

Brexit Readiness Guide



Introduction

It is clear that Brexit continues to dominate the political landscape in the UK. There is still a lack of clarity on what the final Brexit arrangements will look like. Many companies have been planning for the implications of Brexit for some time, whereas some still need to consider how Brexit may affect their operations. Both the UK government and the EU are encouraging all companies to prepare for the possibility of “no deal”. Regardless of size, all companies need to put in place plans so they can quickly react to whatever the final Brexit deal looks like.

The Options

There are various potential options for Brexit. Some of the more commonly discussed options include:

- **A “hard Brexit”** – The UK leaves the EU on 29 March 2019 with no deal. Arguably, as things stand, this is the only option that is certain in terms of its legal implications. If companies do plan for this option, they will have a plan for how to deal with the maximum possible disruption to their trade with the EU. A company that considers the impact of a hard Brexit will be much better placed to react to the final Brexit deal.
- **A new free trade deal** – This includes provisions to make trade as frictionless as possible while the UK remains outside of the Customs Union and the Single Market. If any of the potential variations of this option are to form the basis of a future UK/EU trading relationship, a considerable amount of negotiation remains before the final deal can be agreed. While the principles will be agreed by the leave date, the detail will be ironed out during the anticipated transition phase.
- **A remain position** – The UK and the EU agree that the UK remains in the Customs Union and the Single Market.



How Can We Help?

We offer clients a dedicated Brexit advisory service, which is tailored to specific requirements.

We have developed detailed guides on all of the relevant issues, as well as a range of services that are designed to deliver cost-effective advice to assist companies in the preparations that they need to take to be ready for the potential outcomes of the UK's negotiations with the EU. Given that a no-deal outcome remains a real possibility, companies need to be ready to mitigate against the potentially serious and immediate ramifications of Brexit and have gained a deep understanding of the range of implications on their businesses.

Impact Area	Detail	Action
Brexit Status & Risk Report	A "where are we now" report that identifies the key legislative risk, together with scenario planning, to identify the steps that can be taken to mitigate the most significant risks to your business.	We agree with you the significant areas of interest for review. We then present an outcomes report and a "roadmap" that sets out business priorities in relation to navigating you through Brexit while mitigating the risks.
Trade Impact Assessments	<p>This report advises on the impact of each Brexit scenario – WTO most favoured nation hard Brexit terms, a free trade agreement or a customs union-style "soft Brexit" and the potential consequences for your business. In practice, this will detail what companies can expect from additional costs and paperwork derived from the imposition of customs duties on UK-EU imports, along with matters such as dealing with valuations, rules of origin, INCOTERMS, exports processes, freight forwarding, shipping and so on. In particular, we will include tips on mitigation strategies.</p> <p>The reports can also highlight which customs procedures might apply in relation to different types of goods and how best to comply with rules of origin.</p>	Undertake a Trade Impact Assessment to give you a clear understanding of your trade position in light of Brexit. Once mapped out you will have a clear picture of the impact of Brexit and the the consequences to your business. Once the assessment is complete implement any potential mitigating actions.
Customs	If the UK does not enter into a new customs union, customs declarations will be required each time goods cross the UK/EU border. Any changes to the UK's trading relationship with the EU may require extensive work to reconfigure all manner of systems and to handle more complexity in terms of information held, the frequency of data submission and for customs declarations.	<p>Ensure that IT systems are updated to deal with the additional complexity of potential customs declarations.</p> <p>Develop contingency plans to mitigate delays at borders – such as stock piling and additional warehousing, if required.</p>
Rules of Origin	It is necessary to consider the origin of any raw materials, the country in which final substantial production took place and the value of the processing of goods in other countries. If goods are to qualify for tariff-free trade, they must satisfy the applicable rules of origin tests.	<p>Consider how best to deal with rules of origin, such as any issues that arise in relation to any EU content not being recognised as being aggregated with UK content.</p> <p>In the long term, consider options such as reshoring manufacturing to the UK.</p>

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Supply Chain	Brexit could have an impact on both existing and future supply chain contracts and building in enough flexibility to accommodate uncertainty. Our focus is to ensure the parties understand their commitments and how to mitigate any associated risks.	<p>Undertake a detailed review of existing contracts and the development of a checklist to support the negotiation of new contracts to understand how Brexit might affect their viability and mitigate against future supply chain risk.</p> <p>In-depth planning at this stage will make it easier to identify any potentially adverse consequences of Brexit and will enable companies to adjust more quickly to the post-Brexit landscape and future opportunities.</p> <p>We have created a methodology to consider the potential impact of Brexit on existing contracts and the strategies relating to the negotiation of new contracts, but also making enquiries of all suppliers to ensure that they will not be adversely affected by other parts of the chain.</p>
Commercial Contracts	Many contracts may need to be reviewed, renegotiated or terminated because of Brexit.	Undertake a review of Brexit vulnerable contracts in terms of flexibility, impact of possible customs delays or increased tariffs, contractual obligations involving the movement of people, VAT changes, data transfers or intellectual property (IP) issues, payment provisions and currency, regulatory changes and termination options.
VAT and International Tax	<p>Currently, intra-EU supplies of goods are generally subject to acquisition rather than import VAT, whereas after Brexit, imports from the EU27 are likely to be subject to import VAT.</p> <p>Unlike VAT, direct tax is a competency of member states and there are likely to be consequences for the UK businesses that have a pan-European structure or even those that simply do business in the EU.</p>	We advise clients on the impact of potentially adverse cash-flow issues on their business and are able to undertake a review of current structures, operations and transactional flow through the business to help clients understand the consequences of Brexit.
People	Subject to a deal on the UK's departure with the EU being agreed, EEA nationals and their families resident in the UK by 31 December 2020 will be able to continue living here under the EU Settlement Scheme. Uncertainty remains, however, in relation to a no-deal scenario, new EEA arrivals to the UK from April 2019, UK citizens in the EU and the UK's future immigration system from January 2021.	Our dedicated Business Immigration team can help companies understand their position in relation to EEA nationals employed within their business, but also supporting them to understand their individual status. We have developed a Brexit immigration support offering to help clients communicate and support their affected employees, as well as plan for their future resourcing needs.
Environmental	The EU has created a significant amount of environmental legislation that regulates all manner of industrial processes. It is expected that all EU-derived legislation will continue to apply during any transition period. However, following transition, there is potential for UK and EU environmental laws to diverge, which may, in turn, affect the obligations that apply to companies who operate in the UK. This gives rise to particular challenges in the context of product related environmental regulation, where companies are facing the prospect of parallel registration and regulatory regimes, duplication of cost and effort, and cross-border supply chain disruption. There are also many outstanding questions regarding environmental governance in the UK and how that will be structured and regulated going forward.	We can work with companies to advise on areas of regulation that may be affected, any issues arising out of changes to regulatory requirements and the potential effects of divergence in environmental standards between the UK and the EU. We can assist with evaluation and assessment of environmental and product regulation risks and issues in existing supply chain arrangements, and advise on actions that could be taken, to facilitate effective contingency planning.

