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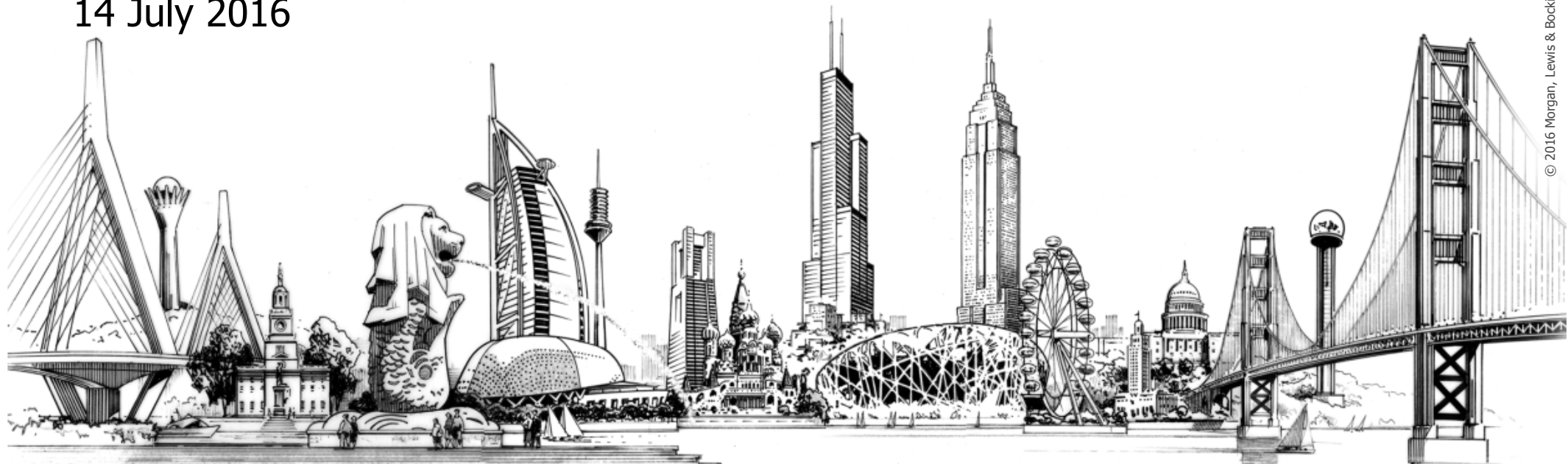
BREXIT: EMPLOYMENT, DATA PRIVACY, AND IMMIGRATION IMPLICATIONS FOR GLOBAL EMPLOYERS

