Helping you see the bigger picture
Our contractual risk analysis and changes delivery for Brexit
As the date for UK withdrawal from the European Union gets nearer, managing risk exposure resulting from Brexit becomes ever more crucial. Whilst the precise nature of the UK’s future relationship with the EU and the impact this will have on business and trading arrangements is currently unknown, it’s not too late to assess trading relationships that have assumed EU integration and to future-proof them against inevitable changes.

Brexit is unlikely to have been envisaged by most businesses when setting up all but the most recent trading arrangements. Where it is not expressly dealt with in a contract, commercial mechanisms may not adequately deal with new Brexit exposures, for example:

- Could Brexit-related events amount to force majeure or trigger a right to terminate?
- If tariffs are introduced:
  - will this result in the business being liable for additional import/customs costs; or
  - could this give the counterparty the right to unilaterally increase the prices?
- How are references to EU law in a contract likely to be interpreted post-Brexit?
- What changes does the business need to make to its trading activities and entities to accommodate Brexit and how will these impact on its contracts?

**How we can help – risk analysis**

Using our Brexit Risk Analysis, we can help you answer these and other questions, understand the potential risks to your trading arrangements arising from Brexit (whether pricing, currency, regulatory, territorial, tariff, people, data or otherwise) and suggest measures to put in place to protect against or mitigate those risks.

Our Brexit Risk Analysis comprises a six-stage process which can be tailored to your business needs. As well as manual reviews of contracts, we offer, wherever possible, the use of advanced contract review technology to provide visibility of key provisions that expose your business to risk. This enables the development of a remediation strategy: Brexit proofing.

**How we can help – delivery**

In addition to our sophisticated Brexit Risk Analysis to help define the risks and an appropriate strategy for these, we can also assist with implementation of change, whether through the need for additional “in-house” resource or the outsourcing of reparation work leveraging our highly developed processes and technology.

**Staying ahead of the game**

Top level recognition from the Legal 500 for our Brexit team.

1. **Scoping your needs**
   We will initially scope your risks and requirements to focus on the key areas of risk for your business and create an agreed risk profile.

2. **Contract identification**
   We can use artificial intelligence techniques to aid the selection of contracts that need further analysis to extract key terms.

3. **Contractual risk analysis**
   We will review selected contracts to evaluate how risks arising from Brexit are addressed.

4. **Brexit proofing**
   Building on our Contractual Risk Analysis, we will suggest strategies to mitigate the risks inherent in your trading arrangements.

5. **Brexit resource**
   If further resource is required “in-house” by our clients to support Brexit-related work, they can draw upon our contract resource business (ES Agile) to provide legal and/or project management support at all levels.

6. **Brexit reparation**
   Brexit may give rise to major reparation of terms and conditions. Our managed service (ES Ignite) can assist with high-volume contract remediation by deploying the latest robotic technology, resource at appropriate levels and highly efficient processes to manage outreach from initial contact through negotiation to completion and archiving.
Executive summary

Our automated review has identified customers in the following countries.

These customer contracts contain no provisions allowing you to pass on tariffs applying post Brexit. This risk is to some extent mitigated by the price certainty that you have under your supply chain contracts.

Recommendations and next steps

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<th>Key sale agreement</th>
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<td><strong>Risk rating</strong></td>
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<td>Imposition of Tariffs</td>
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We recommend you renegotiate the agreement to incorporate a review mechanism allowing you to adjust prices should tariffs be introduced. You may be able to use your change in law termination right as leverage in such renegotiation.

If you are unable to renegotiate and if profitability of the agreement is materially affected, consider exercising your right of termination.
What happens next?

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