

BREXIT AND YOUR BUSINESS

HOW CONTRACTS PLAY A ROLE IN BREXIT PREPAREDNESS

The Brexit clock is ticking for all organizations to determine how Brexit effects them. It is clear that for all UK and European based-businesses, Brexit will have a dramatic impact on business operations. For any North American or Asian organization who does business internationally, there is a high likelihood that Brexit will impact them as well.

Organizations are starting to consider the impact of Brexit on their business relationships. Brexit may cause changes in currency and exchange rates, governing law, logistics, and trade rules - including tariffs. For this reason, organizations are starting their Brexit preparedness initiatives, and are realizing it starts with a clear understanding of how these elements are defined inside contracts.

CURRENCY VALUATION AND PAYMENT TERMS

The core value and commercial benefit from a contract may be impacted by foreign exchange and currency issues as a result of Brexit. If it results in wild swings in the currency markets, and contract value and invoicing provisions are pegged to the Euro or the Pound, and the services themselves involve global delivery from different countries, then one can imagine the uncertainty on business performance Brexit brings to organizations. In certain circumstances valuation swings could be anticipated as a trigger for termination, or provisions that may be tied to currency could be invoked to protect the organization or may be invoked against them and may shift risk ownership.

If currency changes mean it is no longer profitable for an organization to produce a product, they may look to invoke force majeure or termination provisions. What this means for the sourcing or procurement side of the business is that all of those goods and services necessary not only to keep the lights on, but to also drive their business forward are at risk for termination.

MOVEMENT OF GOODS AND SERVICES

It could also drastically effect logistics if Brexit results in changes in the movement of goods and services in and out of the UK. For example, a UK-based organization has a SLA that states a crucial product component being produced in Spain will arrive on a specific date. With Brexit, it now takes x amount of time longer because of delays and inspections at border crossings, and this component is critical for the organization's production and delivery of their product, many contracts are likely to be violated.

“The global economy is reeling from the implications of the country’s decision to leave the EU. Markets will face political and economic uncertainty for years to come. Unfortunately, the impact for American firms may be just as severe as for British companies.”

Forbes June 27, 2016

In addition, where business relationships are people-heavy in terms of labor or delivery, changes to the free movement of people could impact a party's ability to staff certain locations. This in turn could impact visa applications, import/export tariffs and taken together could change the underlying economics of the contract.

TERRITORY PROVISIONS

In some cases, Brexit may alter territory use or rights in a business relationship. If an organization has a license to use something within an applicable geography or specific rights in “the EU,” Brexit means those provisions or rights no longer are applicable to the UK, resulting in a material impact on rights and utilization. This would require a revised or new contract to cover the UK, and potentially the revenue or cost of the original agreement (i.e. a license to use) will have been dramatically altered.

GOVERNING LAW

Currently English Law includes concepts and references (covert and overt) to EU treaties. The very meaning of the phrase “English Law” will change once the UK withdraws and thus the underlying basis for business relationships will be altered. Of course, this impacts all companies having EU/UK engagement – either directly, or as part of their extended supply chain. This will result in attempts to renegotiate or repaper contracts if a supplier or suppliers, for example, now face higher tariffs on a component they sell to customers.

BREXIT PREPAREDNESS STARTS WITH CONTRACTS

Business relationships are defined by contracts between organizations. Assessing the impact of Brexit to a business, and then assessing what business decisions or course corrections need to be made to minimize the downside and maximize the potential upside of Brexit, starts with knowing what is in those contracts.

Organizations have two ways to find their thousands of contracts potentially affected by Brexit, and triage those of highest importance and impact. They can do it manually, with teams of people scanning corporate shared drives and repositories across the business locating all the contracts and then reading each one looking for specific wording. That data is typically entered into a spreadsheet for legal professionals to review. This process can take months or years, be very expensive and be prone to user error and subjective bias.

The alternative to manual review is to use Seal. Seal Software automatically discovers contractual documents, extracts metadata and clauses and provides a sophisticated search/graphical review to provide organizations an intuitive way to drill down to those contracts which need attention – saving cost and critically reducing the time to start Brexit preparedness programs.



Seal can immediately find both searchable and non-searchable contract types, centralize those in a secure repository, and then extract terms and provisions needed for Brexit analysis. They include:

- Jurisdiction
- Force Majeure
- Change of law
- Payment Terms
- Performance SLAs
- Termination provisions
- Contracting parties
- Start date
- Termination/end date
- And many others relevant to the business

These terms become the baseline for prioritizing the steps in Brexit preparedness, and power the business decisions needed to effectively deal with what Brexit may bring.

It is widely assumed that organizations, in an attempt to deal with the potential impacts of Brexit, will use whatever contract provisions they can within the law. They will leverage termination for convenience clauses, enact Force Majeure, invoke a break clause or similar. Organizations must have this information in advance in order to resist potential attempts by trading partners that may be detrimental. On the other hand, organizations must know if any of these provisions are present, in order to be the beneficiary of the changes driven by Brexit, and want to ensure they have a watertight case to enforce the contract. Either way, organizations must understand their positions, across all of their business relationships

THE FUTURE WITH BREXIT

With Brexit, there may be new treaties, regulations, or resolutions that take the place of EU governance within the UK. These potential changes are completely unknown and unpredictable. Because of this, the work needed to extract and analyze contractual terms and provisions must be “future proofed” against any outcome. With manual reviews, if new data is needed from large portfolio of contracts, but with Seal, all the pertinent contact data, so dealing with new regulatory or commercial mandates is much faster, and less disruptive to the business.

Business hates uncertainty. It is incumbent on those who manage an organisation to reduce that uncertainty in the most efficient and effective way possible. The first step in understanding how Brexit will impact your company is to know which business relationships and commercial terms are affected. Using Seal Software to reveal what’s in your contracts is a major step towards achieving deeper and clearer insight into how to address the changes with Brexit, and doing so quickly, at a reduced cost, and with the least disruption to the business.

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