Matthew Howse

Pulina Whitaker

Nicholas Hobson

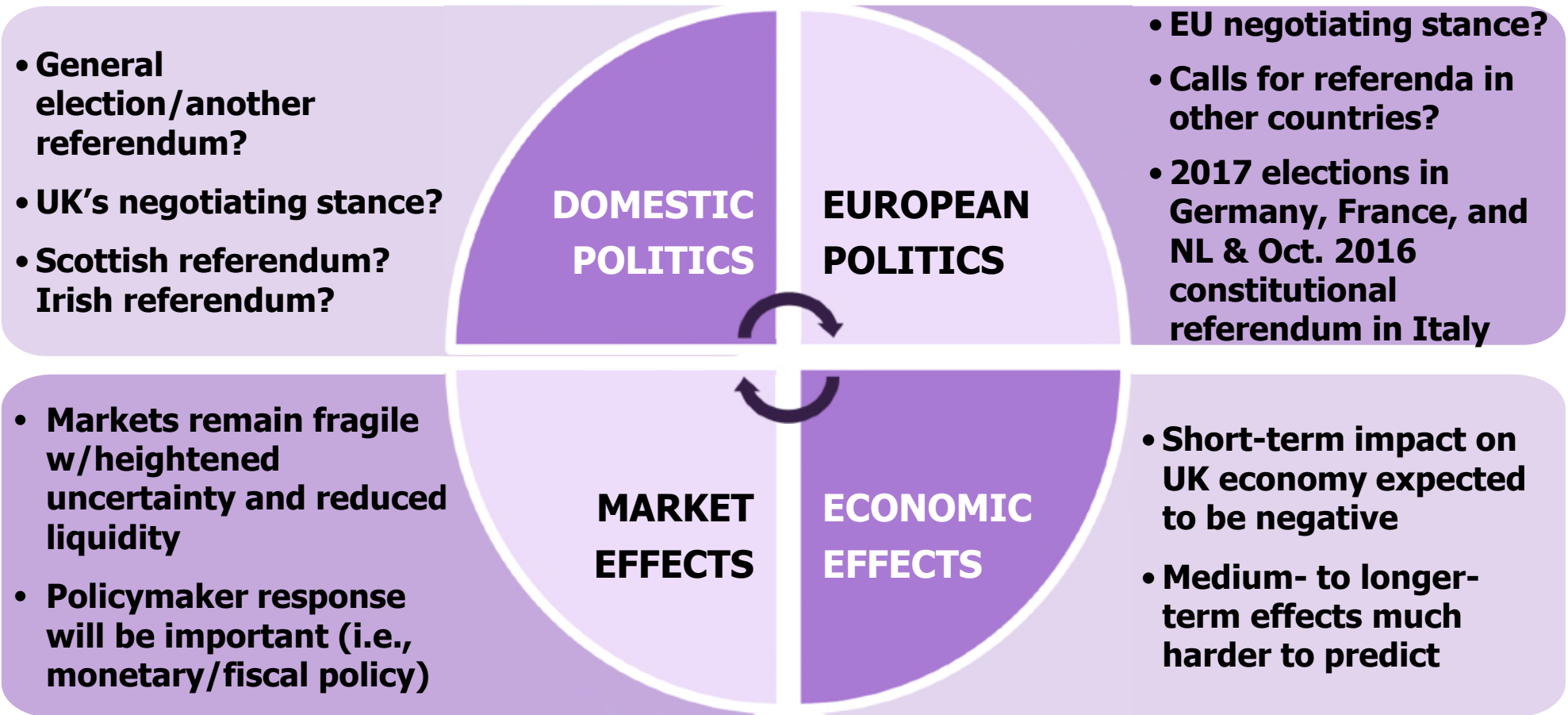
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Today's Agenda

- The current situation
- During Article 50 negotiation period
- On completion of exit negotiations
- If UK remains in EU single market
- If UK leaves EU single market
- Employment law implications
- Immigration issues
- Data protection law issues
- Practical steps

Some Unknowns



Current Situation

- Business as usual for now – no immediate legal change for employment/free movement
- Treaty stipulates up to two years to complete exit negotiations, once Article 50 is invoked (autumn 2016 or early 2017?)

During Article 50 Negotiation Period

- UK remains subject to all EU employment law and EU Court of Justice judgments, for example:
 - Consultation duties in lay-offs and business transfers
 - Social security coordination
 - Equality law
 - Working time
 - Data protection
 - Free movement for UK and EU nationals

On Completion of Exit Negotiations

- Completion date by autumn 2018 or early 2019?
- UK's deal with the EU will determine fate of EU law, including free movement
- For some employment laws, there is complex 'layering' of UK and EU obligations
- Impact of political changes in UK:
 - New prime minister Theresa May, possible national elections
 - Government attitude to labour market regulation?

If UK Remains in Single Market

- Will likely be required to abide by EU employment laws
- EU says UK will have to allow freedom of movement to benefit from single market
- UK politicians argue that is not possible

If UK Leaves Single Market

- UK will be able to adapt its own immigration system
- UK will be free to decide which EU laws to retain and which to repeal and/or modify
- To increase trade and attract investment, UK may seek to become (even) more employer-friendly by reducing regulation

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**EU EMPLOYMENT LAWS
IMPACTING EMPLOYEE
RELATIONS**

'Home Grown' Employment Law

- Many employment laws in UK are *not* impacted by EU law:
 - Domestic strike law
 - Trade union recognition, members' rights and protections
 - Right not to be unfairly dismissed
 - Discrimination laws introduced in UK before EU law
 - Shared parental leave
 - Primacy of employment contract

Working Time

- Opt out from 48-hour maximum working week?
- Calculation of holiday pay and overtime?
- Statutory paid holidays?
- Rest breaks?

