BREXIT SECTOR VIEWPOINT
TECHNOLOGY

For years, the UK - and particularly London - has championed the role of tech firms in the UK economy. Hundreds of start-ups have benefitted from the UK Government's Tech City initiative, and both employees and customers have been drawn to the UK from around the world.

Although the tech sector is not heavily regulated or subject to EU laws and regulations in the same way as, for example, the banking, telecoms or media sectors, there are nonetheless a number of commercial concerns that have been raised in the context of Brexit.

Change is inevitable. And right now, the big picture considerations include:

- **Talent** – the tech sector relies heavily on international talent particularly maths and science graduates. In February 2015, four technology occupation categories were added to the UK's "shortage occupation list", allowing UK organisations more easily to hire product managers, senior developers, data scientists and cyber security specialists from outside the EU. Tech companies want the UK Government to reflect this priority with regard to EU citizens even after free movement of people between the EU and UK ends. The UK Government's digital strategy report published in March 2017 confirmed both that UK digital sector companies currently employ around 80,000 people from other EU countries and the importance of continuing to attract international talent after we leave the EU.

- **Access to the Single Market** – the European Commission's Digital Single Market strategy is currently seeking to create a digital single market in Europe in a number of areas, including the distribution of digital services. The extent and basis of UK access to this developing market will be important for businesses' long term plans, including in respect of their geographical footprint and supply chain strategies.

- **Data** – hand in hand with the proliferation of new technologies goes the free movement of data. The tech sector has helped to enable the vast collection and use of data which can currently move freely around the EU. The UK Government has confirmed and re-iterated the importance of a "coherent data protection regime" and ensuring the continuous free flow of data between the EU and the UK post-Brexit, not least to mitigate the negative effect of any data transfer restrictions on UK businesses. However, the exact methods by which the reciprocal benefits and protections currently afforded to the UK will be achieved in practice, are still to be confirmed.

- **Investment and Funding** – between 2007 and 2013 the EU funded nearly £7 billion worth of research, making it one of the EU's largest recipients of research funding. This means that, although the UK Government has promised replacement funding for certain EU projects and, more generally, to boost UK government funding for R&D, businesses will wish to monitor any developments. For example, there are concerns that UK start-ups will lose access to certain EU sources of venture capital.

- **Copyright** – Copyright is the primary intellectual property right protecting so-called rights in software, a vital component of the technology sector. Copyright is not formally harmonised across Europe as the recent policy statements from the Commission on the proposed Digital Single Market for the EU make clear. To the extent there has been harmonisation, however, it has been implemented into UK law and as such would remain UK law after Brexit. The UK Government would need to consider the impact of the Digital Single Market on the UK and what, if any, new harmonisations of the laws of the EU states would help the UK to remain competitive in the European markets.

"The uninterrupted transfer of data to and from the UK post-Brexit will be key to mitigating any negative effect on UK businesses"

**NICK PANTLIN, PARTNER,
HERBERT SMITH FREEHILLS**

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◦ **Database rights** – the database rights provided for under the Database Directive give protection across the EU but are only available to EU nationals and nationals of other states providing reciprocal protection. If the UK continued to apply these rights in the same way as the EU then reciprocal protection could be expected, but if the laws began to diverge then this reciprocal protection would be in doubt.

◦ The UK Government's proposed "Great Repeal Bill", despite its name, will seek to preserve most EU law currently applicable in the UK as UK law after Brexit. However this cannot completely replicate the present situation as, for example, UK legislation cannot bind the EU Member States to recognise UK actions under that legislation.

