



## What next?

Steps to take today  
as the UK votes to  
leave the EU

Guy Lougher  
July 2016



Pinsent Masons

# Agenda

---



- Treaty mechanism
- Possible options
- Immediate impact

# Treaty mechanism



- Article 50 of Treaty on European Union
  - When ready, UK notifies EU Council of UK's intention to leave
  - UK negotiates withdrawal arrangement with EU; needs approval of EU Parliament and qualified majority of Council
  - No mechanism for withdrawing Article 50 notice
- EU Treaties cease to apply to UK on entry into force of new arrangement OR 2 years after UK gives notice
- 2 year period can only be extended if all EU states agree

# Invoking Article 50



- Does Parliament first need to approve invoking Article 50?
- Can the EU deem notice to have been served if the UK delays?
- Until Brexit takes effect, UK remains bound by EU law
- Given the current UK political situation,
  - Will Article 50 be invoked?
  - Parliamentary approval for a new EU/UK arrangement is unlikely to be straightforward

# Possible future UK-EU arrangements



	Pros	Cons
Norwegian (EEA) model	<p>Free movement of UK goods and services thro' EU</p> <p>Could be a stepping stone, while negotiating a bespoke trade deal</p>	<ul style="list-style-type: none"><li>• Must allow free movement of EU nationals</li><li>• Norway is bound by 75% of EU legislation but has very limited influence over its content</li></ul>
Swiss (EFTA) model	<p>Free movement of UK goods thro' EU</p>	<ul style="list-style-type: none"><li>• Must allow free movement of EU nationals (currently a flashpoint)</li><li>• Limited free movement of services</li><li>• 100 separate agreements, very cumbersome</li></ul>
Canadian model (free trade deal)	<p>A la carte access for UK goods and services thro' EU</p>	<ul style="list-style-type: none"><li>• 7 years to negotiate, not yet in force</li><li>• Free movement of EU nationals the price for UK's freedom to provide services thro' EU?</li></ul>

# Possible future UK-EU arrangements



	Pros	Cons
WTO access	<ul style="list-style-type: none"><li>• Readily available fall-back option</li><li>• Free movement of EU nationals not required of UK</li></ul>	<ul style="list-style-type: none"><li>• Tariffs on UK trade with EU</li><li>• Limited access between EU and UK for services</li><li>• Applies to UK trade generally</li></ul>
All		<ul style="list-style-type: none"><li>• UK exports to EU must comply with EU legislation</li><li>• UK not covered by EU's external trade agreements</li><li>• UK must adopt 50+ treaties and conventions where the EU is a signatory</li></ul>

CURRENTLY UNCLEAR WHAT DEAL THE UK GOVERNMENT WOULD TRY TO NEGOTIATE

# Checklist of issues to consider now



## Review any plans for material M&A, investments, projects

Opportunities from Brexit?	Lobbying Government?	Shareholder engagement?
Assessing your commercial contracts	Competition: leniency applications, State aid, trading on WTO terms	Customer and third party data
Employees	Funding & financials	Procuring goods and services
Protecting IP rights	Regulatory issues	Tax

# Impact on UK supply chain/manufacturing



- Uncertainty? Higher raw material costs?  
Access to funding?
- Tariffs & delays possible, especially under a WTO model
- Check underlying contractual arrangements
- Impact of post-Brexit arrangement on free movement of workers between UK and EU
- Potential divergence over time in EU/UK regulatory requirements



# Assessing your commercial contracts



- For each commercial contract:
  - Are territorial definitions clear?
  - What contract variation or termination mechanisms?
  - How are any change in law provisions drafted?
  - What does it say re currency/currency risks?
  - Who pays if tariffs are imposed?
  - Might Brexit inhibit the supply of goods or services under the contract?
  - Supply chain impact of not being in the EU single market?
  - Is the contract material to the business?
- Does Brexit create any commercial opportunities?

# Competition



- Brexit will lead to duplication of EU and UK competition law:
  - Apply for leniency in the UK and the EU?
  - Impact on current EU investigations?
  - Seek merger approval in the UK and the EU?
- EU State aid law may well cease to apply, but WTO rules will apply - what are the implications of that?
- What are the implications of trading on WTO terms, rather than under a bespoke free trade deal?

