This checklist scopes out actions general counsels can take in preparation for a “no deal” exit by the UK from the EU in March 2019.

“No deal” means the UK leaving the EU with no withdrawal agreement and so without any transition period. This may happen if the EU and the UK government cannot agree or if the EU or the UK parliaments do not approve the withdrawal agreement, which is expected to be accompanied by a political declaration on the future relationship.

The negotiations on the withdrawal agreement are currently stalled on several issues, and the UK government's proposal for the future relationship faces much opposition. Time is short. In practice, Christmas is the likely deadline for agreement to be reached so as to allow for the parliamentary approval processes. An abrupt exit, where the UK leaves the EU and becomes a “third country” on 29 March 2019, will be inevitable without an agreement, unless the UK is able to revoke its Article 50 departure notice or agree an extension with the other 27 EU member states. Both the UK government and the EU are stepping up their measures to prepare for the consequences of no deal.

Individual businesses and investors should be prepared for and, where possible, try to mitigate any adverse impacts of a sudden change in the UK’s status as a member of the EU. Even with a transition period, some impacts could be felt immediately – especially where non-EU countries are concerned. In any case, transition may only postpone, not remove, the changes that Brexit will bring.

## Project management

1.1 Consider reengaging with or, if you have not yet done so, setting up a Brexit task force to identify issues and agree a co-ordinated action plan. Representatives from the following areas are likely to be needed:
- Heads of business units and strategy/operations
- HR
- Finance
- Risk
- Communications and PR
- Data
- Supply chain

1.2 Consider impact on legal team, including training requirements. Consider also impact on team resources/availability. Ensure structured to track legal developments, including changes to legislation and agreements with relevant non-EU countries (eg where EU has existing agreements which the UK will no longer be part of).

## Communications

2.1 Board updates. Likely to need to include:
- Exit process, timings and what is known about the likely terms of any deal
- Preparatory work/diligence done to date to gauge likely impact of Brexit on the business
- Risks and opportunities for the business
- Operational resilience and planning for economic shock
- Anticipated impact on key stakeholders, including employees, shareholders, suppliers, counterparties, regulators. Ensure co-ordinated and consistent messages
- Engagement with governments

2.2 When preparing financial reports for UK entities, be mindful of the Financial Reporting Council’s guidance on considerations following the EU referendum, in particular the need to be as specific as possible about the impacts.

2.3 Consider likely media interest. For example, have you previously made public statements about the impact of Brexit on business?

2.4 Consider disclosure obligations under stock exchange/listing rules. Usual rules apply.

2.5 Consider communicating to employees or other key stakeholders on impact and planning.
3 Employees

3.1 If deemed necessary or desirable to advise employees on their residency/immigration status, has this been done?

3.2 Consider immigration status of key personnel. Consider level of dependency on EU personnel in the UK (or UK in EU) and logistical and recruitment implications of potentially stricter immigration regimes.

4 Contracts review

4.1 Consider major contracts. Are termination rights exercisable, for example, in the event of new tariffs being imposed? Can different counterparties be substituted to ease any regulatory or contract fulfilment difficulties? Who carries the risk of delivery delays or price increases?

4.2 Scope need for review of standard term contracts and/or boilerplate clauses. Are any changes required? For example, consider whether an adjustment to territorial definitions to reflect UK withdrawal from EU is required; consider whether jurisdiction clauses in favour of English courts remain appropriate.

4.3 Will force majeure or material adverse change clauses in key contracts be triggered? Will depend on precise wording but, absent specific/precise wording to contrary, it is unlikely.

5 Trade and supply chain mapping

5.1 Be aware of the tariffs that will apply to UK goods entering the EU and the tariffs that the UK will adopt as its WTO schedules for EU and third country goods entering the UK. The imposition of tariffs will not only affect goods imported into the UK from the EU, but also those the UK exports into the EU.

5.2 Consider the processes and resources needed to deal with additional export and import controls and customs checks on goods travelling between the EU and UK.

5.3 Map your company’s supply chain to determine the origin of all component parts for goods and services.

5.4 Consider the impact of delays on goods in transit, and whether it will be necessary to hold larger stocks of critical supplies.

5.5 Carry out due diligence on all key suppliers of goods and services to ensure continuity of critical supplies.

For further details on changes to tariffs, supply chain mapping and questions businesses should be considering in relation to their supply chains, see our publication “Brexit Preparations – Supply Chain Mapping”.

6 Data services

6.1 Map data flows – where does data reside/where is data processed?

6.2 There is a risk the UK will be treated as a third country without “adequate” data protection rules, and transfers of personal data from the EU to the UK will be subject to additional restrictions. If data is a key part of your business, consider the cost and process involved in moving data services.

6.3 Consider using EU model clauses or serving relationships from a different EU group company if key customers/partners are in the EU/EEA.

7 Understanding and influencing government policy priorities

7.1 Consider the business’s priorities in terms of issues to be negotiated between the UK and EU/third countries.

7.2 Consider best way of ensuring these are understood by government negotiators. Consider contacting industry bodies for industry-wide view/approach.

7.3 Contact relevant regulators and agencies to understand their policies and priorities.

8 Strategic planning

Task force should consider risks and opportunities for the business arising from change of status of UK versus EU and third countries. Operational issues which task force may need to consider include:

> Case for establishing new base for operating within the EU or in the UK? Factors to be considered when deciding any new location will include regulatory environment, taxation, employment laws, language, talent pool and real estate

> What new licences or regulatory approvals might be required?

> Funding costs, loss of EU funding, possibility of new UK funding

> Impacts of currency fluctuations, interest rate changes or other short term reactions to no deal

> Whether there is any other action that can be taken in advance of the UK actually leaving the EU e.g can EU grants be drawn down early? Can eligible employees apply for citizenship rights?

This checklist is part of a suite of documents that also includes “A checklist for Brexit-proofing contracts” 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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