KEEPING ALL DOORS OPEN FOR BUSINESS

Despite the uncertainty and concerns raised about the prospects for the UK tech sector and related opportunities for remaining EU tech centres such as Berlin in the immediate aftermath of the referendum, there have since been a number of deals suggesting optimism for UK as a tech hub. For example:

◦ SoftBank completed its acquisition of UK chip design company Arm Holdings for $32 billion in September 2016 and has promised to run its $100 billion global tech investment fund out of London

◦ Google confirmed in November 2016 its plans to go ahead and build a new headquarters in Kings Cross London, creating 3,000 jobs

◦ Facebook announced in November 2016 its own plans to expand in the UK with new offices in Fitzrovia London and hiring 500 more employees

◦ IBM announced in November 2016 that it was going to triple the number of its cloud data centres in the UK, stating that the investment reflected the strength of the UK economy and the size of the opportunity in cloud computing

◦ Snap (formerly known as Snapchat) announced in January 2017 that it will set up its main international hub in the UK because of the nation's "strong creative industries"

◦ Apple re-confirmed in February 2017 that it plans to build its new UK headquarters in London in the redeveloped Battersea Power Station. Apple also confirmed that it currently supports nearly 300,000 jobs across the UK

PREPARE FOR THE UNKNOWN

Though the road ahead remains uncertain, UK businesses in the tech sector need to keep up to speed with the developing agenda and pre-empt, as far as possible, forthcoming changes.

The first step to Brexit readiness is for organisations to analyse their current operations. A useful starting point is to ask questions such as:

◦ How reliant is my business on cross-border trade? How will this be impacted by Brexit?

◦ How will my business get access to the necessary talent in the post-Brexit world?

◦ How is my business funded? Does it rely on EU grants or other investments/funding from Europe?

◦ How am I regulated in each European jurisdiction in which I operate? Is this likely to change post-Brexit?

◦ Will I need to transfer data (eg employee data or customer data) from Europe to the UK in the future?

Only by carrying out an audit of the current state of play will businesses in the tech sector be able to fully evaluate the implications of possible Brexit scenarios and assess possible outcomes.

Organisations will need to remain agile in the face of current uncertainty. Though it is wise to prepare for change and to understand the implications it might have on your business, it is also important to remain flexible until the Brexit path becomes clearer.
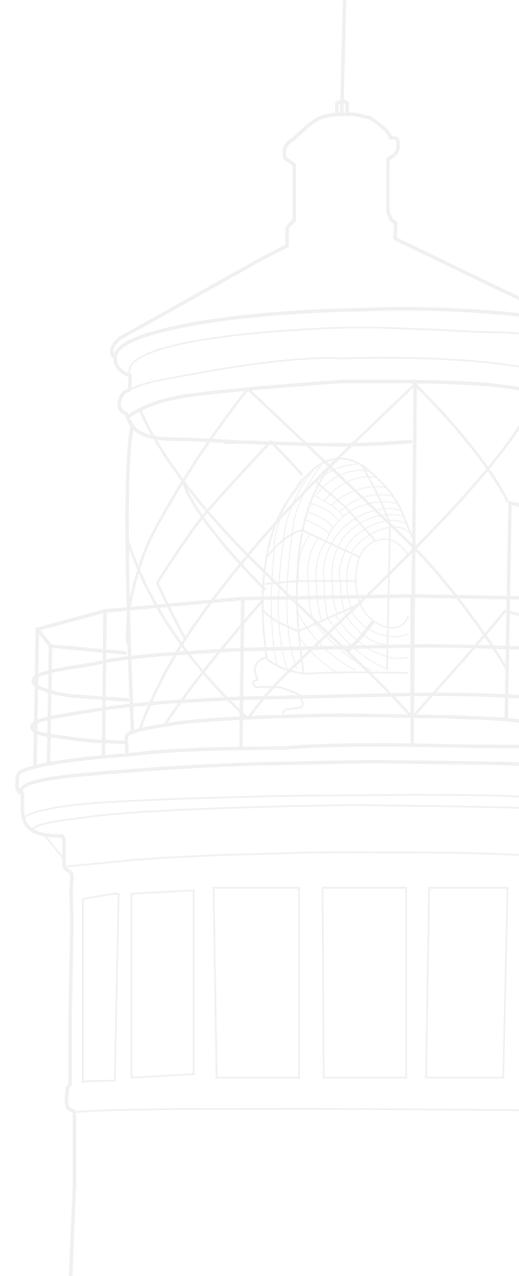
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