

# BREXIT IN BRIEF | COMMERCIAL CONTRACTS

*At 11:00pm on 29<sup>th</sup> March 2019, the United Kingdom will leave the European Union unless the Article 50 period is extended, the United Kingdom revokes its Article 50 notice, or a withdrawal agreement is agreed and concluded between the United Kingdom and the European Union providing for a later withdrawal date. Below is a brief overview of the potential implications of Brexit on any commercial contracts you may have in place or may be looking to enter into.*

## HOW MIGHT I BE AFFECTED?

- ❖ Whilst the vast majority of contract law is embedded in domestic legislation and common law, it is possible that areas currently harmonised with EU legislation see changes start to be implemented. These may include aspects of consumer rights law, the governing law and jurisdiction of contracts (which may lead to increased challenges enforcing contracts in other jurisdictions) and interest rates on late payment.
- ❖ Existing contracts are likely to face significant implications which may include:
  - Restrictions on the free movement of goods, services and people
  - Fluctuations in currency exchange rates
  - The imposition of tariffs
  - Restrictions or increased barriers on data protection and the transfer of data outside of the UK
  - The removal of passporting rights into EU member states (which may lead to it being illegal to perform some broadcasting and financial services contracts)
- ❖ Any negotiations concerning new or future contracts should assess and consider the above which may lead to more drawn-out and harder negotiations as well as increased costs.

## WHAT IF THERE IS NO DEAL?

- ❖ As above, whilst there is unlikely to be significant changes in the short-term to the governing laws, there would likely be significant impacts in respect of the commerciality of existing contracts in place in the event of a no-deal Brexit (which could include the imposition of tariffs, increased costs and the inability to fulfil contractual obligations).

## WHAT SHOULD I BE DOING?

- ❖ Review your commercial contracts for any provisions or arrangements which may be adversely affected by any of the above and establish if your contract contains any clauses which may provide for amendment or termination in the event that the contract becomes unviable (such as a *Material Adverse Change* or *Force Majeure clause*).
- ❖ Consider negotiating amendments to any provisions which may become unviable and including protections in any new or future contracts.

If you would like further information or advice in respect of the potential implications of Brexit, please contact Piers Larbey at [piers@fletcherday.co.uk](mailto:piers@fletcherday.co.uk) or on 020 7870 3870.