

# Global Expansion & Brexit

Managing international growth, day-to-day operations  
and the impact of Brexit

ACC Northeast – April 10, 2019



# About Osborne Clarke

**1,700+**  
employees  
and counting



**24**  
international  
locations

## Europe

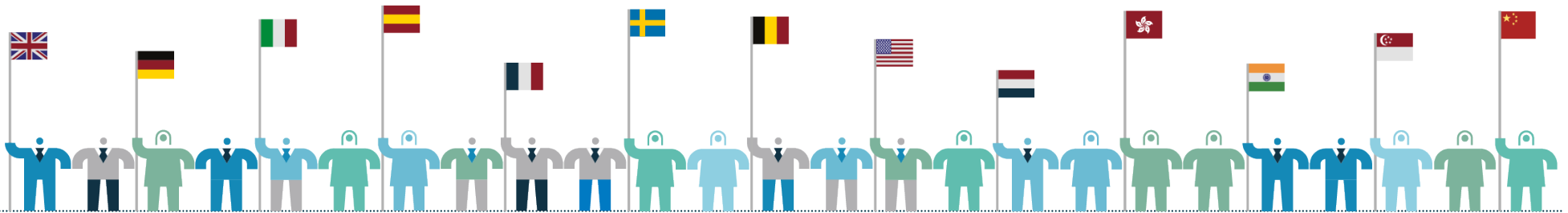
Belgium: Brussels  
France: Paris  
Germany: Berlin, Cologne, Hamburg, Munich  
Italy: Brescia, Busto Arsizio, Milan, Rome  
The Netherlands: Amsterdam  
Spain: Barcelona, Madrid, Zaragoza  
Sweden: Stockholm  
UK: Bristol, London, Reading

## Asia

China: Shanghai  
Hong Kong  
India: Bangalore\*, Mumbai\*, New Delhi\*  
Singapore

## USA

New York, San Francisco, Silicon Valley



Osborne Clarke is the business name for an international legal practice and its associated businesses. Full details here: [osborneclarke.com/verein](https://osborneclarke.com/verein)

\*Relationship firm

## Who we are

Osborne Clarke is an international legal practice with over 1,100 talented lawyers in 24 locations. We help clients tackle the issues they're facing today, and prepare for the ones they will face tomorrow.

For the past 20 years we have been in the US providing our clients with local access to international legal advice within the time zone.

In that time we've supported over 1,000 US companies expanding and growing into overseas markets.



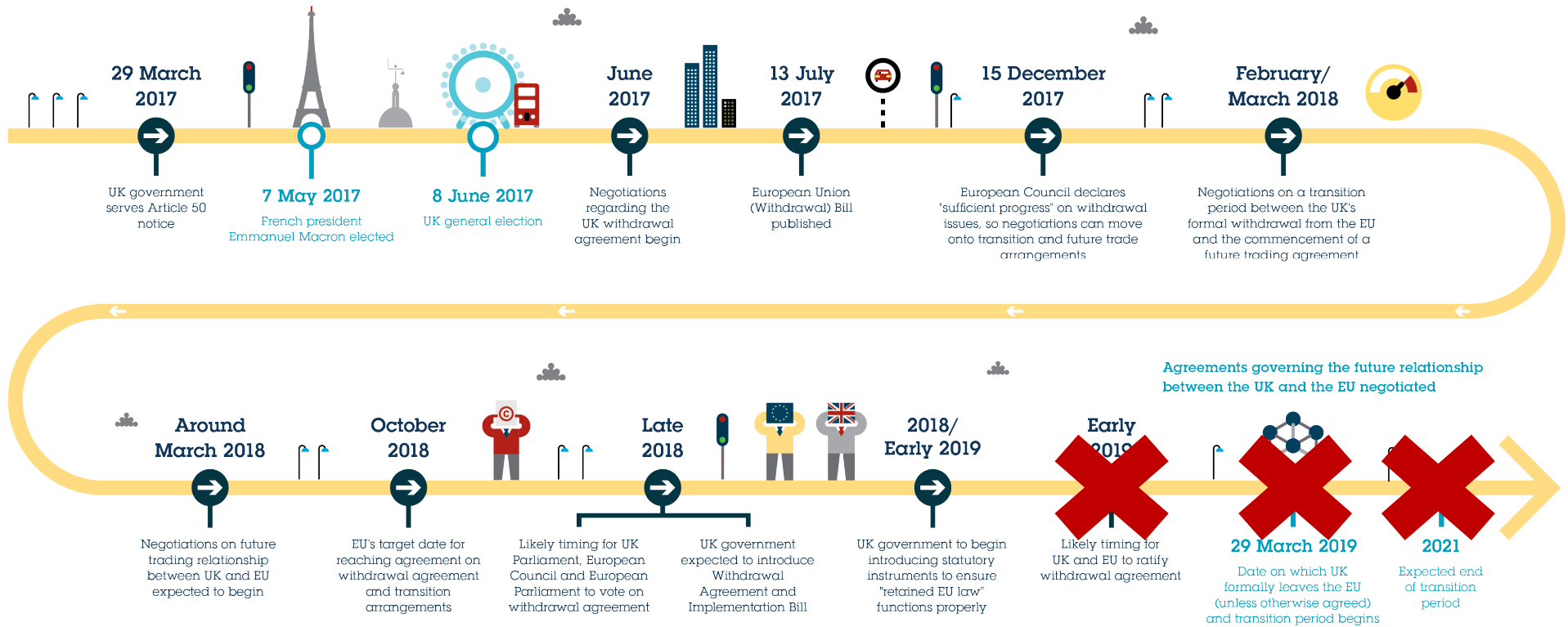
## International market entry: Understanding the market

