

# Linklaters

## Brexit: a checklist for General Counsel

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This checklist for General Counsels sets out actions your organisation may need to consider taking as we now have more certainty on the UK's intention to leave the EU, following the UK's issuing of its Article 50 notice.

The checklist covers both the need to deal with short term pressures and the need to begin to prepare for a future in which (barring any unanimous agreement on extension of time or revocation of the UK's Article 50 notice) the UK leaves the EU in March 2019.

In addition to what is covered below, most companies in highly regulated sectors, such as financial services, energy or aviation, should already be closely focussed on changes to the regulation of their sector and how their business may need to adapt. This publication does not focus on regulatory issues for individual sectors.

It is important to bear in mind that, whilst the UK Government has confirmed that it is open to some form of phased implementation, it is not yet clear whether the UK will face a "cliff edge" in March 2019. The practical impacts of the UK's withdrawal from the EU will largely depend upon what is negotiated between the EU and the UK on both the UK's withdrawal and its future relationship with the EU.

### 1 Project management

- 1.1 Consider reengaging with or, if you have not yet done so, setting up a Brexit task force to identify issues and agree a co-ordinated action plan. Representatives from the following areas are likely to be needed:  
Heads of business units and strategy/operations | HR | Finance | Risk | Communications and PR | Data | Supply chain
- 1.2 Consider impact on legal team, including training requirements. Consider also impact on team resources/availability. Ensure structured to track legal developments.

### 2 Communications

- 2.1 Board updates. Likely to need to include:
  - > Exit process, timings and what is known about the likely form of a deal
  - > Preparatory work/diligence done to date to gauge likely impact of Brexit on the business
  - > Risks and opportunities for the business
  - > Anticipated impact on key stakeholders, including employees, shareholders, suppliers, counterparties, regulators. Ensure co-ordinated and consistent message
  - > Engagement with governments
- 2.2 When preparing half-yearly and annual financial reports, be mindful of the Financial Reporting Council's [guidance](#) on considerations following the EU referendum.
- 2.3 Consider likely media interest. For example, have you previously made public statements about the impact of Brexit on business?
- 2.4 Consider disclosure obligations under stock exchange/listing rules. Usual rules apply.
- 2.5 Consider communicating to employees or other key stakeholders on impact and planning.

### 3 Employees

- 3.1 If deemed necessary or desirable to advise employees on their residency/immigration status, has this been done?
- 3.2 Consider immigration status of key personnel. An audit of the whole workforce is not needed at this stage given the length of time before the UK actually leaves, and natural turnover in employment.

## 4 Contracts review

- 4.1 Consider major contracts. Are termination rights exercisable, for example, in the event of new tariffs being imposed?
- 4.2 Scope need for review of standard term contracts and/or boilerplate clauses. Are any changes required? For example, consider whether an adjustment to territorial definitions to reflect UK withdrawal from EU is required; consider whether jurisdiction clauses in favour of English courts remain appropriate.
- 4.3 Will force majeure or material adverse change clauses in key contracts be triggered? Will depend on precise wording but, absent specific/precise wording to contrary, it is unlikely.

## 5 Trade and Supply Chain Mapping

- 5.1 Be aware of the tariffs that will apply to UK goods entering the EU post-Brexit (should a free trade agreement not be reached) and the tariffs that the UK will adopt as its WTO schedules for EU and third country goods entering the UK post-Brexit. For example, in relation to some of the most imported and exported goods as between the EU and the UK, absent agreement otherwise, tariffs will be:  
Cars: 9.7% | Vehicle parts: 3.8% | Crude petroleum: 0% | Refined petroleum: 3% | Packaged medicaments: 0%  
(Note: These figures are based on the EU most favoured nation tariffs as at 2016. Each figure is an average of the tariffs for all specific products within that category of products.)  
The imposition of tariffs will not only affect goods imported into the UK from the EU, but also those the UK exports into the EU.
- 5.2 Map your company's supply chain to determine the origin of all component parts for goods and services.  
At each step in your supply chain consider the extent to which you move goods and services between the UK and EU and your reliance on inward and outward processing relief to prevent the payment of duties.  
For further details on changes to tariffs, supply chain mapping and questions businesses should be considering in relation to their supply chains, see our publication "[Brexit Preparations – Supply Chain Mapping](#)".

## 6 Data services

- 6.1 Map data flows – where does data reside/where is data processed?
- 6.2 There is a risk the UK will be treated as a third country without "adequate" data protection rules, and transfers of personal data from the EU to the UK will be subject to additional restrictions. If data is a key part of your business, consider the cost and process involved in moving data services.
- 6.3 Consider using EU model clauses or serving relationships from a different EU group company if key customers/partners are in the EU/EEA.

## 7 Understanding and influencing government policy priorities

- 7.1 Consider the business's priorities in terms of issues to be negotiated between the UK and EU/third countries.
- 7.2 Consider best way of ensuring these are understood by government negotiators. Consider contacting industry bodies for industry-wide view/approach.

## 8 Longer term strategic planning

Task force should consider risks and opportunities for the business arising from change of status of UK versus EU and third countries. Operational issues which task force may need to consider include:

- > Case for establishing new base for operating within the EU? Factors to be considered when deciding any new location will include regulatory environment, taxation, employment laws, language, talent pool and real estate
- > What new licences or regulatory approvals might be required?
- > Funding costs, loss of EU funding, possibility of new UK funding
- > Whether there is any other action that can be taken in advance of the UK actually leaving the EU eg can EU grants be drawn down early? Can eligible employees apply for citizenship rights?

This checklist is part of a suite of documents that also includes "[A checklist for Brexit-proofing contracts](#)" and "[Brexit preparations – Supply Chain Mapping](#)". A full collection of Brexit materials is available on our dedicated [Brexit microsite](#) on the Client Knowledge Portal. For more information please get in touch with your usual Linklaters contact or any of the contacts listed [here](#).

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