

BREXIT AND BUSINESS – WHERE ARE WE NOW?

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OVERVIEW OF PRESENTATION

First Part

- Effects of Referendum vote on:
 - Economy
 - Currency
 - Interest Rates
 - QE
 - Property

OVERVIEW OF PRESENTATION (2)

Second Part

- Article 50
- What will Brexit look like – hard or soft?
- Negotiations
- Legal challenges
- What happens next?
- What should you be doing now?
- Conclusion

SO, WHERE ARE WE NOW?

- Referendum – 23rd June 2016
- Leave – 51.9% : Remain – 48.1%
- David Cameron resigns
- New PM- *'Brexit means Brexit'*
- New Cabinet
- Market instability or 'jitters'
- Political and economic Brexit

SO, WHERE ARE WE NOW?

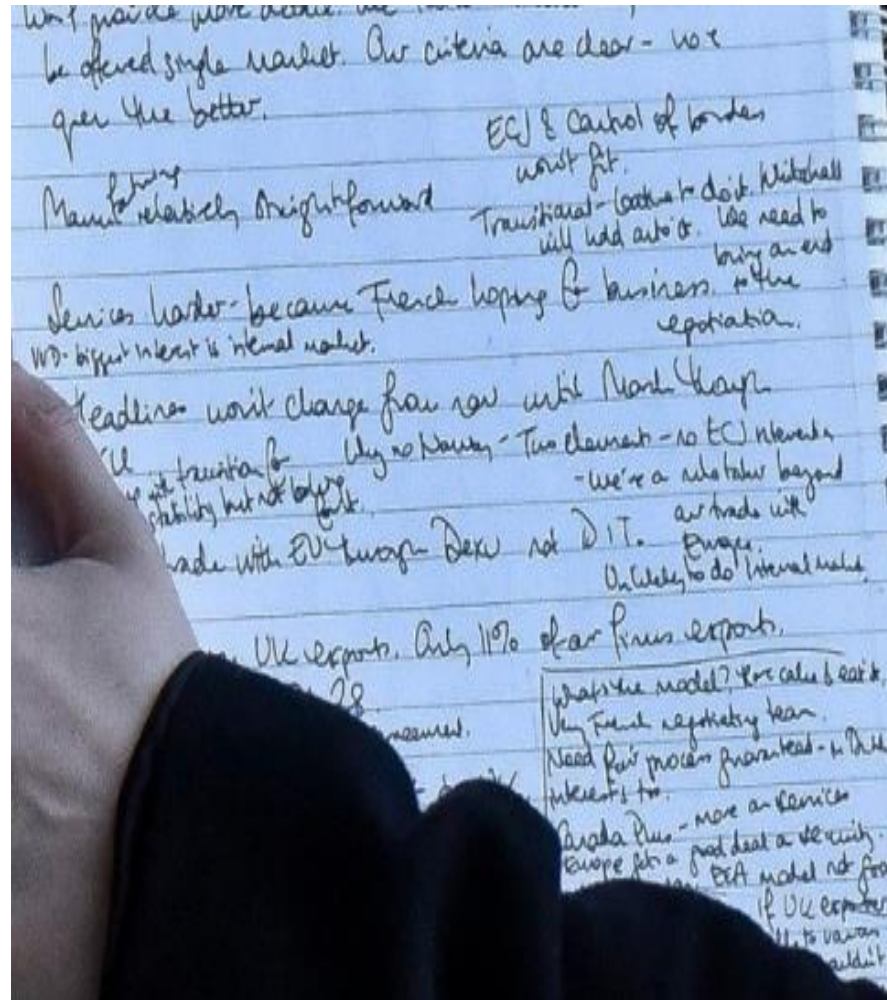
- *“Britain is now apparently a country..*
- *when the government is defeated, the pound gets stronger,*
- *when parliamentary sovereignty is upheld some parliamentarians are unhappy,*
- *and when judges listen to legal arguments in a courtroom they are ‘enemies of the people’”*

(Financial Times)

