

March 12, 2018

BREXIT - CONVERTING THE POLITICAL DEAL INTO A LEGAL DEAL AND THE END STATE

To Our Clients and Friends:

1. In our [client alert of 8 December 2017](#) we summarised the political deal relating to the terms of withdrawal of the UK from the EU with a two year transition. It is important to remember that this "Phase 1" deal only relates to the separation terms and not to the future relationship between the UK and the EU post Brexit.
2. In her Mansion House speech on 2 March 2018 UK Prime Minister Theresa May set out Britain's vision for a future relationship. The full text of her speech can be found [here](#). It continues to make it clear that the UK will remain outside the Single Market and Customs Union.
3. On the critical issue of the Irish border, the UK Government's position remains that a technological solution is available to ensure that there is neither a hard border within Ireland nor a border in the Irish Sea which would divide the UK. Neither the EU nor Ireland itself accept that a technological solution is workable, and there remain doubts whether such a solution is possible if the UK is outside the EU Customs Union (or something equivalent to a customs union). The terms of the political deal in December make it clear that, in the absence of an agreed solution on this issue, the UK will maintain full alignment with the rules of the Single Market and Customs Union.
4. The UK's main opposition party, The Labour Party, has now shifted its position to support the UK remaining in the Customs Union. The Government is proposing a "customs partnership" which would mirror the EU's requirements for imports and rules of origin.
5. Theresa May has acknowledged both that access to the markets of the UK and EU will be less than it is today and that the decisions of the CJEU will continue to affect the UK after Brexit.
6. On a future trade agreement, the UK's position is that it will not accept the rights of Canada and the obligations of Norway and that a "bespoke model" is not the only solution. There is, however, an acknowledgement that, if the UK wants access to the EU's market, it will need to commit to some areas of regulation such as state aid and anti-trust.
7. Prime Minister May has confirmed that the UK will not engage in a "race to the bottom" in its standards in areas such as worker's rights and environmental protections, and that there should be a comprehensive system of mutual recognition of regulatory standards. She has also said that there will need to be an independent arbitration mechanism to deal with any disagreements in relation to any future trade agreement.

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8. Theresa May has also said that financial services should be part of a deep and comprehensive partnership.
9. The UK will also pay to remain in the European Medicines Agency, the European Chemicals Agency and the European Aviation Safety Agency but will not remain part of the EU's Digital Single Market.
10. Donald Tusk, the European Council President, has rejected much of the substance of the UK's position, stating that the only possible arrangement is a free trade agreement excluding the mutual recognition model at the heart of the UK's proposals. Crucially, however, he has said that there would be more room for negotiation should the UK's red lines on the Customs Union and Single Market "evolve".

It is clear that this is an opening position for the two sides in the negotiations and that there is a long history of EU negotiations being settled at the very last minute. The current timetable envisages clarity on the final terms of the transition and the "end state" by the European Council meeting on 18/19 October 2018.



This client alert was prepared by London partners Charlie Geffen and Nicholas Aleksander and of counsel Anne MacPherson.

We have a working group in London (led by Nicholas Aleksander, Patrick Doris, Charlie Geffen, Ali Nikpay and Selina Sagayam) that has been considering these issues for many months. Please feel free to contact any member of the working group or any of the other lawyers mentioned below.

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