

# Linklaters

## A checklist for Brexit-proofing contracts

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This document sets out some key considerations, common to most commercial contracts in the UK and the EU, to aid parties in protecting against Brexit and resulting uncertainties.

### Starting point: Review existing contracts

- > Consider how Brexit will affect your business and commercial arrangements with third parties.
- > Identify key contracts and assess if they are either clear on the implications of Brexit or provide sufficient protection against Brexit.
- > Consider whether to amend or renegotiate contracts that are not clear on implications and continue beyond March 2019.
- > Be wary of making unequivocal statements that action will or will not take place on Brexit to ensure you do not vary the terms of a contract.

### 1 Cover express consequences of Brexit rather than relying on general concepts

Rather than relying on financial hardship, force majeure or MAC, consider including express provisions that cover specific consequences of Brexit, for example movements in exchange rates or the passing on of cost increases from the imposition of tariffs.

### 2 Clarify references to “the EU”

Expressly state whether references to “the EU” will include the UK after Brexit or use a list of relevant countries rather than referring to “the EU”.

### 3 Clarify references to “EU law”

Expressly state whether reference to “EU law” will include legislation that succeeds the existing EU law in the UK post-Brexit.

### 4 Consider the impact of potential changes in the enforcement of judgments of UK courts

If the recast Brussels Regulation on recognition of judgments no longer applies to the UK, enforcement in the EU of judgments by courts in the UK will be subject to national laws of the relevant EU member state. Where this is potentially a significant issue, consider: (a) taking local law advice on enforcement implications; and/or (b) using arbitration with London as the seat (as this is unlikely to be affected by Brexit).

## 5 Consider benefit of an express right to terminate on Brexit

### Options include:

- > *Specific*: Termination on the entry into force of the withdrawal agreement agreed under Article 50 or two years after the Article 50 notice is served (subject to any extension), whichever comes first.
- > *General*: Termination on the UK's withdrawal from the EU or on the UK ceasing to be subject to the EU Treaties.
- > *Commercial impact-focussed*: Termination based on a material adverse effect or a particular event (for example, the UK exiting the customs union, the loss of passporting rights).

### Be clear on:

- > Whether the right to terminate is bilateral or unilateral.
- > Whether the contract will terminate immediately or after a period of time.
- > If there is a compensation obligation.
- > If there is an obligation to renegotiate (although such an obligation will be largely unenforceable).

This checklist is part of a suite of documents that also includes “[Brexit: a checklist for General Counsel](#)” and “[Brexit preparations – Supply Chain Mapping](#)”. A full collection of Brexit materials is available on our dedicated [Brexit microsite](#) on the Client Knowledge Portal.

For more information please get in touch with your usual Linklaters contact or any of the contacts listed [here](#).

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