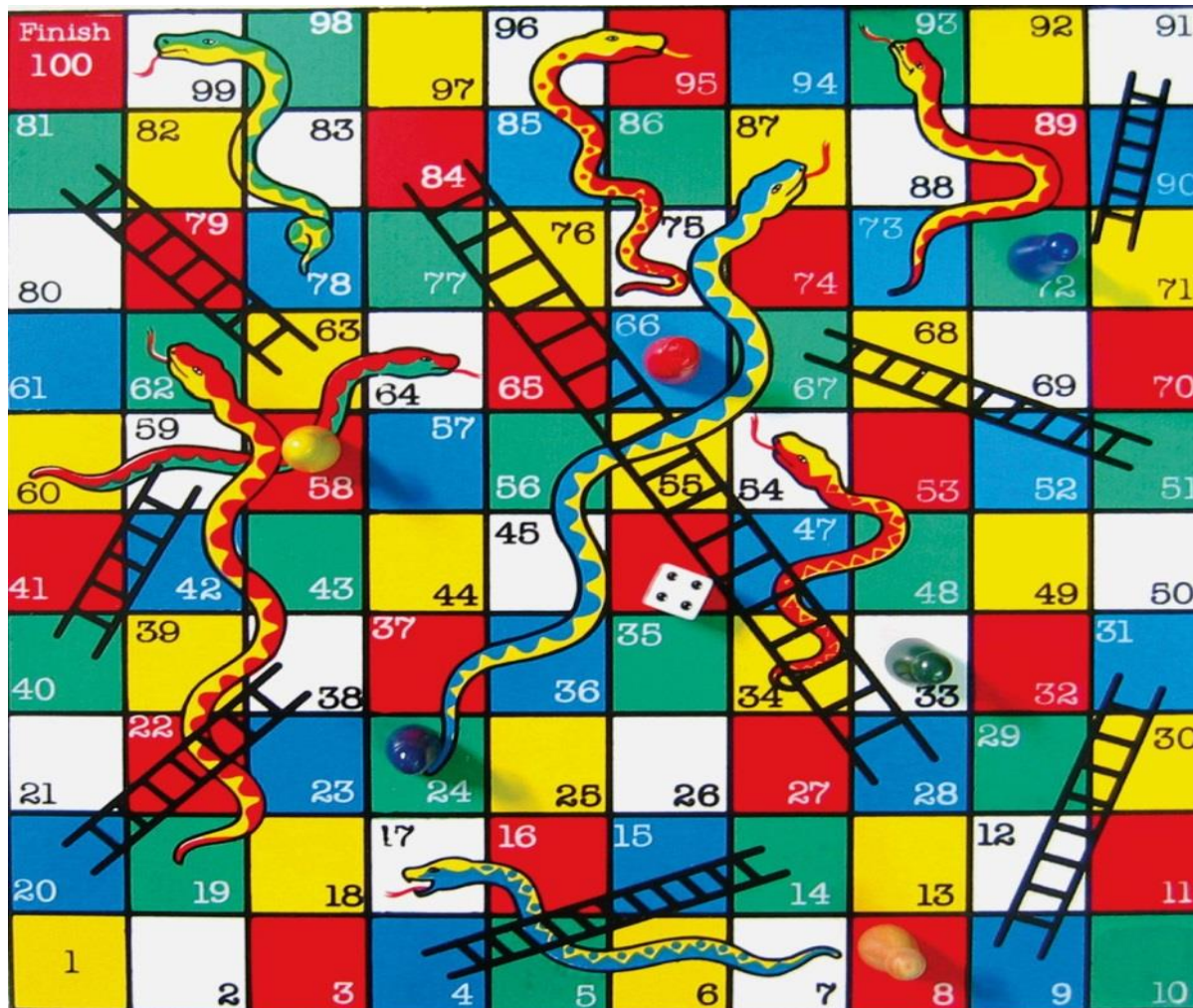
SO, WHERE ARE WE NOW?

- *“That is what people voted for – power and authority residing once again with the sovereign institutions of our own country”*
(David Davis – September 2016)

IS THERE A PLAN?



HOW IT MIGHT WORK?



