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Brexit – the journey begins

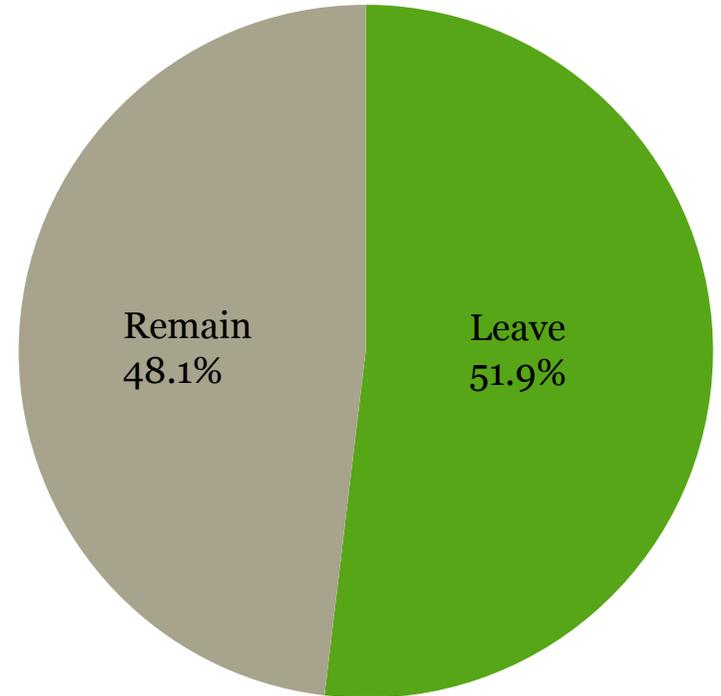
27 June 2016

What has happened?

The result of the UK's referendum on EU Membership was a narrow vote to Leave the EU

Agenda

- Where are we now?
- What does this really mean?
- Process
- Potential Implications – Some Key Issues
- What is less likely to change?
- Future EU/UK Relationship – Some Possible Models
- Immediate actions to consider
- What else can business do now?
- How we can help



Where are we now?

- The referendum was advisory (i.e. no legal force)
- No laws have changed; there is no certainty that any laws will change
- No exit process has started; exit is not inevitable
- Key next steps:
 - UK Government needs to decide a preferred relationship with the EU in light of Referendum
 - UK and EU will need to agree and implement changes
- Changes to the EU's internal arrangements are also possible
- The broad nature of any changes is likely to become clearer in late 2016 with detail emerging over the following years
- Any tangible change is unlikely to take effect before 2019

What does this really mean?

- The possibility of real change has increased
- The probability and shape of any real change (to the UK/EU relationship and, possibly, within the EU) will become clearer between now and the end of 2016
- Once that probability has become clearer there is still likely to be at least 2 years to prepare
- It is not all threat; there will also be some opportunities
- Whilst business should prepare, it would be a mistake to implement fundamental changes at this stage
- The current business priority should be to analyse, prepare and influence

Process

Article 50

- Only formal mechanism for the UK to leave the EU
- Would be triggered by the UK serving notice starting 2 year process
- Only provides for exit - post-exit relationship and transition need to be agreed

Alternatives

- No mechanism for EU to eject the UK or fundamentally change EU rules applicable to the UK
- No mechanism for the UK to limit the application of EU law to the UK

In reality

- Exit, new relationship and transition are likely to be negotiated
- UK currently appears unlikely to wish to trigger Article 50 before it has a plan
- Article 50 may never be triggered

Potential Implications – Some Key Issues

Now	Market Impact	Turbulence in the capital and foreign exchange markets
	Knock-On	Indirect impact via material adverse change provisions and uncertainty over investment decisions
Possible in 2-3 years	Agreements	Change in application of future (and many existing) agreements, licences etc which are defined by reference to the territory of rEU; Termination/change rights
	No passport	Loss of ability to "passport" regulatory status so approval in either the UK (or rEU) would permit operation in rEU (or UK)
	People	Reduction in ability for people to move between the UK and rEU potentially impacting individuals currently in place as well as future transfers
	Changed UK Laws	Changes to UK law and regulation if not all laws currently based on EU laws are preserved
	Barriers	Less flexibility to move goods, data and/or services between UK and rEU
Possible 3 years +	Divergent Regulation	Divergence of laws, regulation or regulatory enforcement between UK and rEU; less coordination (e.g. over product recalls)
	International Trade	UK exclusion from bilateral EU Free Trade Agreements: actual (e.g. Singapore); potential (e.g. Canada, US, Japan)
	Policy Development	Loss, or substantial reduction, of the UK's voice in development of rEU policy

What is less likely to change?