Transfer of Undertakings (TUPE)

- UK conducted own review of TUPE rights in 2014 and decided not to weaken law
- UK gold-plating of EU law
- Increasing employers' ability to change scope of terms and conditions following TUPE?
- Reducing applicable sanctions?
- Duty to inform and consult?
- Many businesses have factored TUPE into commercial arrangements

Worker Status and Rights

- Agency workers
- Temporary workers
- Part-time workers

Social Security Coordination

- Currently, EU regulation determines the country in which social security is paid for employees moving within the EU
- Will UK negotiate for social security regulation to continue (like Switzerland)?
 - Or bilateral agreements between UK and each member state?
- Employers may have to plan for additional social security costs

European Works Councils (EWCs)

- EWC directive derived from EU law
- For now, no change – EWCs that are subject to English law continue
- Status of companies currently negotiating with a Special Negotiating Body?
- But future will depend on UK status on completion of exit negotiations:
 - Requirement to change EWC governing jurisdiction from English law?
 - Future UK employee representation on EWCs?
 - Strategic considerations?

EU Law in Pipeline

- Nonfinancial information (effective December 2016, first reporting by companies during 2017 financial year)
 - Requires listed companies to report diverse range of employment/employee relations data, for example:
 - Respect for human rights, anticorruption, and bribery matters
 - Company implementation of ILO fundamental conventions
 - Working conditions
 - Social dialogue
 - Respect for trade union rights
 - Workplace health and safety
 - UK implementation of directive?

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DATA PROTECTION ISSUES

Data Protection Act 1998

- Implements the EU Data Protection Directive
- Similar to other European data protection laws implementing the Directive
- Additional requirements such as notification of data processing with ICO
- Business-friendly approach of ICO to date

New General Data Protection Regulation (GDPR)

- GDPR in force May 2018
- Extra-territorial effect – applies to all organisations offering goods or services to EU market
- GDPR will apply to UK businesses targeting the EU market
- Higher standard of data protection laws compared to Directive – increased adequacy standard
- Significantly greater penalties
- Consistency mechanism and one-stop shop across EU countries – will UK be out of step?

Network and Information Security Directive

- Implemented by EU countries by 2018
- Will not apply to UK organisations post-Brexit unless Government implements it through local law
- Existing cyber security obligations
- Overlap with GDPR obligations and existing DPA obligations on data security

Key Data Protection Issues

- Will DPA be upgraded? Or two data protection regimes for international businesses?
- Data transfers from EU to UK
 - Will UK need to apply to European Commission for adequacy decision post-Brexit?
 - Model clauses
 - EU-UK Privacy Shield?
 - Binding corporate rules
- Data transfers from UK to other “inadequate” countries
 - Any restrictions?
 - Model clauses
 - UK-US Privacy Shield?
 - Binding corporate rules
- Data breach notifications
- Data Protection Officers

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IMMIGRATION ISSUES

European Economic Area (EEA) Workers

- The EEA Agreement allows for the free movement of trade and the free movement of workers
- Member states of the EU are signatories of the EEA Agreement as well as Norway, Liechtenstein, and Iceland. Switzerland entered into a bilateral agreement with the EU, and Swiss nationals have the right to live and work in the UK
- Nationals of the following states have the right to live in the UK:
 - Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland

Impact on Right to Work in the UK and EEA

- No impact on UK nationals' right to work in the UK
- No impact on non-EEA nationals' right to work in the UK
- No immediate impact on EEA nationals' (and their family members') right to work in the UK
- Employers can continue to hire EEA nationals and Swiss nationals (and their family members)
- Employers should not discriminate on the basis that an applicant is an EEA or Swiss national
- UK nationals working in EEA member states continue to have the right to work

Next Steps for Employers

- Audit immigration status of workforce to help plan for change
- Identify EEA and Swiss nationals working for you in the UK
- Identify UK nationals working elsewhere in the EEA
- Check duration of stay in the UK or abroad
- Review long-term recruitment and succession planning and proposed secondments and rotations
- Consider application for Tier 2 sponsor licence (if sponsor previously held a sponsor licence, check cooling-off period)
- Review compliance with Tier 2 and 5 sponsor licence rules