ECONOMY

- Predictions of an immediate and significant impact on the UK economy and consumer confidence in the event of a leave vote
- Predictions have not come to pass
- International Monetary Fund (IMF) accepts that its prediction of a '*post-Brexit vote financial crash*' has proved overly pessimistic
- The UK services sector grew 0.4% in July
- Consumers carried on spending as normal after the Brexit vote

ECONOMY (2)

- Office for National Statistics (ONS) – economic growth accelerated faster than thought in the run-up to the referendum
- Gross Domestic Product (GDP) grew by 0.7% in the three months to the end of June 2016
- OECD has gone back on its warning that the UK would suffer immediately from a Brexit vote
- Revised its 2016 GDP growth forecasts for the UK slightly upwards from 1.7% to 1.8%

“Uncertainty about the future path of policy and the reaction of the economy remains very high and risks remain to the downside”

ECONOMY (3)

Fears of a “Brexit tsunami”

- David Blanchflower, professor of economics at Dartmouth College in the US,:
 - *“The bad news already is prices are rising, wage growth is slowing and unemployment is up”*
 - Andrew Sentance, another former MPC member, told the Guardian that a 1% inflation rate *“is the tip of the inflationary iceberg created by the recent fall in the pound”*

ECONOMY (4)

- Autumn Statement
- Public finances have worsened
- Borrowing will hit £68.2bn this year, exceeding a forecast of £55 billion
- Britain will then borrow:
 - £59 billion in 2017, £46.5 billion in 2018-19, £21.9 billion in 2020-21 (when it had been expected to repay £10 billion)
Another £20.7 bn a year later and £17.2 bn in 2021-22
- Growth next year forecast by Government-
 - Dip from 2.1 to 1.4 per cent instead of the 2.2 per cent forecast eight months ago, before rising again

ECONOMY (5)

- Federation of Small Businesses - confidence has fallen for the third consecutive quarter
- A wake-up call for politicians to act to “*avoid an economic slowdown*”
- Recent survey of 400 Insolvency Practitioners on Brexit –
 - Two thirds of IP’s believe Brexit will increase the number of business failures in the UK over the next 12 months

CURRENCY

- Pound fell dramatically immediately after Brexit vote
- Declined to a 3-year low against the Euro following announcement that the UK would begin formal Brexit negotiations by the end of March 2017
- Pound has fallen about 16% against the dollar and about 11% against the Euro since June
- Currency's continuing weakness has been accentuated by the cut in interest rates and the Bank of England's economic stimulus measures
- Tesco v Unilever and *Marmitegate*

CURRENCY (2)

- Survey of 430 businesses released by the Confederation of Business Industry (CBI)
- Cost of imported raw materials has risen
- *"The weak pound is beginning to make its mark, and prices are expected to rise, especially in the food and drink sector,"* said CBI's chief economist Rain Newton-Smith

CURRENCY (3)

- Tourism
- Beneficiary - UK's own tourism sector
- Analytics firm ForwardKeys says flight bookings to the UK rose 7.1% after the vote
- More expensive foreign holidays for UK nationals

INTEREST RATES

- Bank of England taken a number of steps to boost the UK economy
- It cut interest rates from 0.5% to 0.25% in August
- First reduction in the cost of borrowing since 2009
- UK rates at a new record low
- The Bank left interest rate at 0.25% in November

QE

- The Bank announced a huge extension of its quantitative easing programme by an extra £70bn
- Also a £100bn scheme to force banks to pass on the low interest rate to households and businesses
- One effect of falling interest rates – exacerbated the growing pension funds deficit because of falling bond yields
- As yields fall it reduces the incomes pension funds get from their investments

PROPERTY

- Post-referendum jitters
- House prices across the UK have risen by an unexpected 7.7 per cent in the past year
- Biggest house price rises were in the east of England, London and the South-East
- House prices in eastern England, which includes areas from Hertfordshire to Norfolk, rose by 12.1 per cent to £277,000, making it the fastest-rising region

