

# P.R.I.M.E. Finance

## Panel of Recognized International Market Experts in Finance

### The Reality of Brexit What next?



Presentation by Habib Motani, Clifford Chance  
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# Where do we go from here?



Article 50 negotiations\*

Triggered by UK notice to European Council  
2 year period to negotiate withdrawal

Long-term UK-EU agreement(s)

No prescribed timeline: EU Treaties only provide for EU to enter into treaties with "third countries"

Negotiations with third countries

Replacing EU FTAs and other arrangements

Limited impact on existing arrangements

Resetting domestic laws

Major amendments to UK law and regulation

Limited changes needed to EU law

\* Theresa May: the UK would trigger Article 50 "no later than the end of March 2017".

# Brexit will require at least six interlocking sets of negotiations / agreements from a UK perspective\*

| Withdrawal Agreement  | Transitional Agreement   | Future Agreement  | UK WTO Schedules of Commitments   | New FTAs with third countries   | Co-operation on foreign ,defence and security policy                |
|---|--|---|---|---|---|
| Art. 50 TEU provides the legal basis of the UK's withdrawal from the EU   | Transitional arrangements are likely to be included in the Withdrawal Agreement  | Negotiation may not start until the UK has left the EU**  | UK to modify and negotiate its schedules of commitments (initially with EU 27)  | EU rules prevent the UK from concluding trade deals with third countries until it has left the EU   | Such co-operation agreement could be linked to the EU-UK trade deal |
| <ul style="list-style-type: none"> <li>Separate to the agreement setting out the framework for the UK's future relationship with the EU</li> <li>It is unclear what areas will be included</li> </ul> | Arrangements must address the uncertainty businesses would face and provide temporary cover to the UK and EU27 economies | Options: <ul style="list-style-type: none"> <li>Norway (EEA/EFTA)</li> <li>Switzerland (Bilateral-sectoral agreements)</li> <li>Turkey (Customs Union)</li> <li>Canada CETA (FTA)</li> <li>WTO rules</li> </ul> | The UK's proposed schedules are likely to require the approval of other WTO members   | UK will have to address bilateral trade deals with third countries (34 trade deals with 60 countries)   | UK has important diplomatic, intelligence and military assets       |
| TEU: 2 year period of negotiation<br><br>Extendable by unanimity  | UK will need to ensure arrangements do not breach WTO rules<br><br>Transitional arrangements may take time to negotiate  | The timeframe for negotiation of a future agreement will be lengthy and vary according to the complexity and controversial nature of the provisions included  | Decisions under WTO rules require consensus, the timeframe for the UK to negotiate tariffs and quotas is uncertain and may be lengthy | FTAs take years to negotiate<br><br>Before entering into negotiations, third countries will likely want to see the EU-UK future agreement outcome |   |

\* Theresa May and her six-pack of difficult deals – Centre for European Reform, Insight, Charles Grant, 28 July 2016

\*\* European Commission and Donald Tusk have said that such negotiation should not start until the UK has left the EU.

Other member states (Germany) suggest the UK should be allowed to work on the FTA at the same time as the divorce settlement.



# Future UK/EU Agreement and third countries

## Future UK/EU Agreement(s)

- Article 218 TEU governs the agreement of third country agreements with the EU
- May be negotiated under existing powers in Treaty e.g. for common commercial policy
- Recent timetable for negotiating FTAs 4-10 years
- This negotiation different: not negotiating to increase market access
- UK government capacity issues
- Comprehensive agreement requires Council, European Parliament and probably Member State ratification

## Third countries

- Re-establish UK position in WTO
- Replace 34 existing EU FTAs with 60 countries
- Replace existing EU mutual recognition or substituted compliance arrangements
- EU-UK transitional provisions do not affect third countries
- Treaty restricts UK's ability to conclude 3rd country agreements while still a EU Member State
- Other countries will 'wait and see'



# Financial Services

## How do UK entities benefit from EU single market legislation today?

UK and UK based (e.g. US, Japanese, Swiss and Canadian owned) entities today rely on key **EU “passports”** to provide services across the EU and vice versa

### MiFID investment firm passport covers:

- Dealing in securities and derivatives, portfolio management, investment advice, underwriting/placing, etc.

### CRD4 banking passport covers:

- Deposit-taking, lending and guarantees, payment services and e-money, spot FX and
- MiFID services and activities

As well as other EU legislation which secures equal treatment or access rights e.g.

|                 |  |
|-----------------|--|
| UCITS Directive | EU UCITS can be sold across the EU   |
| AIFMD           | EU managers of EU AIFS have a passport to sell those funds to professional investors across the EU |
| PSD2            | EU payment institutions have a passport to provide payment services across the EU                  |
| EMD2            | EU e-money institutions can issue e-money and provide related services across the EU               |
| Solvency 2      | EU insurance companies can sell insurance products across the EU                                   |

# Financial Services

## How could UK Financial Firms Access EU Markets?

| Activity                    | Relevant EU Legislation   | Relevant Provisions  |
|-----------------------------|---|--|
| <b>Investment Services</b>  | Markets in Financial Instruments Directive / Regulation (MiFID, MiFIR)                  | Third country recognition provisions in Article 46 MiFIR could allow firms from an equivalent (and reciprocal) jurisdiction to provide MiFID2 services cross-border to wholesale clients/counterparties in the EU. Retail selling could require branching (Art 39 MiFID2). |
| <b>Derivatives Clearing</b> | European Market Infrastructure Regulation (EMIR)  | Under Art 25 EMIR and 38(1) MiFIR, a non-EU CCP may be recognised for the purpose of being permitted to provide clearing services to EU venues.  |
| <b>Retail Funds</b>         | Undertakings for the collective investment in transferable securities (UCITS) Directive | UCITS funds must have EU-established management companies, but may appoint non-EU managers and invest in non-EU securities. Thus UK-managed funds could continue to be sold in the EU provided that appropriate infrastructures were put in place within the EU.           |
| <b>AIFs</b>                 | Alternative Investment Fund Managers Directive (AIFMD)                                  | Art. 40 AIFMD contains provisions enabling AIFs managed by non-EU AIFMs to be marketed in the EU with a passport provided that equivalent regulation is in place in the home jurisdiction.   |

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