

5 Ways to Brexit-Proof Your Existing Contracts

The UK Prime Minister has indicated that the government will invoke Article 50 in the first quarter of 2017, triggering the beginning of the negotiation of the UK's withdrawal from the EU—which is a fixed, two-year period, if not extended. Companies should be reviewing their existing contracts—at least those

which may still apply at the point of Brexit—and amending the standard terms of business they propose to use from now on, to account for when the UK ceases to be an EU Member State. Five key considerations to Brexit-proof your company's contracts include:

1

Does your contract rely on “Rome I Rules”?

Issue to watch for:

Rome I is the EU Regulation which determines the law applicable to contractual obligations. Does your contract state which law applies? Do not assume Rome I rules will be applied by the UK post-Brexit.



2

How and where will contractual rights be enforced?

What does your contract say about where challenges will be brought? This will impact on the issuing of injunctions and the conduct of arbitrations. It is not yet clear whether EU Member State courts will continue to recognize and enforce English judgments, and vice versa.



3

Is your contract subject to English Law or Scottish Law including EU Law?

Where contracts provide that they are subject to “English law” or “Scottish law”, at present this would be taken to include EU law. But some of that will cease to apply on Brexit. The UK appears likely to carry over much EU law but cannot carry over every aspect, and UK judges may not follow ECJ precedents in interpreting EU law.



4

Does your contract assume the UK is an EU member state and make references to the EU?

Review your contracts for obvious references to the EU (with the assumption this includes the UK as a member) and less obvious references (rights or obligations arising from specific EU laws which currently apply to the UK).



5

Does your contract rely on or assume the availability of free movement within the EU?

Do your contracts require you to (or assume that it is possible for you to) move staff, goods or capital between UK and the remainder of the EU? Does your contract envisage the provision of cross-border services?



Looking ahead to drafting future contracts, a business may wish to consider an adjustment to the usual **Material Adverse Change (MAC) clause**, or even to include a **bespoke Brexit clause**. Such provisions could anticipate the emerging negotiations between the UK and the EU, placing breaks in contracts should an unforeseen or undesirable change in the legal framework be agreed.