# Customer and third party data

---

- Will the UK benefit from an EU adequacy decision - will there be mutual recognition?
- In relation to data used or controlled by the business,
  - Where is it held?
  - How is it owned/licensed?
  - What consents exist in relation to the data?
  - What commercial plans exist for the data?
  - How material is it to the business?

# Employees



- Does the UK business rely on (key) employees from other EU states, or vice versa?
  - What would be the business impact if that was interrupted?
  - How material would it be to the business?
- Does the business have EU-wide policies or groupings that will need to be reviewed?
- Over time, will the UK Govt. dilute workers' rights? Is there an opportunity to lobby Govt.?

# Funding and financial



- What external funding is available/used?
  - Termination/variation mechanisms?
  - Alternative funding sources?
  - Currency-related risks?
  - Multi-currency borrowing facilities?
  - How material is it to the business?
- Will there be mutual recognition?
  - What if EU Insolvency Regulation ceases to cover UK?
  - Potential impact on UK investment prospectuses & investment funds?

# Procuring goods and services

---

- Impact of Brexit on the business' future ability to procure goods or services?
  - Need to review suppliers?
  - Need to accelerate/decelerate planned procurements of goods or services?
  - How material is it to the business?
- Will Brexit lead to acceleration/deceleration of projects and purchases subject to EU procurement rules?

# Protecting IP rights



- What IP does the business own, use or licence?
  - Where and how is it being used?
  - Where and how is it protected?
  - Should additional steps be taken to protect existing IP or future applications for patents, trade marks etc.?
  - How material is it to the business?
- What will be the impact of Brexit on the EU unitary patent system and new Unified Patent Court (including its seat in London)?

# Regulatory issues



- Does the business rely on regulatory approval in the UK to operate in other EU states, or vice versa?
  - Which countries are affected?
  - What are the requirements?
  - How else could regulatory approval be obtained?
  - How important is the business covered by the regulatory approval?
  - Is there an opportunity to lobby Govt. to amend the regulatory requirements?





- What will be the impact of Brexit on:
  - Tax repayment claims and litigation?
  - The current VAT system?
  - Repatriation of profits?
  - Customs duties on imports & exports?
- Will the UK Govt. consciously pursue a low-tax regime to encourage foreign direct investment?
- Is there an opportunity to lobby Govt.?

# Longer term impact



- Longer term impact/outcomes also unpredictable; depend on shape of UK's future relations with EU/others and clarity of policy-making
- But...
  - Political pressure within UK to reverse EU laws pending Brexit?
  - Border controls with Ireland?
  - Another referendum on Scottish independence?
  - Impact on the EU, and especially Qualified Majority voting?
  - Encourage anti-EU parties in other countries?

# Conclusion

---



- Bespoke free trade deal or WTO = most likely alternative
- Immediate downside risks
- Significant mid term commercial and legal uncertainty
- Many more questions than answers at this stage



## Pinsent Masons

Pinsent Masons LLP is a limited liability partnership registered in England & Wales (registered number: 0C333653) authorised and regulated by the Solicitors Regulation Authority, and by the appropriate regulatory body in the other jurisdictions in which it operates. The word 'partner', used in relation to the LLP, refers to a member of the LLP or an employee or consultant of the LLP or any affiliated firm of equivalent standing. A list of the members of the LLP, and of those non-members who are designated as partners, is displayed at the LLP's registered office: 30 Crown Place, London EC2A 4ES, United Kingdom. We use 'Pinsent Masons' to refer to Pinsent Masons LLP and affiliated entities that practise under the name 'Pinsent Masons' or a name that incorporates those words. Reference to 'Pinsent Masons' is to Pinsent Masons LLP and/or one or more of those affiliated entities as the context requires. © Pinsent Masons LLP 2014

For a full list of our offices around the globe visit our websites



[www.pinsentmasons.com](http://www.pinsentmasons.com)



[www.Out-Law.com](http://www.Out-Law.com)