PROPERTY

- House prices in London rose by 10.9 per cent in the 12 months to September to £487,000 – more than double the national average
- However, the number of homes for sale is at near 30-year low
- Bank of England figures showing the number of new mortgages being approved by banks and building societies falling to its lowest for eighteen months in July

ARTICLE 50

- Article 50 Lisbon Treaty:
 - ‘Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements’ - Article 50 (1)
- ‘A Member State which decides to withdraw shall notify the European Council of its intention’
- ‘In the light of the guidelines provided by the European Council, the Union shall negotiate an agreement with that State, setting out the arrangements for its withdrawal...’ (Article 50 (2))

ARTICLE 50

- PM said she will trigger Article 50 by 31st March 2017
- Now says she ‘intends to trigger’ ...
- EU leaders - Article 50 must be triggered before negotiations can begin
- 2 years of negotiations over Britain's exit from the EU
- 18 months in reality?
- PM has faced repeated calls to set out what she wants Brexit to look like, but has refused, saying there will be "*no running commentary*" (Did Boris get the memo?)

THE BREXIT PLAN?

- Is there one?
- *'A good deal for the UK is a good deal for the EU'* – Theresa May – 22.10.16
- When will it be clear what the objectives of the UK Government are?
- Brexit Plan – (6.12.16)
- The post-Brexit model – Hard v Soft
- Realistic?
- Achievable?
- Compromises?
- Timeframe?
- How will markets and business respond?

THE BREXIT PLAN?



Donald Tusk 
@eucopresident



Following

The only real alternative to a "hard Brexit" is "no Brexit". Even if today hardly anyone believes in such a possibility.

HARD BREXIT

- Making independent trade deals
- Losing full access to the single market
- Full control over immigration from the EU
- Applying new rules within the UK's own territory
- Reverting to World Trade Organisation (WTO) rules and tariffs

SOFT (ER) BREXIT

Remaining close to the existing arrangements with the EU –

- Access to single market;
- Not subjecting Britain's exports to border tariffs;
- Accepting "four freedoms": movement of goods, services, capital and people;
- Continued free access for EU nationals to live and work in the UK; and
- Membership of the European Economic Area (EEA)?
- Norway model?

SOFT (ER) BREXIT (2)

One possible Option:

- Stay in the EEA beyond 2-year Brexit negotiation period (unless extended) until final deal is agreed – ‘Brexit Lite’
- Access to single market
- Allows tariff – free movement of goods, services, money and people within EU
- Non-EU members (Norway, Iceland and Lichtenstein) outside Common Agricultural Policy and customs union but get barrier-free trade with the single market
- Worse deal in economic terms than full EU membership

NEGOTIATIONS

- What is Britain aiming for in terms of deal?
- Demands growing for a softer Brexit
- Full access to single market under new deal?
- Restrictions on freedom of movement?
- Protection for UK expats in EU?
- Right to make new trade deals with rest of World
 - ‘Canada Plus’
- Avoid trade barriers, tariffs and WTO rules
- Or simply.... *‘having cake and eating it’*

NEGOTIATIONS

- What is EU agenda?
- Former French Foreign Minister Michel Barnier has been appointed by the European Commission to lead the negotiations
- EU adopting a 3 tier approach to Brexit:
 - First stage – Pending issues – UK payments to EU, border issues and single market
 - Second stage – Post-Brexit transition deal
 - Third stage – ‘final deal’ or ‘association agreement’

NEGOTIATIONS

- *“There is no à la carte menu”*
- *“There is only the whole menu or none”*
- *“Without membership of the internal market, without acceptance of the four basic freedoms of the internal market, there can, of course, be no passporting, no free access for financial products or for financial actors”*

(Wolfgang Schäuble – German Finance Minister)

NEGOTIATIONS

(1) Passporting

- Financial Services and Markets Act 2000 (as amended) (FSMA)
- A firm authorised in a European Economic Area (EEA) state is entitled to carry on permitted activities in any other EEA state by either exercising the right of establishment (of a branch and/or agents) or providing cross-border services