- The EU has little or no influence over many aspects of the UK's legal and policy framework
- In large areas any change is likely to be relatively limited
- These areas include many aspects of:
 - The operation of English and Scots common law and the majority of statutes
 - The vast majority of contracts made under English and Scots law (n.b. competition law, implied terms)
 - Much UK corporate law
 - Most UK real estate law (n.b. ancillary areas – eg environmental)
 - The process and provisions applicable to M&A and other deal making
 - Direct taxation (including transfer pricing)
 - The operation of the English and Scots courts
 - The vast majority of matters of criminal law

Future EU/UK Relationship – Some Possible Models

	Full Divorce (no special relationship between UK and EU)	Free Trade (wide ranging free trade deal)	Pick & Mix (free trade deal with greater alignment in particular areas)	Associate Membership (EEA not EU; special status with some Single Market access)	Adjusted Membership (UK still in EU on revised terms – possibly also changes in rEU)
Influence	<ul style="list-style-type: none"> UK outside policy process 	<ul style="list-style-type: none"> UK outside policy process 	<ul style="list-style-type: none"> UK outside policy process Consulted as "best friend"? 	<ul style="list-style-type: none"> UK outside policy process Consulted as a "best friend"? 	<ul style="list-style-type: none"> UK involved in policy development
Trade	<ul style="list-style-type: none"> No guarantee of access to single market Tariff and non-tariff barriers possible 	<ul style="list-style-type: none"> Commitment to no barriers in most areas No regulatory alignment - "passporting" not preserved 	<ul style="list-style-type: none"> Commitment to no barriers in most areas Regulatory alignment to preserve "passporting" in some areas 	<ul style="list-style-type: none"> Access to single market Regulatory alignment to preserve "passporting" in some areas 	<ul style="list-style-type: none"> Access to single market Regulatory alignment to preserve "passporting" in most areas (with some enhanced carve outs)
UK Laws	<ul style="list-style-type: none"> No particular alignment of UK and EU laws 	<ul style="list-style-type: none"> No express alignment between UK and EU laws 	<ul style="list-style-type: none"> Alignment of laws in specified areas 	<ul style="list-style-type: none"> UK follows EU laws in many current areas 	<ul style="list-style-type: none"> UK follows EU laws in many current areas
People	<ul style="list-style-type: none"> Qualitative controls - no favourable UK/rEU terms 	<ul style="list-style-type: none"> Qualitative controls possibly with favourable UK/rEU terms 	<ul style="list-style-type: none"> Free movement to work with some enhanced specific "brakes" or qualitative controls 	<ul style="list-style-type: none"> Free movement to work with some enhanced specific "brakes" 	<ul style="list-style-type: none"> Free movement possibly with some enhanced specific "brakes"
Financial	<ul style="list-style-type: none"> No UK contribution to EU budget 	<ul style="list-style-type: none"> No UK contribution to EU budget 	<ul style="list-style-type: none"> Possible reduced UK contribution to EU budget 	<ul style="list-style-type: none"> Significant UK contribution to EU budget 	<ul style="list-style-type: none"> Significant UK contribution to EU budget
Legal	<ul style="list-style-type: none"> EU law no role in UK 	<ul style="list-style-type: none"> EU law no role in UK except areas covered by trade agreement 	<ul style="list-style-type: none"> EU law no role in UK 	<ul style="list-style-type: none"> EU law applicable in UK in various sectors Areas of dual competency? 	<ul style="list-style-type: none"> EU law applicable in UK

Immediate actions to consider

- People
- Business impact
- Deals
- Deferment

What else can business do now?

Analyse

- Detailed review of the application of EU rules to your business
- Which ones really matter and impact of potential models
- Identify:
 - Priority areas for UK/EU process
 - Actions your business might take once likely model becomes clearer
 - Any areas of new opportunity (e.g. to influence UK rules)

Plan

- Prepare action plans for the scenarios of most significant change
- Maximise optionality in decisions over the next few months

Influence

- Engage with process in London, Brussels and Member State capitals
- Focus policymakers on priorities taking account of political realities

How we can help

- Access our resources at www.hoganlovells.com/constitutionalchange/
- <http://maps.hoganlovells.com/europe/>
- Contact at brexit@hoganlovells.com

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