



NAVIGATING YOUR BUSINESS THROUGH BREXIT: **FOUR WAYS** **DLA PIPER CAN HELP**



The key to navigating Brexit successfully is informed analysis, accurate forecasting and practical contingency planning. DLA Piper's dedicated Brexit team has the political, policy and legal capability to provide tailored advice on how to mitigate risk and maximise opportunities, wherever in the world you do business.

WHAT DOES BREXIT MEAN FOR BUSINESS?

In a word, change. On 29 March 2019 the UK is set to leave the EU's Single Market and Customs Union of frictionless trade and regulatory cooperation between 28 States, unless a temporary transitional agreement allows the UK to remain in both while a Free Trade Agreement is negotiated. UK-based companies that do business with the EU, or with the 50 or so countries with which the EU has free trade agreements, will be significantly affected by this change, including the many multinationals that use the UK as a gateway to the EU. EU companies that do business with the UK will be similarly affected.

With this change comes significant commercial risk: in short, the loss of barrier-free, uniform terms of business across the EU, and the legal uncertainty of what will follow. Opportunities tend to be more overlooked, but they too will arise. For example, from sterling exchange-rate fluctuations, changes in UK business regulation as it diverges from EU regulation, a greater focus on domestic supply chains, and the opening of new trade routes under UK trade agreements.

Being able to read the negotiations early, and draw the right conclusions, will be critical to mitigating the risks and seizing the opportunities that arise from Brexit.

SHOULD BUSINESS ACT NOW?

How affected companies respond to Brexit will be critical to their success. Those that have correctly assessed the commercial implications, and made contingency plans flexible enough to keep pace with the negotiations, will navigate Brexit successfully.

Does the level of uncertainty about the outcome of Brexit prevent planning for it? We think not. In fact, we think the opposite is not just true, but vital. The timeframe for the negotiations is short; should contingency measures need to be activated, they will require lead-in time.

Despite the noise and confusion coming from the negotiations, the main contours of the UK's future relationship with the EU are now in focus, and important commercial consequences can already be identified.

BREXIT NEGOTIATIONS – COMMERCIAL CONSEQUENCES

- The UK Government wants to leave the Single Market, which means no free movement of goods, services, people and money between the UK and the EU, but more limited access.
- The EU considers that the Single Market is indivisible, so being out of it means being out of every sector of cooperation within it. Separate deals for the automotive, financial services, life sciences or manufacturing industry, for example, are therefore unlikely.
- The UK Government wants to leave the Customs Union, which means it can have separate trade deals with non-EU countries. The UK could face customs procedures and tariffs on exports to the EU, and will apply the same to imports from the EU.
- The UK Government and the EU want a comprehensive Free Trade Agreement, to be agreed after the UK leaves the EU. This will not provide the same level of access to the Single Market and is unlikely to come into force for several years after Brexit.
- Both the UK Government and the EU are contemplating a transitional arrangement being put in place until the trade agreement enters into force. An effective transitional arrangement is vital for business.
- The UK Government will, through the EU Withdrawal Bill, seek to replicate EU law in national law after Brexit, but will be able to diverge from it in the years after. There are over 20,000 pieces of EU legislation, so this will change the way much of UK business is regulated.
- By contrast, the Government will seek to legislate in place of EU law in the areas of immigration, customs, international trade, agriculture, fisheries, and international sanctions. This will change the way UK business is regulated in these fields.

FOUR WAYS DLA PIPER CAN HELP

With the direction of travel known, companies should take steps now to assess their exposure to Brexit, and if necessary to plan for it. We advise they do so by drawing up a Brexit strategy with four elements:

1. **Understanding**
2. **Preparation**
3. **Action**
4. **Influencing**

For larger businesses, especially those with separate operating companies or multi-jurisdictional operations, we recommend a **Brexit Committee** be set up with overall responsibility for implementing the Brexit strategy. Brexit is legally complex, so it is advisable that in-house counsel are represented on that committee. DLA Piper can also act as an adviser to that committee, as well as participate in it.

1. **Understanding**

Businesses should have procedures in place to ensure they are sufficiently well-informed about the Brexit process—timelines, developments in negotiations, early warning of likely outcomes—to be able to assess its impact. Relying on press reports is unlikely to be enough. Understanding the details of the negotiations and accurately forecasting the likely impacts are fundamental to an effective Brexit strategy, and to gaining early competitive advantage.

DLA Piper can provide you with a tailored service which monitors the progress of the negotiations, analyses the published negotiating documents, and identifies the impacts for your business the moment they become clear.

2. **Preparation**

Advice from the European Council speaks for itself: businesses should “take all necessary steps to prepare for the consequences of the United Kingdom’s withdrawal.” We would add: prepare for Brexit with and without a withdrawal agreement; the worst-case-scenario is not, unfortunately, impossible.

To do so, businesses should carry out a **Brexit legal impact assessment** followed by a **Brexit commercial impact assessment**. These will form the baseline of any contingency measures.

