

THE MISSING PIECE



Welcome....

to the latest issue of *The Missing Piece*, the monthly legal bulletin from *In House Lawyer*. *In House Lawyer* is my individual and exclusive legal service with strong ideals and a bespoke approach.

This bulletin gives some general pointers for contingency planning for general commercial contracts following the Brexit vote.

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This bulletin does not look at particular sectors or regulations, nor the impact on the economy of the exit or the impact on employment law of changes to free movement but is a starting point for a review of the leave vote's general implications for contractual arrangements until the point is reached when the UK's future relationship with the EU becomes clearer.

Identifying contracts at risk

A starting point for contingency planning is an initial high level assessment of trading relationships to identify priorities, for example by focusing on strategic contracts or those relationships where:

- there is dependence on EU trade or on EU funding or grants;
- EU authorisation or passporting is assumed;
- pricing mechanisms assume no tariffs, quotas or other barriers (and those other barriers could be regulatory requirements, legal barriers or transaction costs such as value added tax) or are tailored to take account of particular savings or levels based on EU free movement of goods and people;
- currency fluctuations will cause significant increased burden;
- performance assumes compliance with particular EU law that the UK government in the future might repeal as “red tape” or where regulatory divergence is likely in the future, for example, where personal data cannot be sent outside of the EU; or
- the transaction or any clause is dependent on particular territorial EU wide definitions.

A range of contractual tools

The next stage would be to assess the risks you have identified against the possible contractual mechanisms you can use in mitigation. These include:

- compliance with law obligations – should they apply to Brexit imposed changes?

- providing that changes in particular laws or new barriers give rise to rights to renegotiate or price adjust – but with significant changes or those which result in significant adverse consequences allowing for exit or suspension rights;
- agreeing renegotiation rights or costs allocation if Brexit or any associated market volatility or credit risk results in increased or reduced costs or reduced rate of return;
- considering transitional arrangements if exit rights are triggered;
- ensuring territorial restrictions or definitions continue to work in a post Brexit world.

I would be happy to assist you with any such reviews.

THAT’S ALL FOR THIS MONTH...

If you have any queries, comments or request for future bulletins then get in touch, I would be delighted to talk to you or meet at your convenience.



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