
EUROPEAN TOUR OPERATORS ASSOCIATION

Mishcon de Reya

Brexit Update – Business Continuity

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- EU Regulations and Directives – become part of UK law under UK (Withdrawal) Act 2018
- Multiplicity of amending Regulations already in place
- Free movement principles do not transfer – goods and services, capital, persons, and establishment

- Check contracts for reference to EU – e.g. resale agreements, licence agreements
 - Prepare amendments/side letters if necessary and both parties agree
 - Novation if new party(ies) are appropriate
- Will performance be an issue ? Audit supply chains, personnel and money flows
- Consider frustration/force majeure – unlikely (ref. EMA case) but more litigation is likely
- Check for price variation clauses (can be used to mitigate cost increases)

- UK judgments will no longer be enforceable in the EU and vice versa
- Consider choice of law and jurisdiction
- UK seeking to sign up to the Hague 2005 convention
- Choose arbitration for dispute resolution (separate non EU regime)
- Check for references to the EU Online Dispute Resolution platform (available to EU businesses only)

- Does your business transfer data from the EU to UK and vice versa?
- Change references to GDPR to UK GPDR. Regulation will sit alongside the DPA 2018
- Audit data flow. Data transfer from business to consumer and vice versa is not caught per se
- Data going to UK from EEA to controller or processor – will need standard contractual clauses
- Data going from UK to EEA will benefit from UK adequacy regulations but revise contract wording
- ICO website has useful tools to enable you to build appropriate contracts, import appropriate provisions (www.ico.org.uk)

- Consumer Rights (Payment Surcharges) Reg 2012 (as amended) prevents additional surcharges being added in respect of specified payment methods
- Will now only apply where both payment service providers used by the parties are in the UK
- Will facilitate charges for cross border transactions

- EU trade marks or designs will be deemed to create an equivalent UK right.
- If UK rights are assigned then ensure this is recorded with UKIPO
- