

# 2016 Luxury & Fashion Industry Conference

1 November 2016

Baker & McKenzie New York



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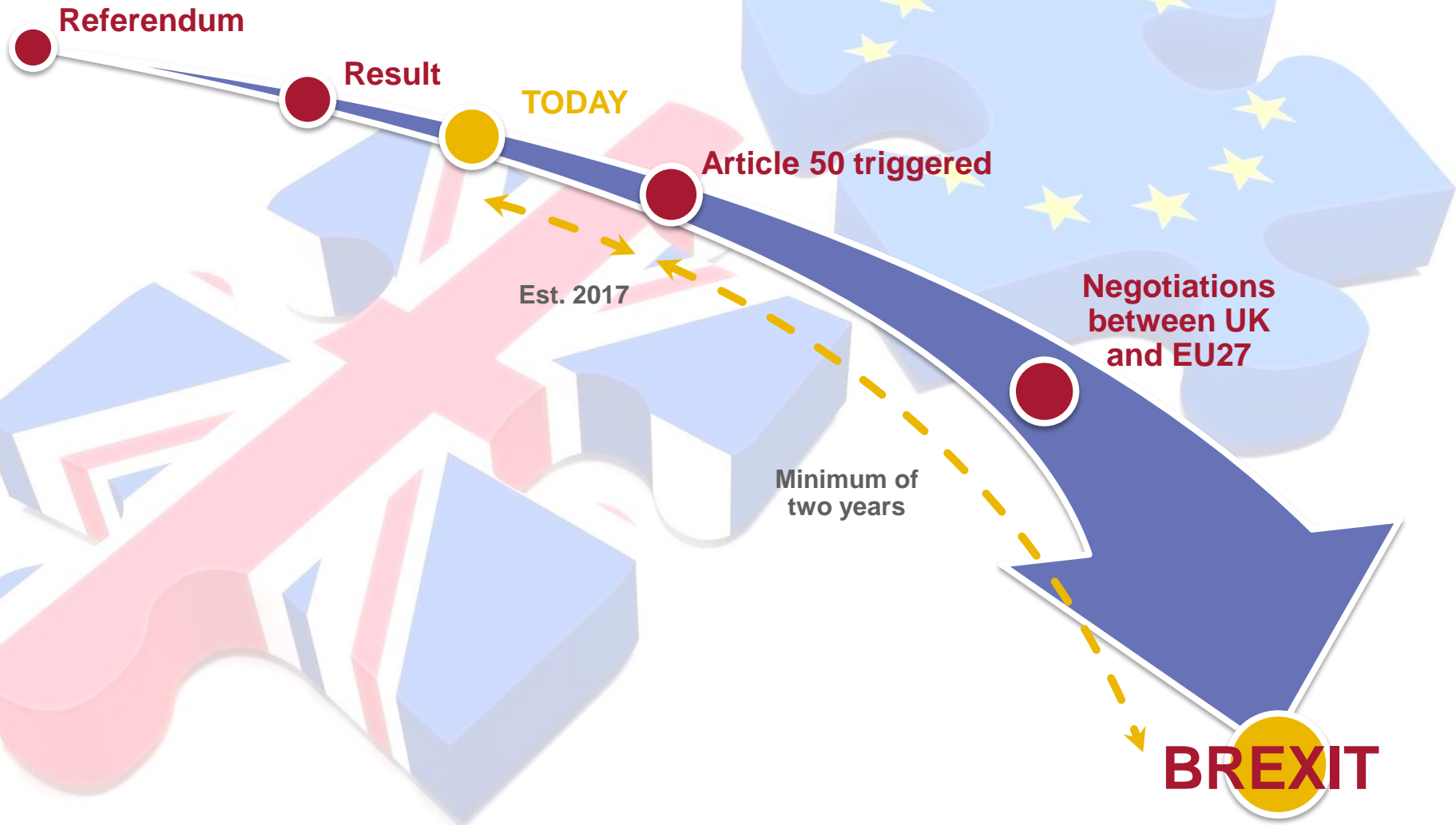
## BREXIT and the Luxury & Fashion Industry

James Wilson, New York



What we know so far...