A Brexit legal impact assessment

Gauging the impact of Brexit on a business requires an assessment of how much of its operations rely on EU-derived rights and obligations. This is often unclear, as not all EU law has a cross-border element. The assessment should then consider the fall-back legal framework for a business should those EU rules no longer be in force (i.e. a worst-case-scenario). This could include, for example, an analysis of the domestic law of the EU Member States in which a UK business sells the majority of its services, to determine the regulatory barriers it would face. It could also include an assessment of the impact of trading with the EU on WTO terms. The chart on the next page contains a checklist of primary areas of the legal impact of Brexit on businesses.

A Brexit commercial impact assessment

Once the legal impact is understood, businesses are better placed to carry out a commercial impact assessment. This should focus on how a worst-case-scenario Brexit would affect the core profitability of a business. The risks posed by Brexit to the company's suppliers and customers will be an important part of this assessment too, as will the opportunities that may arise from Brexit.

DLA Piper is well placed to help you carry out these impact assessments. We are a leading global law firm with sector focused teams covering almost every area of commercial activity in every region of the world. Our lawyers have in-depth knowledge of legal practice and law. In Europe alone we have offices in 17 of the EU Member States, including eight offices in the UK, and relationship firms in all other Member States. Few, if any, other leading law firms understand the domestic law of all 27 other EU Member States better than us.

BREXIT LEGAL IMPACT ASSESSMENT: CHECKLIST

- New barriers to exports of goods or services from the UK to the EU?
- New barriers to imports of goods or services from the EU to the UK?
- New barriers to exports of goods or services from the UK to countries with an EU trade agreement ?
- New barriers to imports of goods and services from countries with an EU trade agreement to the UK?
- Changes in tax legislation?
- Changes in safety, health and the environment (SHE) legislation?
- Changes in trademarks, copyright and patent legislation?
- Changes in consumer protection legislation?
- Changes in data protection legislation?
- Changes in immigration legislation?
- Changes in employment/pensions legislation?
- Changes in competition rules?
- Changes in funding sources?
- Enforceability of contracts?
- Loss of EU-wide enforcement rights?
- Impact of EU Withdrawal Bill?



3. Action

Based on these impact assessments, businesses should decide whether to put in place **contingency plans** and when they should be activated. These plans should include mitigation measures for the worst-case-scenario, and take account of lead-in times for regulatory approval in the EU-27 Member States.

There is no one-size-fits-all solution. Some companies will be marginally impacted, others significantly. UK financial services companies are illustrative of businesses whose operating model is sufficiently threatened by Brexit to require re-structuring in EU Member States, and lead-in time to get regulatory approval. For others, contingency measures could include setting up alternative supply chains, identifying new customer markets, or re-skilling employees.

DLA Piper has been at the forefront of advising clients on the commercial implications of Brexit. We have the experience to help you devise and implement contingency measures for your business, and stress-test them against a range of Brexit scenarios, whatever industry you operate in.

4. Influencing

The best way to avoid a Brexit that damages your business is to influence the outcome yourself. Brexit provides an opportunity to do that, which businesses should exploit more.

DLA Piper has the benefit of senior counsel and advisers associated with – and within – the Brussels and London based Government Affairs teams. They include former politicians, diplomats, journalists and media experts, and former staff members of regulatory bodies and political parties. This breadth of skills and experience enables clients to:

- devise and implement policy advocacy strategies to influence the course of the Brexit negotiations, and the negotiations on a new trade agreement, both in London and Brussels; and
- build long-term regulatory compliance strategies, including relationship-building with key influencers and government authorities.

Case Study I: Restructuring European insurance groups so they can continue operations after Brexit

DLA Piper's multi-disciplinary insurance sector lawyers are helping a number of international insurers restructure so they can continue business across Europe and the UK after Brexit with as little disruption to their operations as possible.

We were advising insurer clients on the potential implications of Brexit both before and after the referendum result. The local know-how and market knowledge in our network of European offices, and our in-depth knowledge and experience of EU law procedures such as portfolio transfers, cross-border mergers, and European public company (Societas Europaea, or SEs) formations and re-domiciliations, allowed us to present insurance groups with a range of restructuring options to enable such groups to operate across Europe, while maintaining their activities in the UK market. We advised on the processes and forms that restructurings could take, and on the relative merits of competing European jurisdictions to serve as a post-Brexit EEA base. This early-stage support enabled clients to feel comfortable with their decisions about how to restructure, and confident that a smooth implementation would be achieved through DLA Piper's international reach and expertise.

We are now helping those clients put their plans into practice. As the entities affected have branches in several EEA jurisdictions, this involves a strong coordinated effort across different offices, with corporate, regulatory and real estate teams all contributing. European rules regarding the transfer of employees also require a seamless multi-jurisdictional employment team to work alongside the other practice groups and support the client through the process of employee consultations, and our litigation team is assisting through court-sanctioned merger processes. Continued involvement of different departments and offices in the firm means we are providing an integrated service to meet all of our insurance clients' needs.

