

BEING PREPARED FOR BREXIT – A CHECKLIST

Theresa May, the UK Prime Minister, has outlined in a speech the UK's negotiating objectives for exiting the European Union (EU). May has listed 12 negotiating priorities around four key principles:

1. Certainty and clarity;
2. A stronger Britain, with strengthened sovereignty;
3. A fairer Britain with regards to immigration and workers' rights;
4. A truly global Britain based on future trade agreements which will not be limited to the EU.

Regarding the timeline, Theresa May said that the UK aims to reach an agreement within the two-year period after Article 50 is triggered, which is imposed by the Treaties for the process of exiting the EU; and wishes for a phased process of implementation after this point. She also committed to give the UK Parliament a vote on the final Brexit deal.

While the post-Brexit landscape still remains undefined, as it will only emerge from a complex negotiation, it is already possible to identify a number of issues requiring particular attention from any company working in the UK, or with the UK in the context of the European Union.

Accordingly, businesses should be focusing their contingency planning on the following areas:



EMPLOYMENT

- While Brexit is unlikely to lead to significant legal changes in the short term, remain aware that post-Brexit UK employment legislation may start to diverge from that of the EU
- Consider the impact of Brexit on workforce consisting of EU nationals working in the UK and UK nationals working in the rest of the EU



FINANCIAL SERVICES

- Prepare business for the UK leaving the European Single Market and the possible end of the financial services passporting regime
- Closely monitor any developments regarding financial services legislative equivalence and the extent to which firms passporting into and out of the UK may be able to operate under transitional arrangements (if any)



INTELLECTUAL PROPERTY AND DATA PROTECTION

- Consider whether brand, design and patent owners should consider applying for separate UK and other national registrations as part of their protection strategy
- Plan for the consequences of the UK leaving the European Union Trade Mark (EUTM) system, EU registered design system and European Patent Convention, including disruption to Court proceedings and future litigation strategies



TRADE

- Plan for the customer relationship and supply chain implications of potential changes to the existing complete free trade relationship between the UK and the rest of the EU. This is in the expectation that the UK will be leaving the Single Market and seeking to put in place a bilateral free trade agreement in terms to be defined
- Plan for changes in the trading relationships between the UK and third party countries with whom the EU has signed free trade agreements (including South Korea, Chile, Mexico and South Africa)



DISPUTE RESOLUTION

- Review contracts to see whether they have choice of governing law clauses as different rules on conflict of laws may end up applying between the UK and the EU
- Consider using arbitration as an alternative method of dispute resolution, bearing in mind that, after Brexit, arbitration awards may be easier to enforce across the EU than English court judgements



TAX

- Closely monitor the position on customs duties and trade tariffs if your business imports and exports goods into the UK and/or the EU or operates international transportation
- Review the impact on VAT in intra-European operations, between the UK and the rest of the EU, which currently allows for most business transactions for “taxable” activities to be broadly VAT neutral. If the UK becomes a third party country reclaiming VAT incurred in the EU will take a different form, claims under the 13th Directive would need to be made, and where relevant, businesses should consider changes to how the “mini one-stop-shop” will operate



COMPETITION & ANTITRUST

- Review whether EU State Aid rules ceasing to apply in the UK may impact your business and may create new opportunities
- Consider the future need for companies to have to file the same transaction to the UK Competition & Markets Authority and the European Commission if the requisite merger filing thresholds are met

K&L Gates Brexit European Advisory Group

Clients can contact the firm with questions about the consequences of Brexit by email at brexit@klgates.com.

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