

# Brexit

## The effect on commercial contracts

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# BREXIT



## Introduction

- Hypothetical, BUT lot of beneficial work to be carried out
- Different sectors are affected
- Main impacts from Brexit
- Contracts will survive
- Recommended actions

## Background

- Impact on English contract law
- Commercial impact of Brexit on contracts
- What next for companies?
- When should you be acting?

## Commercial impact

- Any analysis will have to be unique to each company and each contract
- Based on factors such as location of parties, customers, suppliers and regulation
- Each contract will have a differing degree of flexibility – may be terminated at short notice or have no purchasing obligations
- Will depend on interpretation of the contract, will look at what the parties have formally agreed in writing

## Commercial impact

- Factors such as exchange rates, tariffs, custom checks and the labour market may result in a loss making contract
- Force majeure clauses?
- Frustration – can Brexit be an event of frustration for a contract?
- Look at future proofing of contracts with express provisions

## Data protection

- Major issue that needs to be dealt with by the government/EU
- Transfers of personal data from the UK to EU states will continue to be governed by GDPR
- Transfers of personal data from EU states to the UK are more problematic as the UK is a “third country”
- Crucial to ensure that the Information Commissioner's recommended standard contractual clauses are included

## EU References

- How is the term “EU” currently used in your contracts?
- Commercial common sense will need to be used
- References to EU law will have to be considered separately
- TUPE could, in theory, be revoked after Brexit – need to keep finger on the pulse of what the government is intending to do at the time; likelihood is tweaks of existing laws



## Governing law/jurisdiction

- English law will likely still be seen as an attractive choice of law
- Existing contract law will likely not be affected by Brexit, parties can still rely on currently used principles
- Courts will be largely unaffected by Brexit
- English courts will still be able to judge on contracts
- Brussels Regulation may cease to apply to UK which could impact on the enforceability of decisions from the UK in other EU states

## Audit of current contracts

- Conduct an audit of your business as a whole
- Review contracts, particularly key trading relationships and whether or not their existing terms sufficiently protect your business for Brexit
- Renegotiate those contracts which you can, bearing in mind potential exit dates
- Be careful with wording used in discussions with third parties

## Approach for future contracts

- Brexit clauses – a clause where there is a trigger which impacts upon parties' rights and obligations upon a particular event; may not be Brexit itself
- Termination rights associated with Brexit
- References to the EU
- References to EU law

# ANY QUESTIONS?



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