

# Braced for Brexit?

As negotiations continue, so do business preparations. Change is almost inevitable but the extent, nature and timing is uncertain. How can such change be addressed in one-off transactions (e.g. M&A) and in on-going relationships (e.g. key contracts)? This Hogan Lovells Commercial Update uses insight gathered since the referendum to update our previous guidance on [Brexit Clauses](#) and [Brexit M&A](#). For further insight into the points summarised here (including drafting recommendations), or to discuss particular scenarios, contact Peter Watts or Helen Kimberley.

Issue	One-off transaction	On-going relationships
<b>Brexit Ready?</b> Brexit means change but timing and nature are uncertain. Every company should analyse scenarios, prepare impact assessments and put in place tangible response plans. You need to know that the people you deal with have done this.	Diligence a copy of Target's Brexit preparedness plan (and consider a warranty confirming that steps required by the plan have been taken). Request a warranty that all potential impacts of Brexit on Target are disclosed.	Include requirement to provide copies of, or access to, updates on Brexit preparedness and notification of awareness of a potential impact. Consider obligation to take all necessary steps to address Brexit issues.
<b>People</b> Brexit will almost certainly reduce ability to move between the UK and EU. The detail will be determined by transitional and on-going arrangements and post-Brexit immigration policies on each side of the border.	Diligence details of non-UK EU nationals working in Target's UK operations (and the reverse) and the movement of Target's workers between the UK and EU. Consider a warranty or indemnity confirming the answers.	Include obligation to ensure immigration status of all relevant personnel. Ensure force majeure clauses are not triggered by inability to have necessary staff due to immigration changes.
<b>Data</b> Data movement is increasingly important. The UK has been within a single EU data zone. That may continue but Brexit could result in restrictions on data movement which have not been anticipated when data has been gathered to date.	Diligence extent to which Target currently relies on moving data between UK and EU. Consider warranty that data permissions will allow continued movement even if UK no longer aligned with EU data regime.	Include obligation to gather data with permissions which allow transfer between UK and EU even if data regimes diverge. Ensure force majeure not triggered by regulatory changes which restrict transfer or use of data.
<b>Comply?</b> Brexit will likely have a range of regulatory impacts. Existing licences, authorisations and certifications may no longer be adequate. Other UK and EU Regulations may diverge over time.	Diligence all EU based regulation applicable to Target's UK operations and seek a disclosure warranty of EU based licenses, authorisations and certifications held. Include indemnity protection for risk areas identified.	Ensure compliance obligations and applicable laws definitions are robust to deal with Brexit related change (including responsibility for associated costs). Ensure force majeure not triggered by Brexit illegality.
<b>Contracts</b> Every business is impacted by its own agreements and innumerable other contracts in its supply chain and routes to market. Impacts can include potential termination triggers or breaches.	When undertaking diligence of key contracts, assess potential impact of key Brexit scenarios. Consider warranty that any material impacts of Brexit on supply chain, customers or downstream market are disclosed.	Ensure your own contracts appropriately manage Brexit risk. Focus particularly on termination, change, pricing, territory and force majeure. Consider and address Brexit impact of key sub-contracts.
<b>Systems</b> Brexit will likely trigger changes in operating procedures from certification to customs. Complex businesses rely on IT. Brexit will likely require system changes potentially on accelerated basis.	Enhance systems diligence to assess potential impact of Brexit. Diligence how change provisions in Target's IT contracts would deal with cost and timing of Brexit induced change.	Include obligation to ensure all systems will operate compliantly notwithstanding Brexit. Consider requiring counterparty to provide all necessary help to enable you to modify systems to accommodate Brexit.

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