- **Why are you going where you are going?**
  - Where is the market/existing customers?
  - Where is the talent you need?
  - Other considerations: business environment, logistics, language, time zones, culture and tax
- **Researching the market to determine the best approach**
  - How do other US companies enter and operate in the market?
  - Are there potential joint venture or M&A opportunities?
  - How does this fit into your wider international strategy and structure?
  - Could you build your own organic presence in the market?
  - How does Brexit impact your approach to the European market?



# Brexit

## Background and the latest developments:



## Brexit

### Where we currently stand:

- **November 2018: Draft withdrawal agreement between UK & EU**  
↓
- **January – March: UK Parliament votes down the agreement 3 times**  
↓
- **March 21: Brexit deadline extended from March 29 to April 12**  
↓
- **April 9: May meets Merkel/Macron seeking an extension to June 30**  
↓
- **April 10: EU leadership meets to consider the June 30 extension**



# Brexit

## What's next:

- **The current options:**
  - June 30 extension proposed by UK
  - 1 year extension proposed by EU
  - Extension and a second referendum
  - Hard Brexit on April 12 if no extension
- **Impact of no deal / hard Brexit?**
  - Parliament takes control from Prime Minister?
  - UK elections?
  - Impact on business and legal framework?



## International market entry: Acquisitions and joint ventures

- **Overseas acquisitions**
  - Due diligence: understanding the differences in the market.
  - M&A transactions, consider how the process, timeline, laws and deal structure differ from a typical US transaction.
  - Other considerations: post-merger integration, employee transfers
- **Overseas joint ventures**
  - Identifying and evaluating a JV partner for overseas market entry
  - Structuring the JV agreement, best practices for aligning the two parties
  - On-going operations with an overseas JV partner





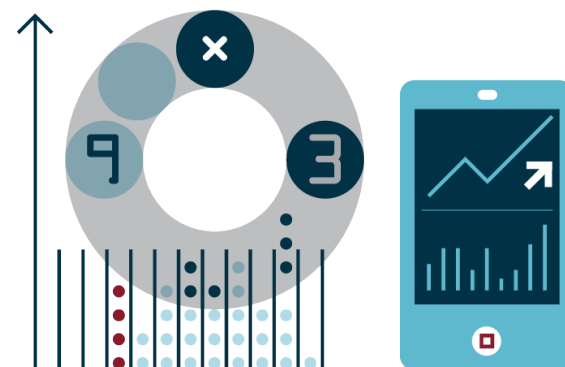
## International market entry: Preparing for international setup

- Setting up an overseas company – know your metrics and timelines for success
- Plan ahead, some things take longer than you expect
  - Hiring lead times and obtaining visas
  - Setting up entities and opening bank accounts
  - Internal budgeting and expenditure
- Do your own research
  - Understand the jurisdiction you are working with
  - Beware second hand information, take good advice!
- Be thorough
  - Treat the local subsidiary the same way you'd treat the US company



