

24 June 2016

Brexit headline checklist

This checklist is designed to set out some of the key questions which businesses will need to consider in their initial planning phase as they evaluate their existing structures and operations and the potential impact of Brexit on them.

Any such review of the issues at this stage has to be conducted against a background of uncertainty.

- The impact on businesses will be highly dependent on the final form of the post-Brexit relationships which the UK has with the EU and with other non-EU nations.
- Multiple negotiations will need to take place with different parties and negotiating structures on, potentially, different timelines.
- Those negotiations will need to cover not only the terms of the new relationships, but also the terms of the UK's withdrawal from the EU and transitional arrangements.
- The extent to which UK and EU laws will ultimately diverge will also depend on future political decisions in the UK as to which elements of EU-derived/mandated law should be retained in its domestic legislation.

Nonetheless, as the picture progressively clears over the coming weeks and months, the number of scenarios which businesses need to consider in their contingency planning will reduce and, even before full clarity is achieved, various potential impacts can be identified.

Freedom of movement

- How would your business be impacted by restrictions on freedom of movement of workers between the EU and the UK and the potential need for visas or residence permits, possibly even before Brexit becomes effective?
- Will your ability to recruit or second staff be affected?
- How might that impact your operations and costs?
- Should you consider adapting your recruitment policies going forward?

Supply of services

- To what extent do your operations or legal structure and the location of your people depend on existing passporting or similar regimes enabling financial or other services to be provided from the UK to other EU member states or vice versa?
- To what extent do your operations depend on liberalised access to the services markets of other non-EU countries pursuant to free trade agreements (FTAs) to which the EU is a party?
- Will you need to consider relocation to another EU member state?
- What challenges would you face in implementing a relocation—for example, client or commercial counterparty consents, or tax or regulatory consents? What sort of timelines could they involve?

Supply of goods

- To what extent does your business or supply chain involve supplies of goods between the UK and other EU member states or other countries with which the EU has trade agreements?
- Will you need to consider relocation to another EU member state if your ability to supply goods between the UK and the EU could be compromised, for example due to CE marks requirements or due to equivalency arrangements on product safety not being in place?
- How would your business be impacted by the imposition of tariffs or non-tariff barriers if post-Brexit arrangements do not preserve the status quo in relation to those?

Existing contracts

- What issues could arise under your existing contracts?
- Might they need amendment and how do they allocate the risks?
- Issues to consider could include:
 - Do they contain specific references to EU territories, laws or regulators?
 - If there is a concern over whether the contract can continue to be performed in the manner originally contemplated, what will the impact be of force majeure, change in law or similar provisions? Might there even be a risk that the contract could be treated as frustrated entirely?
 - Could additional tariffs or costs arising due to Brexit render the contract uneconomic to perform on current terms?
 - If you have M&A transactions waiting to close, what conditions or termination rights could be triggered, allowing either party to refuse to close?
 - Could there be an impact on your ability to enforce against assets in other EU member states?

Financing

- If you have financings that have yet to close, what conditions, termination rights or drawstops could be triggered? What Brexit flex rights (Flexit) do your creditors have?
- Could exchange rate or interest rate movements or other market impacts of the UK's vote to leave or subsequent developments have a sufficiently adverse impact on your business to create a risk of breach of financial covenants in financing agreements?
- How are your financial ratios determined and could exchange rate movements and volatile spot rates affect these (in particular if the testing mechanism does not provide for the use of average rates)?
- Does your current financing contain material adverse effect clauses and could these be triggered?
- If you have upcoming financing or refinancing needs, what alternative finance provider options might be available if the general European loan and debt capital markets are suffering disruption or dislocation?

- Does your current financing provide committed (or uncommitted) acquisition lines? If the UK's vote to leave or subsequent developments give rise to M&A opportunities for you (e.g. as others exit markets or businesses), do you have available financing to take advantage of this?
- Would any change to the UK's credit rating affect your credit rating and what impact might this have on your business?

EU funding

- What sources of grants or other funding from the EU are relevant to your business?
- Do you currently have the European Investment Bank, the European Investment Fund or any other EU institution as a lender, investor or guarantor?
- How might the loss of that funding affect your business?

Public procurement

- If you are a UK business, do you participate in public procurement tenders in other EU member states relating to industries where non-EU parties may be excluded from the process?
- To what extent do your operations depend on liberalized access to the procurement markets of other non-EU countries pursuant to the public procurement chapters of FTAs to which the EU is a party?

Data protection

- Do you transfer personal data (e.g. customer data or HR data) between the UK and other EU member states?
- Are the major data processing decisions for your business (i.e. decisions about how and why personal data are processed) taken in the UK, another EU member state or a jurisdiction outside the EU?
- Does your business engage service providers in other EU member states to process personal data on its behalf (e.g. payroll service providers or cloud storage solutions)?

Intellectual property

- To what extent does your business currently rely (only) on pan-EU IP rights (e.g. EU trade marks and Community designs) for protection in the UK?
- How might your IP filing and management strategy be affected?
- Have any of your UK companies registered any .eu domain names?
- Are you relying on pan-EU injunctions that you have obtained in the past from EU national courts to protect your IP rights in the UK?
- Are you currently seeking or planning to seek an injunction only from a UK court in order to protect your IP rights in other EU member states?
- Do your licences and other IP-related agreements require modification, in particular with regard to their geographical scope and the IP rights covered (e.g. inclusion of potential national UK rights that may be established as successor or transitional rights for pan-EU rights)? In particular, to what extent do you use third party IP in the UK on the basis of licences that have been granted to you for the territory of the EU?

Tax

- To what extent do the tax efficiency of your business operations, your capital structure or your profit repatriation strategies depend upon EU Directives and EU law?
- How might future capital raising involving clearance services or depositary receipt systems be affected in the absence of an applicable Capital Duties Directive?

Environmental law

Does your business currently benefit from emissions allowances under the EU Emission Trading System (ETS)?

Internal controls and compliance policies

- To what extent are your compliance policies or strategies or your internal controls tailored to EU laws and regulations?
- Might they need to be adapted going forward to accommodate divergence between EU and UK requirements and enforcement approaches going forward?

Your counterparties

- How are your suppliers, customers and commercial partners likely to be affected by the issues outlined above and the other implications of Brexit?
- What impact could that have on your business?

Disclosure and communications

- Consider whether you need to make any public statements or disclosures in relation to the potential impact of Brexit on your business under any applicable listing rules.
- Do you need to say anything in your annual report or interim financial statements?
- Do you need to start talking to suppliers, customers and commercial partners about the issues?
- What is your strategy for communicating with your staff about the potential impacts on your business and the implications for them?

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