

October 2016

Commercial Contracts

Impact of Brexit



Impact of Brexit on Commercial Contracts

We are working with a number of clients looking at the potential impact of Brexit for commercial contracts.

It is striking how varied the effects are, depending largely on the nature and structure of the client's business, and the precise terms of important contracts.

Examples of structural challenges include:

- ▶ clients dependent for non-UK business on UK assets and distribution models: for example, clients presently importing goods via the UK to other EU markets may be concerned about future tariffs on goods coming via the UK;
- ▶ where intellectual property is key to the arrangement, the likely effects of Brexit on (for example) EU trade marks and Registered Community Designs;
- ▶ clients handling data across the EU are required to nominate a single EU regulator; this may not be the UK's Information Commissioner in the event of a "hard Brexit";

Problematic Contract Clauses

Examples of potentially problematic contract clauses include:

- ▶ force majeure clauses: some clients (particularly if buying raw materials from outside the UK) are concerned that potential consequences of Brexit, such as tariffs on products, may be claimed by suppliers as force majeure, especially if there is no mechanism for passing these costs on to the customer;
- ▶ choice of law and jurisdiction: in most cases, English law is still likely to be the most appropriate choice of law. Clauses providing for the exclusive jurisdiction of the English courts are unlikely to be affected, but agreements providing for non-exclusive jurisdiction of the English courts could become problematic as a result of Brexit;
- ▶ territorially-focused provisions: obviously to the extent that (for example) a restriction prohibits activity in "any member state in the EU", at least if this definition references EU members states from time to time, this will cease to cover the EU once Brexit takes place;
- ▶ definitions or obligations referencing EU law may also be problematic (eg "The Supplier will comply with all applicable EU laws relating to product safety")

Certainly, to the extent that potentially problematic clauses are set out in standard documentation or precedents. These should be rendered "Brexit-proof" immediately.

The position as regards contracts already in force is less clear-cut. Key considerations will certainly include:

- ▶ the extent to which the contract concerned is business critical/ replaceable;
- ▶ remaining duration/ minimum notice required to terminate;
- ▶ the balance of negotiating power, and whether opportunities for advantageous renegotiation exist; for example, if the counterparty has Brexit concerns which it wishes to address, this may make tackling the issues which matter from our side easier.

If you have any questions on the above or for further advice, please get in touch with your usual contact at Addleshaw Goddard or contact:



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