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Corporate and M&A	<p>The expectation of Brexit is challenging many investment decisions. Companies should prepare for core Brexit scenarios when they plan their M&A activity. There are a number of areas that require careful due diligence on a target's business in light of Brexit:</p> <ul style="list-style-type: none"> • Consideration and adjustment clauses • Key commercial contracts • Merger control • People and the effect on the workforce • Restrictive covenants • IP rights • Data • MAC clauses • <i>Force majeure</i> • Seller limitation • EU grants and funding 	<p>Working alongside our Brexit team, our Corporate M&A team is able to consider the implications of Brexit in transactions and assist in scenario planning to ensure that risk is mitigated and a sound commercial outcome is achieved.</p>
Finance	<p>Brexit may place increased challenges on the finances of many businesses and their suppliers, especially in terms of trade finance.</p>	<p>Undertake a review of current financing arrangements and clauses to ensure that they are "fit for purpose". We are able to advise on negotiating finance arrangements and can assist suppliers that need to negotiate new financial arrangements.</p>
Intellectual Property	<p>Progress is being made in relation to IP.</p> <p>It is clear that the current intention is that, after the transition period, owners of EU trademark Registered and Community Designs will automatically become the holders of a comparable registered and enforceable right in the UK. The same will apply in relation to unregistered design rights and database rights.</p> <p>Similarly, if international trademark or design protection was obtained on the back of EU designations, the international protection will be recognised as continuing post transition. The remaining issues relate to matters such as geographical indications and the precise mechanics for transition.</p> <p>Pending the implementation of the EU's new "Unified Patent" system, patents will continue to be managed as is, as the European Patent Convention is independent of the EU.</p>	<p>With respect to IP, we recommend that companies prepare for Brexit by considering:</p> <ul style="list-style-type: none"> • Reviewing core IP agreements where the EU, or the countries in which the licensor has valid IP rights, is the defined territory • The impact of any changes to IP laws introduced • If existing IP portfolios should be supplemented with UK rights for core brands or products • Filing EUTM and UK trademark applications separately, either simultaneously or referring to convention priority in the second application – the same applies for design rights • Beginning to use EUTMs as widely as possible • Tackling ongoing infringements now while there is greater certainty

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Data Protection	<p>The draft Withdrawal Agreement indicates that EU data protection law will continue to apply to the UK in relation to the processing of personal data until the end of the transition period. Companies could become subject to separate EU and UK laws in relation to the processing of personal data in the UK.</p>	<p>The European Commission has issued a notice to the effect that, in the absence of a decision on the adequacy of the UK's laws regarding data protection, a transfer of personal data will only be permitted from the EU to a post-Brexit UK where the data controller or processor has provided "appropriate safeguards".</p> <p>In the absence of the European Commission making an adequacy decision in relation to the UK as a third country, any UK business with an EU interest will need to ensure that it can either rely on specific derogations or that it has appropriate safeguards in place prior to the transfer of personal data. This includes any UK business with an EU interest through a parent company, subsidiaries, joint venture, customer or supplier relationships or simply where acting as a controller or processor of personal data being transferred from the EU.</p>
State Aid	<p>Businesses need to consider the extent to which they benefit from aid from the EU and the extent to which any such aid may continue after Brexit and/or be replaced with any sources of aid that are made available within the UK after Brexit.</p> <p>After Brexit, UK business will lose any right to challenge state aid provided by the EU to companies within the EU.</p>	<p>We have specific expertise in advising companies with respect to the EU rules prohibiting certain forms of direct and indirect state subsidies and the highly complex rules governing governmental tenders throughout the EU.</p> <p>We also advise national governments and awarding bodies, recipients of state support, bidders and third-party complainants, and regularly represent such parties before the European Commission and the European Courts in Luxembourg, as well as in procurement matters before national courts in the EU.</p> <p>Our team has considerable expertise in handling the core concepts of state aid, such as the market investor principle, quantification of financial advantages and the application of general and specific exemptions for allowable state assistance.</p>
New Markets	<p>As the UK establishes new free trade agreements with countries outside of the EU, new opportunities will arise for UK companies in terms of access to new markets and talent. Companies operating in the UK will need to consider the opportunities and challenges that this may bring, as the UK opens its borders to third-party trade partners.</p>	<p>Seek guidance on new market entry and the characteristics of customers in the markets of interest, particularly those countries, regions and continents that are to be the focus of new free trade agreements, such as China and the US.</p>

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