies? Do you need to make any other arrangements in relation to tax?

Currently, there are certain EU directives that ensure that intra-group dividend, interest and royalty payments may move within the EU free of any associated withholding taxes. Following Brexit, if the UK does not negotiate a position with regard to these directives, the UK will have to resort to the default position which is stated in the relevant double tax treaty. A double tax treaty may reduce the withholding tax rate in some cases, but it is not always eliminated. Treaties sometimes allow a tax authority to impose full withholding tax and require recovery of any reduction in rate only after a demonstration of entitlement to benefits under the applicable treaty.

It is unlikely that there will be dramatic changes to the VAT system, though the UK will be free to determine how it charges VAT post-Brexit. While derogating from the EU VAT scheme may provide flexibility, businesses have grown comfortable with the existing system which seems to work well. Businesses may need extra working capital to address cash flow VAT issues after Brexit.

- **Conduct a tax audit:** You should conduct an internal audit of your business' tax arrangements, particularly if you work within a group structure.
- **Assess and plan for additional cash-flow and working capital:**
 - » There may be cash flow issues if a double tax treaty structure is employed so these possibilities should be assessed and planned for as appropriate.
 - » Those making or receiving EU supplies may see changes to their administrative costs and cash flows.
- **Consider potential structural changes:** You should consider whether administrative or structural changes ought to be implemented in order to manage the different VAT consequences of making/recovering supplies to/from the EU from the UK and vice versa.

09

What is the likely impact of Brexit on the UK's participation in Base Erosion and Profit Shifting (BEPS) and other international tax cooperation regimes?

- Post-Brexit, the UK will still be a member of the OECD and will therefore still be held to its commitment to the BEPS Project and the Common Reporting Standard (the new global standard for the automatic exchange of certain financial account information between tax authorities). The UK is an enthusiastic supporter of the BEPS Project and is expected to continue its leading role in support for this and other international cooperation regimes.
- Departing from the EU will give the UK more freedom over the method and pace of its implementation of the BEPS project. The EU has proposed its own anti-avoidance directive which seeks to implement many of the BEPS proposals as well as others. Post-Brexit, the UK will not be obliged to implement this EU directive, but since it will still be subject to the international regimes that influenced this new legislation, it is likely that the UK will probably adopt a position that is in line with the EU approach.

Do you transfer data into or out of the EU through the UK?

If the UK diverges its data protection laws from the EU rules (the new General Data Protection Regulation), it will become more difficult to transfer data between the UK and EU countries. This is particularly significant for large multinational companies with branches within the EU.

- **Assess risk:** Businesses should take steps to assess the way they conduct internal or external transfers of data, including the way in which data is transferred electronically and online. Businesses should consider whether voluntary compliance with the new rules might be prudent.

10

Does your business operate in the insurance sector?

11

In addition to the immediate market aftershocks of the Brexit referendum, the UK's withdrawal from the EU could bring about significant long term changes for re/insurers. As discussed in section 2 above, all EEA Member States currently benefit from passporting rights contained in the EU's single market directives, which include Solvency II. The most significant risk is that these passporting rights could be lost (either directly or indirectly) following a UK exit. If this is the case, UK insurers would lose their ability to underwrite business in EEA states with only the supervision of their home regulator and without the need to localise funds or to report to local regulators. As these are reciprocal rights, the same would apply to insurers in EEA states accessing the UK market. The loss of passporting rights would also affect those global insurers relying on a single hub to write all their European business - access to the UK or to the other EEA states could disappear unless steps are taken to preserve access, as discussed below. For insurance services firms, including brokers and those providing outsourced services, the loss of passporting could also cause regulatory, supervision and operational difficulties.

For those firms that would be affected by the loss of passporting, a certain degree of restructuring may be required - the question is whether to wait and see or to take steps now to obtain local authorisation on the basis of a worst case scenario. Whatever the ultimate timeline for a Brexit, there are some practical and planning steps that the prudent re/insurer could be taking immediately:

- **Policyholder, counterparty and regulator relationships:** Communication with these parties through uncertain times will be crucial. In particular, regulators are likely to require reassurance that suitable contingency plans are in place.
- **Capital requirements:** Given the effects of market volatility as discussed above, asset and liability valuations will need to be monitored and the knock on effect on solvency capital requirements assessed.
- **Investments:** Insurers may seek to diversify their portfolios and review their strategy, given their current exposures. Note that Solvency II should have had a mitigating effect on the most severe effects of financial volatility.
- **Transfer of contracts to restructure:** For firms considering significant restructuring to retain access to both UK and the other EEA states, contracts should be analysed for separation issues and transferability.
- **Outsourcing and data protection:** There is potential for change to the UK's legislation in these areas. Monitoring such developments and adapting where required will be key to operational continuity.



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