DELIVERING BREXIT
PUTTING PLANS INTO PRACTICE
APPROACHING BREXIT READINESS

ANALYSE
Pinpoint your risks and opportunities with a Brexit Audit to analyse ‘no deal’ implications

Identify, for example if:

- your market access rights to provide services into the EU from the UK or vice versa may be lost owing to eg loss of passporting, rights of establishment, or recognition of qualifications
- your products may cease to be authorised owing to eg lapse of marketing authorisation, conformity assessments or other regulatory approvals or loss of mutual recognition of product standards
- your products may be exposed to new tariffs, different tax treatments (eg VAT) or customs delays
- you have any EU-wide IP rights (or are using any under licence) which you are relying on for the UK which may fall away

Review contracts to determine:
- specific aspects of existing contracts that need to be risk assessed, amended, or migrated to a different entity
- the implications for new contracts being negotiated before Brexit

ASSESS
Evaluate and prioritise Brexit Audit conclusions to create a Brexit readiness plan

Evaluate
the importance and likelihood of risks and opportunities identified in terms of financial, strategic, operational and human resource impacts

Prioritise
key deliverables and assess the interdependencies and lead times (political, strategic, operational and regulatory) to develop a phased and proportionate response

Plan
a timeline and allocate resources to meet Brexit readiness deadlines, maximising flexibility and resilience given continuing uncertainties

THE CLOCK IS TICKING

29 March 2017
UK triggers Article 50

14 November 2018
UK and EU agree draft exit deal
Implement strategies, deploy arguments and monitor developments to mitigate risks and seize opportunities, whether before the Brexit deadline or the end of any anticipated transition, including:

**Restructure, reorganise...**
- Establish new legal presence and any necessary operations in the EU or UK to obtain authorisations ensuring continued supply of products or services
- Carry out internal reorganisations to make this work
- Adjust investment plans and operating models including to enter or exit markets

**And adapt**
- Migrate existing contracts to the relevant entities and enter into any necessary new arrangements
- Revise compliance frameworks (eg to implement appropriate data protection compliance mechanisms for international data transfers if required)

**Protect intellectual property rights**
Implement strategies:
- To evaluate whether to maintain new UK IP rights which replace UK aspects of EU-wide rights
- To record interests against new UK IP rights which replace UK aspects of EU-wide rights
- To preserve post-Brexit any rights that relate to the UK under agreements relating to the EU or EU wide rights that were executed pre-Brexit

**Engage regulators and government**
Prepare:
- Arguments to put to regulators and government (UK, EU and third countries) directly or through industry bodies
- Applications and engagement with regulators for timely authorisations

**Execute strategic M&A**
- Acquire entities or operations with the necessary legal presence or authorisations
- Divest operations to reflect new business models
Revise strategies for new contracts and risk assess, re-negotiate and re-paper existing contracts

- Revise new contract model terms and negotiating guidelines
- Implement amendment and migration solutions for existing contracts to address regulatory requirements, contractual permission restraints and other contract change drivers
- Large scale re-papering projects may require bulk contract processes harnessing technology, process manuals and negotiation playbooks

Avoid and resolve disputes

Abruptly shifting regulatory environments and business models may require new dispute resolution strategies:

- as part of contract renegotiation and re-papering exercises
- to deal with contracts which become legally difficult or uneconomic for any counterparty to perform
- to terminate contracts as the business pivots to alternative supply
- to respond to Brexit-related amendments which counterparties may seek to make
- to ensure enforcement of judgments

Meet workforce needs

- Comply with employment law obligations for any relocations or restructurings (eg TUPE)
- Implement strategies for recruitment and retention, including employee support
- Update employment documentation (eg, cross-border secondment agreements, restrictive covenants referencing EU, outsourcing agreements) and ensure workability of multi-jurisdiction benefits packages

Monitor developments

Given the nature of the Brexit process, ongoing monitoring is required to sequence and trigger plans and re-validate strategies

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UK leaves EU either i) “cliff edge” to WTO or ii) to transitional arrangements

31 October 2019?

Final EU/UK FTA (if agreed) and any transitional period ends*

31 December 2020

*If such an agreement is a “mixed” agreement dealing with matters that are in shared or sole competence of the individual Member States, it would require the approval of all the continuing Member States in accordance with their individual processes for treaty approval
“With just weeks until the Brexit deadline, businesses must now do what they can to put their plans into practice and take any final steps to build resilience. If we do face a no-deal, disruption is inevitable, but not always predictable. So ensuring resilient management structures are in place for information, escalation and prioritised response will be key, as will communicating with stakeholders to maintain confidence.”

PAUL BUTCHER
BREXIT DIRECTOR, HERBERT SMITH FREEHILLS

“Clients from a wide range of industries turn to the firm for support on Brexit”

TIER 1 - BREXIT LEGAL 500

PUTTING PLANS INTO PRACTICE

QUALITY ASSURED

Full service, leading experts dedicated to navigating the commercial, regulatory and compliance implications of Brexit

COST CONTROLLED

Lower-cost offering for high-volume, document-intensive work (eg for re-papering contracts) powered by cutting-edge technology

DEADLINES MET

Innovative project management and process improvement techniques to deliver legal services in the most efficient, transparent and cost-controlled manner

Please get in touch with your regular Herbert Smith Freehills contact if you would like further information about how we can help you put your Brexit plans into practice. You can subscribe to our Brexit Notes blog hsfnotes.com/brexit/ to keep up to date with our latest thinking.