Options for EEA Nationals

- Collate documentation evidencing their employment and residence in the UK
- EEA nationals who have resided in the UK for less than 5 years may apply for a **registration certificate** confirming they have exercised treaty rights in the UK
- EEA nationals who have resided in the UK for 5 years or more may apply for **permanent residence** confirming that they have acquired permanent residence
- EEA nationals do not need to hold registration certificate for 5 years before applying for permanent residence (they will be able to apply for permanent residence once they have completed 5 years' residence)
- EEA nationals who have held permanent residence documentation for 12 months may apply for **British nationality**

Application Process for Registration Card and Permanent Residence Documentation

- Complete application form (EEA (QP) for registration card or EEA (PR) for confirmation of permanent residence)
- Application fee for postal application is £65
- Applications for registration card can be submitted for same-day processing (limited number of appointments) or by post
- Applications for permanent residence must be submitted by post
- Postal applications can take 6 months to process
- Applicants must include original passports or ID cards
- It is possible to request return of passport within 6-8 weeks of submission (and completion of the biometric process)
- Expect delays

British Nationality

- Applicants must:
 - be 18 years old or over;
 - be of good character, e.g., they do not have a serious or recent criminal record, and have not tried to deceive the Home Office or been involved in immigration offences in the last 10 years;
 - intend to continue to live in the UK;
 - be able to satisfy an English language requirement;
 - have taken and passed the Life in the UK test;
 - have been granted permanent residence;
 - have held permanent residence documentation for at least 12 months; and
 - satisfy a residency requirement (have resided in the UK for at least the 5 years before the date of application, spent no more than 450 days outside the UK during those 5 years, spent no more than 90 days outside the UK in the 12 months prior to the submission of the application)

Application Process for British Nationality

- Application can be submitted by post or via nationality checking service provided by local council office (for an additional fee)
- Applicant must complete form (usually form AN)
- Application fee is £1,236
- Applications can take 6-9 months to process
- Applicant must attend nationality ceremony
- Applicant may then apply for first passport (takes 6-8 weeks and must be submitted by post, and applicant must surrender current passport during this period)

What Next?

- Timings and procedure will depend on if and when UK Government invokes Article 50 of the European Union Treaty to leave the EU and negotiations regarding trade agreements
- Expectation of amnesty for current EEA and Swiss nationals currently residing in the UK and UK nationals residing in EEA member states. EEA nationals or Swiss nationals are likely to have to apply for additional documentation evidencing their status
- Options for the UK include:
 - Norway model – UK leaves EU but remains signatory of EEA Treaty (EEA nationals would continue to have right to work in the UK)
 - Swiss model – UK leaves EU and EEA and enters into a separate agreement with the EU (may be required to accept limited free movement of EEA nationals)

What Next?

- Additional considerations:
 - EEA nationals may be sponsored under existing Points-Based System
 - UKVI may activate Tier 3 of the Points-Based System for low-skilled workers. UK employers may be able to sponsor non-EEA nationals in non-graduate-level roles
 - UKVI may create immigration categories of specific sectors (such as tech or banking)
 - The UK may enter into trade agreements with Commonwealth countries and create immigration categories for nationals of Commonwealth countries
 - The UK may enter into separate trade agreements with overseas countries and create individual immigration categories (for example, follow NAFTA US/Canadian/Mexican model)

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**PRACTICAL
CONSIDERATIONS AND
STEPS TO PROTECT TALENT**

Employee Communications

- Start of a long and uncertain political process
- Reassure employees that there will be no knee-jerk reactions – measured communications
- Temptation to link normal business decisions to Brexit should be resisted

Employee Relations

- Familiarise yourself with information and consultation duties in collective bargaining agreements, and try to factor Brexit into new agreements
- Delay important negotiations until position becomes clear
- Economic downturn could lead to job losses and increased litigation

Discrimination

- Employee nationality should not be a factor in reductions in force or hiring decisions
- Do not make assumptions about workers' willingness to move
- Bullying/harassment on grounds of nationality:
 - Highlight policies on dignity at work, co-worker tolerance
 - Do you have employee helplines?
 - Consider reinforcing social media policy – association of your company with employees' own views on Brexit
- Check mobility provisions in contracts of employment
- Currency fluctuations for workers on assignment

