

# MOFO BREXIT BRIEFING

**9 June 2017**

## UK GENERAL ELECTION RESULT 2017: STALEMATE OR CHECKMATE FOR BUSINESS?

**By Sir Paul Jenkins\* and Alistair Maughan**

Following the UK General Election on 8 June, today the focus shifts to the implications of the election result that have led to a 'hung' Parliament – including, in particular, the likely practical effects on Brexit. The immediate effect is greater political and governmental uncertainty in the UK, which means, in no particular order, a weaker pound, a lower likelihood of a 'hard Brexit', delays in the Brexit process, and more difficult Brexit negotiations generally. Life just got harder for businesses trying to plan for the consequences of Brexit.

Following the election, the Conservative Party is still the largest party but some way short of an overall majority. Working with the Democratic Unionists from Northern Ireland, the Conservatives should be able to muster and sustain a fragile majority, but it will be in single digits.

### Deal-making to achieve a viable government

Formal negotiations between the UK and the EU about the terms of the UK's departure are due to start in Brussels on 19 June. But the complexities of the UK's unwritten constitution will cast a cloud of uncertainty for businesses in the run-up to those negotiations, and delays in achieving anything meaningful are inevitable. The Conservatives, as the largest party in Parliament, have the right to see if they can form a new government; Theresa May has been to Buckingham Palace today to ask the Queen for permission to try to do so. Returning to Downing Street, Mrs May announced that she would be forming a government and working with the Democratic Unionists to deliver Brexit. It won't be a formal coalition agreement but merely an understanding of support subject to conditions.

The next hurdle for the new Government will be to secure a majority in the House of Commons for its legislative programme. Coincidentally, the date for a vote on the programme would be 19 or 20 June. Watch out for a particularly arcane bit of UK constitutional language: any vote will be on 'the Queen's Speech' – the Government's programme is set out in a speech by the Queen from the throne at the formal opening of the new Parliament on 19 June. But also watch out for any emerging details of what may or may not have been offered to the Democratic Unionists.

### Deal or no deal – the impact on Brexit

Whatever details are made public, the agreement with the Democratic Unionists will cover Brexit. Both the Conservatives and the Democratic Unionists agree that Brexit must go ahead and, critically, that there must be no return to a hard border on the island of Ireland. Without access to the Single Market or being part of the Customs Union, this is difficult, and some say impossible. Watch out for signs of what the deal says about Brexit. The Conservatives will hope it can be as high level as possible to avoid revealing too much of their negotiating hand. Having failed to free herself from those in her party who want the hardest of Brexits, the Prime Minister will struggle to find the negotiating space to soften her stance on free movement. Nevertheless, watch out for any softening of language on free movement of workers as a way through to give the Democratic Unionists a deal on the status of the border between Northern Ireland and the Irish Republic.

### Uncertainty for business?

More generally for those doing business in the UK, the election results add an additional, unwelcome level of uncertainty on top of the uncertainty that will, in all events, hover over the negotiations with the EU once they actually start.

For the moment, the only thing that is clear is that, if an early further parliamentary election is avoided, the UK will enter those negotiations with a much-weakened government that is vulnerable to the new parliamentary arithmetic. Over the coming weeks, it should be possible to offer targeted guidance to clients doing business in the UK about that impact of the election. In the meantime, this is a brief reminder of the background.

### Background to UK general election

The Prime Minister, Theresa May, called the ‘snap’ election last month shortly after she had triggered the [Article 50 EU withdrawal process](#). She had an overall majority of 12 in the Westminster Parliament and three years left to run before the next scheduled election. But, with opinion polls suggesting that she might increase that majority to over 100, she saw the opportunity for five years in power with a commanding majority, largely untroubled by opposition either from the other parties in Parliament or, critically, from the hard Eurosceptic wing of her own party. Going back on her many clear statements that she would not call an early election, she justified her change of mind by saying that it was necessary to strengthen her hand in the Brexit negotiations and to deal with those in Parliament who she claimed were trying to thwart Brexit altogether.

The campaign was dominated by domestic policy issues (and three terrorist attacks) and a marked lack of clarity about what either of the two main parties – The Conservatives and Labour – would seek from the Brexit talks beyond some controls on the free movement of people and, inevitably therefore, departure from the Single Market. Both parties promised a full programme of domestic reforms and spending, closing their eyes to the likely impact of Brexit on the economy and to the impact of implementing Brexit on the capacity of the Westminster Parliament and the civil service to do much else.

### Brexit negotiations

Meanwhile, the EU has been preparing and has published negotiating briefs on the preliminary issues of exit costs and the rights of EU and UK citizens. Both briefs are claimed to be models of transparency but are actually transparently high opening bids. The Brexit clock is ticking, and the cliff-edge Brexit is now only 20 months away unless a deal or an extension of time is agreed before then.

If the UK government is operating as a 'hung' Parliament (i.e., with no overall majority), the UK's negotiating mandate will be weaker (and the EU will know that, of course), and so it becomes less likely that a so-called 'hard Brexit' will be possible. It is not yet clear how the new parliamentary balance will play out but there are those who hope that the weakening of the UK's position will make for a softer Brexit.

And, of course, one cannot rule out the possibility (remote though that may still be) that the UK political system is in so much upheaval that Brexit negotiations proceed so slowly and unsuccessfully that the UK is forced to request an extension to the two-year Article 50 deadline. That could only be granted with the consent of the remaining 27 EU member states – and they would surely make the UK pay a price for that consent as part of any future negotiations.

Any eventual Brexit deal has to be agreed by the European Parliament and by the UK Parliament so, in reality, there is less than 18 months left to agree the terms of the divorce, the framework for the future relationship, and the transitional detail to bridge the gap between Brexit and a new, detailed, long-term agreement.

The EU has already said that there cannot be meaningful negotiations with the UK on Brexit without a properly formed UK government. It's impossible to say right now when that point may be, but the inevitable conclusion must be that the solid foundation to Brexit negotiations that Theresa May thought she would lay down with this election have crumbled to dust. And the result for businesses seeking to plan for a post-Brexit world is a prolonged period of speculation and uncertainty.

### MOFO CONTACTS

Please do not hesitate to call with any questions or concerns you may have. We're here to help.

**Contact:**

**Alistair Maughan**  
**Co-Managing Partner, London**  
+44 (20) 7920 4066  
[amaughan@mofocom](mailto:amaughan@mofocom)

**or**

[brexit@mofocom](mailto:brexit@mofocom)

### **About Morrison & Foerster:**

We are Morrison & Foerster – a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology, and life science companies. We've been included on *The American Lawyer's* A-List for 12 straight years, and *Fortune* named us one of the '100 Best Companies to Work For'. Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. Visit us at [www.mofo.com](http://www.mofo.com).

*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.*

### **\*About Sir Paul Jenkins:**

From 2006 to 2014, Sir Paul Jenkins, QC was the United Kingdom Government's most senior legal official, advising the governments of Prime Ministers Blair, Brown, and Cameron. He is an acute observer of Brexit developments. Sir Paul Jenkins currently practices at Matrix Chambers.