NEGOTIATIONS

- Passporting rights only apply within the EEA
- Bilateral treaties could protect passporting rights
- Switzerland have such rights –
 - Swiss general insurers – right to set up an establishment in the EEA under the provisions of special bilateral treaties between the European Union and Switzerland

NEGOTIATIONS

(2) Tariffs

- Are tariffs a real possibility and a potential threat to overseas investment in the UK?
- Who loses and who gains?
- Agriculture and food industries
- Civitas estimates combined loss to EU - £13 billion and loss to UK business – £5.2 billion
- Draft schedule of tariffs – coffee, dairy and sugar

NEGOTIATIONS

- (3) Free movement of people and the proposed restrictions of movement of EU workers
- Existing EU workers remain?
 - Identity cards – ‘phased introduction’
 - Increase in applications for residency
 - Only higher skilled workers allowed in the future?
 - Non-negotiable aspect of EU negotiation approach
 - Record number of EU citizens coming to live in Britain - 284,000 for 12 months to June 2016
 - British Expats (1.2million)

LEGAL CHALLENGE

- *R (Miller) and others v Secretary of State for Exiting the European Union*
- Case heard in High Court – October 2016 – Judgment – 3.11.16
- Government does not have the power to trigger Article 50 without parliamentary approval
- Parliament needs to invoke the procedure

LEGAL CHALLENGE

- Court did not accept the ‘central contention’ put forward by the government that parliament must have intended, when it enacted the European Communities Act 1972 (‘ECA’) that:
 - (1) the government would ‘retain its prerogative power’ to effect a withdrawal from the EU, and thereby -
 - (2) the government should have the power to choose whether EU law should continue to have effect in UK domestic law

LEGAL CHALLENGE

- *'...relevant to bear in mind the profound effects which Parliament intended to produce in domestic law by the enactment of the ECA 1972, which has led to its identification as a statute of special constitutional significance.*
- *The wide and profound extent of the legal changes in domestic law created by the ECA 1972 makes it especially unlikely that Parliament intended to leave their continued existence in the hands of the Crown through the exercise of its prerogative powers'*

LEGAL CHALLENGE

- *‘Parliament having taken the major step of switching on the direct effect of EU law in the national legal systems by passing the ECA 1972 as primary legislation, it is not plausible to suppose that it intended that the Crown should be able by its own unilateral action under its prerogative powers to switch it off again’ (Lord Thomas)*

LEGAL CHALLENGE

- Legislation under which the referendum was run – EU Referendum Act 2015 – was flawed as it failed to confer statutory authority to give notice under Article 50
- Simple provision may have saved Government blushes!

LEGAL CHALLENGE

- Is ‘pulling the trigger’ on Article 50 reversible?
- Not thought to be reversible, as the government accepted that a notice under Article 50 ‘cannot be withdrawn once it has been given’
- Effect of giving the notice under Article 50 – changing UK domestic law

LEGAL CHALLENGE

- Is EU relevant to the triggering of Article 50?
- Yes, potentially on question – is Article 50 notice reversible?
- Possible referral (by Supreme Court?) to Court of Justice of the European Union (CJEU)
- CJEU not to be confused with the European Court of Justice (ECJ)
- CJEU tasked with interpreting EU law and ensuring its equal application across all EU Member States
- ECJ is highest court in European Union on matters of European law.

LEGAL CHALLENGE

- Parliament is sovereign and can make and unmake any law it chooses
- Government's argument to be contrary to both the fundamental rule and the language of the ECA – *'there is nothing in the text to support it'*

LEGAL CHALLENGE

- Appeal fast tracked to Supreme Court
- Hearing – 5th, 6th, 7th and 8th December 2016
- Judgment?
- What next?
- Government wins – triggers Article 50 or does it?
- Government loses:
- 3-line Bill ('bulletproof?')
- Commons seeks to block?

A NEW LEGAL CHALLENGE?

- Article 127 of EEA Agreement
- *“Each Contracting Party may withdraw from this Agreement provided it gives at least twelve months’ notice in writing to the other Contracting Parties,”*
- Does Britain automatically leave the EEA when it leaves the EU?
- Government position is that Britain does leave the EEA when it leaves EU
- Potential legal challenge?