EXAMPLES OF RECENT EXPERIENCE

- Advising a number of global manufacturing companies on the implications of Brexit on their supply chain management, including WTO impact assessments.
- Advising foreign (non-EU) governments on the implications of Brexit for existing EU Free Trade Agreements, current EU trade negotiations and the prospect of bilateral and regional UK Free Trade Agreements.
- Advising the board of an electricity company on the feasibility of a two-year project in the light of changes to EU legislation and the impact of Brexit.
- Advising a US fund manager on where to open its first office in Europe, which required consideration of the impact of Brexit as part of a wider decision on the most favourable European jurisdiction.
- Advising a global communications company on the implications of Brexit for its OFCOM licence and passporting rights, and on competition law implications.
- Advising a number of significant insurance groups on Brexit contingency planning, including structuring and alternative jurisdictions for EU passporting purposes.
- Advising several clients on changing their strategy towards holiday pay in light of Brexit and its impact on EU case law after Brexit.
- Devising a policy advocacy strategy for an international chemical company on alternative forms of oversight of the post-Brexit UK-EU relationship to the EU Court of Justice.

OUR TEAM

Paul Hardy, our Brexit Director, is able to provide in-depth analysis on the political, policy and legal implications of Brexit, and translate what they mean for commercial and public sector clients. He was Counsel for European Legislation in the House of Commons and EU Legal Adviser in the House of Lords for eight years, before which he was a legal adviser in the European Commission and a UK barrister. He has an expert understanding of how each piece of the jigsaw of EU policy and legislation fits together, an insider's knowledge of the political and administrative processes of the negotiations, and considerable experience of how UK legislation is enacted. Few other lawyers have a background so suited to giving Brexit advice.

John Forrest is an experienced international trade practitioner, specialising in international trade law. He regularly advises international governments and commerce on international trade issues. Formerly, John was an advisor to the UK Government on trade and investment policy and has represented the UK in the EU, the WTO, and the OECD. He has advised a number of foreign Governments on various aspects of their trade and investment policy and negotiations with the UK and the European Union. This experience has given John an expert knowledge of the legal and regulatory implications, and also the opportunities, provided by Brexit. John is a key member of the DLA Piper Brexit Committee and a known authority on the trade impact of Brexit on businesses and government bodies in the UK, EU and the rest of the world.

Case Study 2: Brexit planning in the automotive sector

DLA Piper has brought together lawyers from across its practice and sector groups to support several global manufacturers in the automotive industry.

We helped a car producer in Asia to understand and prepare for Brexit through tailored advice and analysis. We explained the legal mechanisms, constitutional requirements and process which will be followed in the UK and Europe to implement the UK's withdrawal. We assessed the impact on the client of the potential loss of preferential market access to the UK under the current Free Trade Agreement, including the impact of changes to tariffs and customs arrangements. We also assessed the impact of immediate shocks to our client's business, such as the fall in sterling. This support, including a detailed presentation to the company's senior executives, has helped our client to take the necessary action to protect and grow its core business.

We delivered an interactive discussion session to the senior management team of a design and production group in the automotive sector exploring the potential impact of Brexit on its UK business operation. We drew from our deep sector experience to examine business-critical issues such as data protection, tax and employment. This detailed scenario-planning enabled key decision-makers first to understand the challenges they faced and then to consider what plans they needed to put in place to meet them.

Richard Bonnar leads DLA Piper's Public Sector practice in the UK and is responsible for the overall strategy and coordination of its different practice groups in their delivery of legal services to central and local government. Richard is chair of the DLA Piper Brexit Committee, which coordinates the firm's approach to the withdrawal of the UK from the European Union.

DLA Piper's Brexit advice is bespoke to your business and is supported by our global practice and sector groups. This enables us to seamlessly deliver dedicated legal knowledge and industry insight to help steer your business through Brexit.



Paul Hardy
Brexit Director
T +44 20 7153 7099
paul.hardy@dlapiper.com



John Forrest
Partner
Head of International Trade, London
T +44 20 7796 6891
john.forrest@dlapiper.com



Richard Bonnar
Partner
Global Co-Chair, Government Contracting Sector
T +44 20 7796 6094
richard.bonnar@dlapiper.com

Case study 3 – WTO impact assessment

We helped a British power generation company to understand the impact on its supply chain of trading on WTO terms post-Brexit. We assessed the tariffs that would be applied to imports of fuel from its key supplier markets in such a scenario, as well as carrying out a comparative analysis of alternative trade scenarios and identifying further risk factors such as the implementation of trade defence measures. This ensured that the senior management of the company had a full picture of their potential exposure to additional import/export costs, and could prepare their budgets and supply chain accordingly.





www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved. | NOV17 | 3252611