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HOW FAMILY BUSINESSES CAN BEAT BREXIT

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Family businesses account for more than two-thirds of UK businesses and many of these families have strong links with the European Union. The UK's exit from the EU could present them with significant risks, especially given that the regulatory framework that will govern the UK's future relationship with the EU is still unknown.

While nobody can foresee the economic outcome of Brexit, there are practical steps that family businesses can take to prepare for a future outside the EU.

The first step is to review all existing contracts. Businesses will need determine their exposure to any potential tariffs on goods and services that may be introduced post Brexit. They should also evaluate how exchange rate volatility could affect their contracts and may want to consider hedging against fluctuations in the value of the pound in order to avoid potentially large losses. It is also important to confirm whether EU membership is a pre-requisite to fulfil a contract. As an example, we have a client who has needed to incorporate a new EU-based company in order to continue to perform a contract for the European Central Bank post-Brexit, as the EBC requires all their approved suppliers to be EU accredited.

Next, where new cross-border contracts are contemplated, family businesses would be well advised to consider any jurisdictional issues that may arise. Under existing EU treaty arrangements, English judgments are fairly easy to enforce in other EU member states. It is far from certain that this will remain the case post-Brexit. Instead, businesses may wish to consider resorting to arbitration. This form of dispute resolution is recognised internationally and arbitral awards are widely enforceable arguably making it a more certain and effective alternative to traditional litigation.



It is also conceivable that Brexit may render performance of some contracts impossible. Contracts usually contain “force majeure” clauses which govern what will happen if performance is not feasible due to circumstances beyond the parties’ control. Some commentators believe that the courts are unlikely to accept Brexit as a force majeure event unless it has been specifically

included, meaning that the drafting of any such clause in new contracts needs to be carefully considered.

Family businesses should also consider the effect that Brexit may have on their labour force. The government is determined that freedom of movement will end on 29 March, 2019, the date for the UK’s exit from the EU. We have found that many of our clients rely on UK resident EU nationals to fulfil contracts and bridge the skills gap in the UK. One of our clients runs a modelling agency which is part of an industry heavily reliant on EU citizens and which now faces significant uncertainty given the lack of clarity about what rights EU citizens will have to live and work in the UK post-Brexit.

Businesses should also review any intellectual property portfolios. After Brexit, EU wide trademarks will no longer be enforceable in the UK and so the government has indicated that there will be transitional arrangements whereby holders of EU trademarks will gain an identical UK registered trademark immediately post-Brexit. Businesses should therefore confirm whether any of their trademarks are affected and ensure that they perform any of the formalities required to gain the UK equivalents ahead of Brexit.



Finally, family businesses looking to expand internationally may wish to focus on non-EU member states in the run up to Brexit. There is a trend among our clients to put plans for UK acquisitions on hold until after Brexit has completed and the framework of the new trading relationship between the EU and the UK is certain. We have seen acquisition budgets move to focus on non-EU targets.

Family businesses can be small and therefore the risks posed by Brexit could be significant. However, many family businesses have been running successfully for generations, seizing

opportunities in boom years and battening down the hatches in leaner times. Indeed, many family businesses are in the perfect position to benefit from potential opportunities post-Brexit. For example, smaller businesses often lack the resources to cope with large and complex regulatory frameworks which may mean that the de-regulation promised post-Brexit could be beneficial in giving them the confidence to expand and innovate. Brexit is both a risk and an opportunity and family businesses would do well to plan accordingly.

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