

Brexit Six: Contractual side effects from 1 January 2021

December 2020

The end of the transition period of the Withdrawal Agreement on 31 December 2020 will signal the UK's withdrawal from the European Union (the EU).

This means that from 1 January 2021 the EU Treaties and the general principles of EU law will cease to apply in the UK. Prior EU regulation will continue to apply until they are modified or revoked by domestic regulations.

The withdrawal will inevitably have a significant impact on commercial contracts between UK and EU businesses and contracts whose supply chain involves the EU.

Businesses should review these contracts now to assess the potential impact of Brexit, and the end of the transition period, on their rights and obligations and plan their resources appropriately.

Brexit six

We set out six of the key points to consider when reviewing existing commercial contracts to secure your value and manage your risks.

- 1. Currency fluctuations:** potential fluctuations in exchange rates could have a significant effect on your commercial contracts. It is important to identify provisions which expose you to currency fluctuations and ascertain whether you are adequately protected.
- 2. Increased trade barriers:** trade barriers seem likely to increase, particularly given the way Brexit negotiations have progressed to date. Barriers will in turn result in increased trading costs when trading in Europe. It is important to evaluate the impact these increased costs will have on your business and identify whether any provisions in your commercial

agreements offer any protection in terms of allocation of trading costs (including tariffs).

- 3. Freedom of movement:** restrictions on freedom of movement are likely to lead to additional costs and delays. It is critical to evaluate the effect this may have on meeting deadlines under any supply of goods contracts and assess the impact it may have on your ability to supply services under any services contract.
- 4. Territorial scope:** if your contracts identify the EU as within their territorial scope it is important to identify whether this is defined as being the EU as comprised at the date of the agreement or as it evolves from time to time. If the latter, the UK is carved out and the territory in the contract will no longer mean the UK.
- 5. Parallel regulatory regimes:** "parallel regulatory regimes" means that both UK and EU law may be relevant to the contract. This may emerge if your commercial contracts govern the introduction of new goods or services to both the UK and EU markets. If such parallel regimes emerge, it would be prudent to agree with counterparties the allocation of responsibility for compliance and consequences of non-compliance.
- 6. Changes of law:** it is important to review the provisions of your contracts relating to changes of law and consider how costs arising from such changes are allocated.

What to do

Given the levels of uncertainty around the post-Brexit landscape, doing nothing is not an option as businesses may be forced to carry out their obligations under

commercial agreements in the face of circumstances that render them commercially unattractive.

If you are dealing with counterparties in the EU or have supply chains in the EU, you should be reviewing your existing commercial agreements now so that you can appropriately prepare for and minimise your exposure to Brexit related risks.

For an initial consultation and assistance with your contract review, contact corporate lawyer [Evangelos Kyveris](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