A NEW LEGAL CHALLENGE?

- Could this further delay triggering Article 50?
- Might this work to Government's advantage –
- Negotiations going badly – no deal on horizon.
- UK threaten to stay inside EEA after Brexit
- Politically hard to sell or economically better?

WHAT HAPPENS NEXT?

- If Government wins Article 50 case?
- Trigger Article 50 without parliament's approval
- New Act of Parliament introduced to potentially repeal unattractive EU Law?
- 'Great Repeal Bill' designed to scrap European Communities Act 1972
- Great Continuity Bill' 'Sunset Clause?'

WHAT HAPPENS NEXT

- Brexit dividend?
- Not all regulatory initiatives are unwelcome
- EU financial regulation based on UK regulation (e.g. market abuse)
- Bankers' bonus caps
- Capital requirement regulations
- Solvency II
- Twin-track approach to regulatory regime?
- Interpretation of European Law

WHAT HAPPENS NEXT?

- Cost of Brexit
- The Office for Budget Responsibility calculated the cost of Brexit as £58.7 billion – or £226 million a week
- *“Disentangling Britain would be pretty brutal....there would be huge costs. Would people really want to pay them?”*

WHAT SHOULD YOU BE DOING NOW?

- Planning:
 - Monitor Brexit developments
 - Develop a contingency plan for a ‘Hard Brexit’
 - Possible withdrawal of passporting rights
 - Review of existing contracts (Legal Bit)

WHAT SHOULD YOU BE DOING NOW?

- Jurisdictional scope of contracts – definition of ‘EEA’
- Investment strategies may require updating – will investments in UK still be permitted post-Brexit?
- Effect on other EU Member States financial trading
- Force Majeure provisions – capable of being performed?

WHAT SHOULD YOU BE DOING NOW?

- Termination rights – withdrawal from potentially loss-making contract?
- Use of materially adverse event (financial) clause
- How are Businesses responding in this political vacuum?

WHAT SHOULD YOU BE DOING NOW?

- *“This year is all about understanding potential scenarios, your options, and what your contingency plans are,”* said Andrew Gray, head of Brexit for UK financial services at PwC, which is advising banks on how best to respond to Brexit
- *“Some plans will take time to execute, and firms can’t afford to wait until 1 January 2019, and risk not being able to do business”*

CONCLUSION (1)

- How to break the deadlock?
- Take some pressure out of timetable – Is the 2-year period ‘fixed in stone’
- Who benefits from a 2-year period?
- Capable of being extended?
- Would a 5-10 year period be more realistic?

CONCLUSION (2)

- Market turbulence?
- ‘Slow motion slowdown’?
- Transitional Arrangement OR Brexit Lite?
- General Election 2019 or earlier?
- Elections in France and Germany next year
- The Greece problem and sovereign debt
- Problems with Italian Banks

CONCLUSION (3)

- The Scottish, Welsh and Northern Ireland questions
- President Trump (January 2017)
- Uncertainty and the need to plan for future
- Will the UK actually Brexit?
- What will the economic and political landscape look like in 12 months?
- Effect on City of London and UK PLC

CONCLUSION (4)

TWO CONTRASTING VIEWS TO FINISH...

- The impact of a “*reckless hard-headed, hard nosed, hard Brexit*” would not just affect the City of London but “*would ripple out far and wide*” with millions of jobs and billions of revenue lost across the country” (Sadiq Khan)

CONCLUSION (5)

- *“In any case, we don’t need to keep our cards close to our chest. We hold nearly all the trumps. We can tell Brussels what we want and let them decide how to respond”*
- *“The UK has plenty of ammunition. Pessimists search for dark clouds behind the silver lining but nobody can ignore our boom in jobs, growth, exports and retail sales since the referendum”*

The Sun – 27.11.16

WATCH THIS SPACE



AND.....



DISCLAIMER

- This presentation contains general advice and comments only and therefore specific legal advice should be taken before reliance is placed upon it in any particular circumstances

QUESTIONS AND THANK YOU



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