# It's not me, it's EU



# “Brexit means Brexit”



50

Exit triggered by the UK invoking Article 50

2-year process (unless mutual agreement reached to extend)

Negotiations between UK and EU27

UK Government has started reaching out to many countries about future trading arrangements

Until “divorce” is finalized, UK remains in the EU

Extended period of uncertainty

# Which BREXIT Model?

## HARD BREXIT

- No access to Single Market
- No passporting for Financial Services
- Limited free trade agreement with EU27
- Control over immigration
- Unfettered control over rules/standards
- No contribution to EU budget
- Quick negotiations

**UK Sovereignty is secured at the cost of market access**

**The final deal will be a negotiated settlement which addresses the concerns of both the UK and EU27**

## SOFT BREXIT

- Access to Single Market
- Passporting for Financial Services
- Continuing free movement of people
- Continuing alignment with EU rules/standards
- Contribution to EU budget
- Quick withdrawal but length negotiations on the 'what next'

**Market access is secured through adherence to EU principles**

# Key considerations for Fashion and Luxury Groups

# Intellectual Property | Key considerations

Licensing /  
Brand Sharing  
/ Agreements

Patents

Trade Marks /  
Design

Copyright

Trade Secrets

*Sui generis*  
database  
rights

Digital Single  
Market

Enforcement



# Products | Key considerations

UK adopts  
“Norwegian  
Model”,  
minimal  
change

UK enters  
bi-lateral  
agreement,  
certain laws  
to be  
adopted

UK adopts  
EU REACH  
regime,  
uncertainty

Will the UK  
continue to  
participate  
in the  
RAPEX  
system?

Will the UK  
rely solely  
on FTAs or  
WTO rules?

# Critical Trade & Customs Questions | Impact of Models on Movement of Goods

## Single Market

- Goods in free circulation move freely within single market (no customs declarations / duties payable)



## Customs Union (Turkey Model)

- Goods in free circulation are not subject to customs duties when moving within customs union, but:
- **Customs declarations required and import VAT payable**
- UK imports benefit from EU FTAs but UK exports do not



## FTA

- Preferential duty rates\* only available for goods which meet **origin rules** (origin certification required)
- **Customs declarations required and import VAT payable**
- UK trade does not benefit from EU FTAs



## Fallback (WTO)

- No preferential treatment\*
- **Customs declarations required and import VAT payable**
- UK trade does not benefit from EU FTAs

\* only of concern for dutiable products

# What are the key commercial considerations?

Consider governing law and jurisdiction clauses

Force Majeure clause unlikely to cover Brexit

Data protection regime will depend upon the UK's relationship with the EU and how the current legal regime will be untangled

UK domestic consumer law should not be impacted by Brexit

# Employment Considerations

## Immediate Impact

- EU Free Movement still applies as it did before the referendum
- But important considerations for any employees that are EU (but not UK) nationals

## Status of EU Nationals Post-Brexit

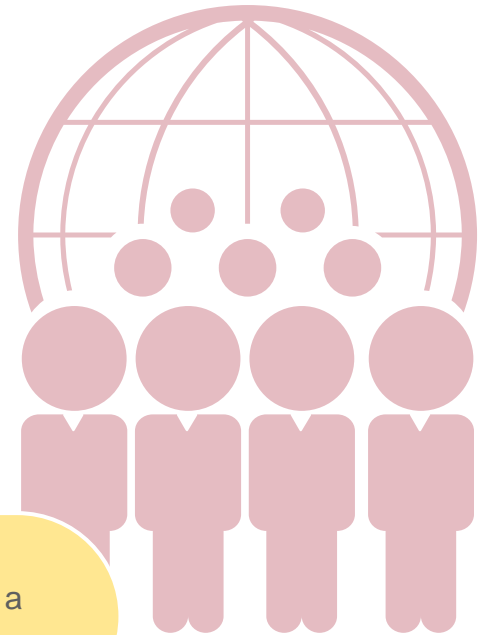
- EU rights acquired automatically by being a “qualified person”

## What can employees evidence their status?

- Newly arrived / <5 yr – Registration Certificate or Residence Card
- >5yr Residence – Permanent Residence or British Citizen

## Practical steps to consider now

- Long term objective and devise a strategy
- Reassure/support EU nationals working in the UK (and vice versa)
- Timing for Certificates/Residence/Citizenship
- Discrimination risks (e.g. in recruitment)



# Critical tax questions

## Trade

- Implications for supply of goods
- Which customs model?