## International market entry: Entity formation

- **Don't be an "accidental tourist", it's easy to trigger corporate taxable presence in many countries without intending to**
  - Based on actual operations
  - Likely if there is a fixed office or dependent agent/employee
- **Without pro-active decision, it's likely a de facto branch is created**
  - Tax implications, liability for directors, required to disclose US company financial information
  - Ensure you appear on the radar when you decide to, not before
- **Branch vs. Subsidiary**
  - Ease of establishment, "corporate veil" to protect US company, tax implications, timelines
  - Consider your future plans and how this fits into your wider international structure



## International market entry: Building the team

- **Beware of consultants, ensure they are a "genuine contractor"**
  - Employment law and tax risks
  - Protecting IP, enforcing post termination restrictions and Commercial Agent Regulations
- **Local hire vs. US migrants**
  - Local knowledge vs. company knowledge
  - Immigration rules
- **Local employment laws WILL apply no matter what your contract says**
  - No "at will" employment and each country will differ, use a local law employment contract
  - Rules around notice periods, approved leave, holiday, pensions and considering your benefits package
- **Other issues:**
  - Protecting your position, probationary periods, post termination restrictions enforceability



### Immigration/ employment

- Work permits for UK-EU transfers
- Employment contracts
- Changes in UK employment law (TUPE, holiday pay etc.)

## Dealing with overseas commercial issues and the international regulatory environment: Intellectual property

- **Before going in: research the market**
  - Is the brand already in use?
  - Different meaning?
- **First impressions last**
  - Differences in IP protection
  - Patents vs. copyright
- **Trademarks – EU wide application?**
- **Enforcement rights across borders**
  - Rights enforceable across the EU and elsewhere?



### IP

- Additional steps to secure IP rights currently enjoying protection under EU law
- Territory covered by licensing agreement

## Dealing with overseas commercial issues and the international regulatory environment: Contracts

- **US-style exclusions can invalidate the contract**
- **Product liability**
  - Can't be excluded by agreement
  - CE marks & other safety standards
- **Consumer protection laws are relevant**
  - Certain provisions may be required
  - Do you need to translate?
- **Negotiation position**
  - Expectation even B2B that agreements under local law



### Commercial contracts

- Is Brexit a force majeure/ cause for termination?
- Negotiation with a UK company
- Impact on regulated agreements (e.g. commercial agencies, consumer law etc.)

## Dealing with overseas commercial issues and the international regulatory environment: GDPR & privacy considerations

- Are you collecting EU resident data?
- GDPR in EU in effect as of May 2018. Consider privacy regulations in other jurisdictions.
- Focus around 'controlling' or 'processing' of Personal Data
- One of the key principles: no transfers from Europe to the US
- Exceptions
  - Consent: not always practical
  - Privacy Shield: self certification for EU-US transfers
- Don't forget your employee data!



### GDPR

- GDPR will continue to apply to the UK as a third party country
- Data transfers - is the UK an "adequate" country for transfers out of the EU?
- The UK's data protection regime to remain harmonized

## Additional practical considerations for conducting business overseas: Operating Globally

- Real estate and office space considerations
- Dealing with international disputes: forum and governing law
- Industry specific regulation
- Consumer protection regulation
- Passporting regulatory approvals/licenses between EU countries
- FX and transferring funds
- Boiler plate: enforceability, currency, time zones, effective notice



### Regulation

- EU Passporting system no longer applicable from the UK into the EU?
- What about EU regulated companies operating in the UK?
- EU industry specific regulations to remain the same in the UK?
- Investment - new UK legislation aiming to attract overseas

## Additional practical considerations for conducting business overseas: Cultural and practical issues

- **Applies globally – every country has its own customs**
  - Can cause offense without intending to
  - Use of informal language or first name
  - Punctuality, meeting times, etc.
- **Can impact your business' success**
  - Building up sales relationships can take a long time e.g. longer sales cycles – don't give up
  - Perception of "big American company" in the market
- **Same language doesn't mean that everything else is the same**
- **Getting cultural aspects right can make a huge difference**
- **Integrating the overseas team with HQ**





## East Coast Team



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# Thank you!

