IBB solicitors

Brexit audit and risk assessment for businesses

Review main areas of business likely to be affected by Brexit

IP rights and scope of application. Consider:
- Additional protection, eg applying for UK national rights to cover existing EUTMs and RCDs, where appropriate
- Terms of existing licences and IP agreements

EU funding sources, eg research grants, EIB financing, CAP funding. Consider:
- Effect on projects, cash flow and workforce
- Alternative funding sources

Borrowings, loans, security and investment plans. Consider:
- Reliance on access to finance and effect of potential reduction in investor confidence and increase in borrowing costs
- Security over assets or rights that rely on EU protection, eg some IP rights
- Counterparty risk and options for obtaining additional security
- Brexit disclosure requirements for public company capital raising

Data protection:
- Map EU-UK personal data flows, eg from EU consumers or EU service providers such as payroll processing or group companies
- Assess potential action required for continuity, eg EU model clauses or BCRs, or redirection of flow to EU group companies

Workforce. Consider:
- Reliance of UK business on EU workers and reliance of EU business on UK workers
- Immigration status of key EU employees in UK, and key UK employees in EU
- Likely effect of potential points-based UK immigration, particularly on unskilled and semi-skilled EU workers
- Reliance of workers on EU rights, eg freedom of movement, establishment rights, rights to provide cross-border services, recognition of qualifications

Identify any European Works Council (EWC) established under UK legislation and monitor requirements to amend or renegotiate EWC agreement

Consider access to labour and mitigation of potential loss, eg:
- Retention strategies, eg communications policy, Brexit resources for staff, legal support on immigration issues
- Staff reallocation
- Recruitment strategies
- Alternative technological measures

Legal expertise:
- Check that internal legal capacity is sufficient to deal with Brexit-related increases in workload
- Consider reviewing legal panel to ensure it covers the expertise required

Review cross-border trade including:
- Location of operations in UK and EU, eg production facilities and service providers
- Customer base and access to markets for goods and services
- Supply, production and distribution network (supply chain)
- Contractors' supply chains

Consider:
- Effects of tariffs on imports and exports
- Effect of non-tariff barriers on imports and exports, eg rules of origin
- Regulatory framework for products and services, and reliance on EU licences and authorisations
- Reliance on EU rights, eg four freedoms, provision of cross-border services

Plan long-term strategy, eg:
- Diversification to reduce risk
- Restructuring supply chains to maximise tariff, non-tariff and VAT efficiencies
- Corporate restructuring to preserve EU market access, eg incorporation of subsidiaries in EU, relocation to EU of UK-based production facilities, service providers or headquarters

Consider requirements and implications, eg:
- Timescale
- Capital cost
- Workforce
- Tax

Review material contracts and other significant agreements such as finance documents

Identify short- and long-term economic effects of decision to leave EU, eg inflation, borrowing costs, exchange rates, consumer confidence

Consider effect of fall in value of sterling and mitigation of currency volatility, eg hedging

Consider effect on cash flow and appropriate mitigation, eg:
- Identifying areas of cost reduction
- Shortening payment times
- Reducing credit given
- Increasing credit received
- Reviewing working capital facilities

Review insurance policies: do they or can they cover potential losses?

Are Brexit disclosures required in public company documents, eg prospectuses and financial reports?

Review long-term agreements, eg:
- Restrictions on potential Brexit strategies, eg relocation or restructuring
- Potential changes to commercial bargain (eg increased costs) or ability to perform agreement (eg loss of passporting)
- Whether events trigger clauses, eg termination, repayment, *force majeure*, MAC, hardship, change in law
- Opportunities for termination, assignment, novation or renegotiation

Review agreements coming up for renewal, proposed new agreements and standard form agreements, eg consider:
- Brexit strategies, eg relocation (break clauses)
- Counterparty risk
- Potential changes to business costs, pricing, KPIs, or access to finance, labour or markets

Are additional clauses required, eg:
- Brexit clauses (events triggering consequences such as termination, renegotiation or price adjustment)
- Key employees
- EU model clauses (data protection)
- Incorporation of EU law to ensure continued application eg GDPR, TUPE, Payment Services Regulations, Market Abuse Regulation

Do usual clauses require further consideration or amendment, eg:
- Governing law
- Jurisdiction and arbitration
- Currency denomination and allocation of currency risk
- LIBOR benchmark
- Trigger events and consequences

Key:
- **BCRs: Binding corporate rules**
- **CAP: Common Agricultural Policy**
- **GDPR: General Data Protection Regulation**
- **EIB: European Investment Bank**
- **EUTMs: EU trade marks**
- **KPIs: Key performance indicators**
- **MAC: Material adverse change**
- **RCDs: Registered Community designs**