Presenters



Matthew Howse

London

+44.20.3201.5670

matthew.howse@morganlewis.com



Pulina Whitaker

London

+44.20.3201.5550

pulina.whitaker@morganlewis.com



Nicholas Hobson

New York

+1.212.309.6792

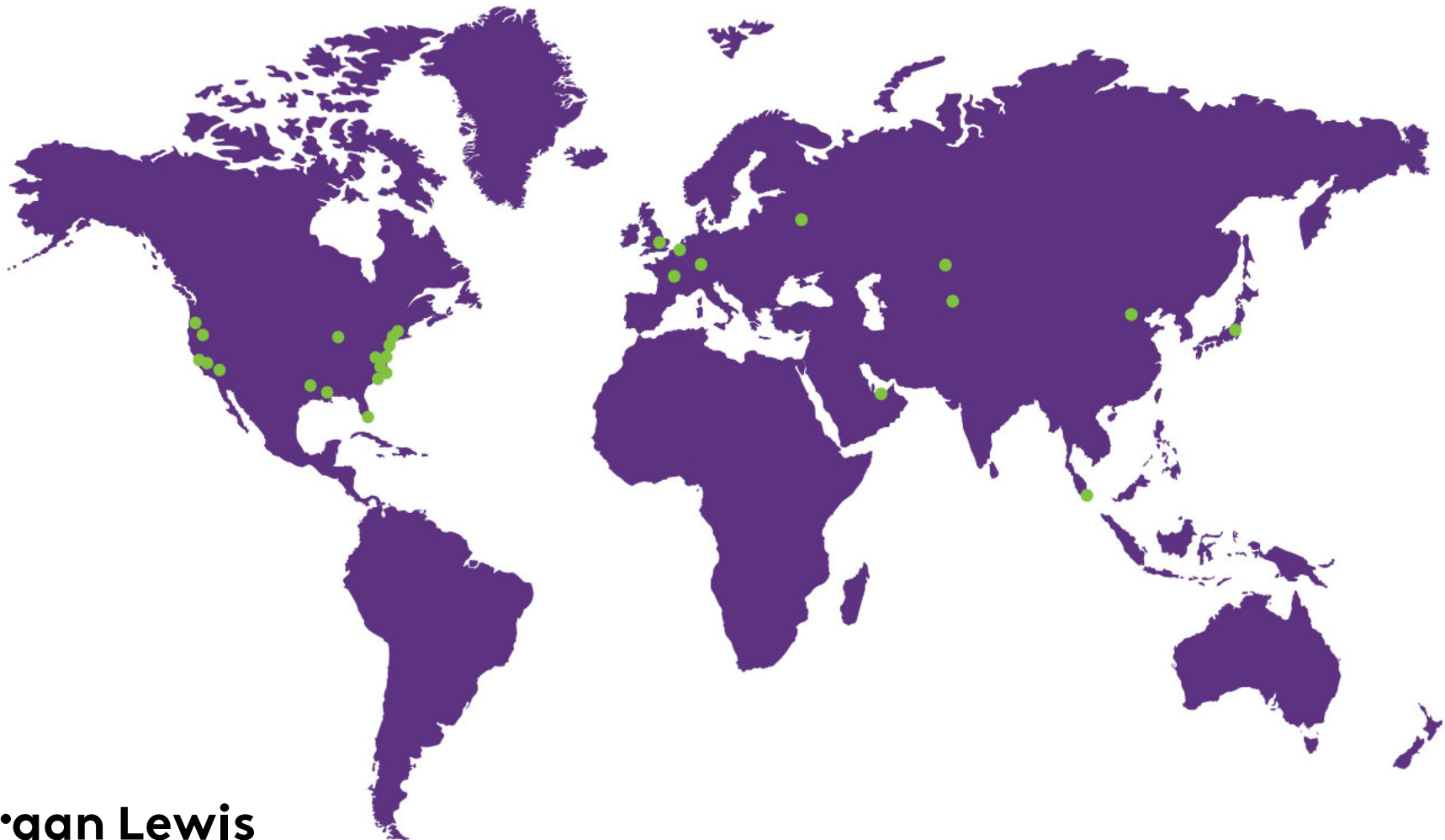
nicholas.hobson@morganlewis.com

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