## VAT

- How will UK law need to change?
- Status of EU law?

## Direct tax

- Implications for UK as a holding, IP and finance company location
- Business as usual?

## Tax policy

- Will the UK retain a competitive territorial corporation tax system?
- <15% UK tax rate?
- Acceleration of EU27 tax harmonisation?

What can you do now in anticipation of Brexit?

A decorative background featuring a stack of playing cards with various patterns (stars, hearts, and the Union Jack) and a large, light-colored pencil pointing upwards. The cards are partially overlapping and have a slight shadow effect. The pencil is positioned diagonally across the right side of the slide.

# Make a Plan

1

Establish a Brexit Working Group

2

Carry out a Brexit assessment and contingency planning; establish immediate action items

3

Determine your Brexit strategy



# How Can We Help?

- We are happy to further **discuss** the potential impact for your company and have created a checklist of issues for companies to consider
- Find our **Brexit materials** on Baker & McKenzie's dedicated Brexit Website at:  
<http://www.bakermckenzie.com/en/insight/publications/2016/06/brexit-what-it-means-for-your-business>
- Keep up to date with the latest Brexit developments on our **Brexit Blog** at:  
<http://brexit.bakermckenzie.com/>





# Questions?

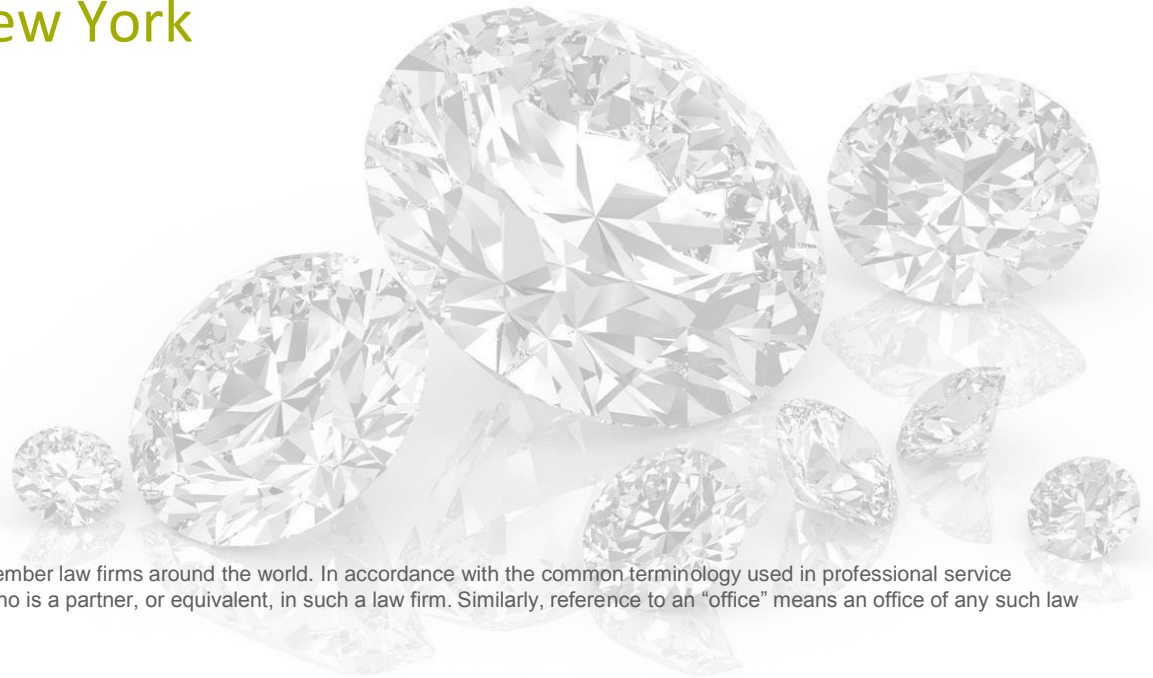


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THANK YOU!



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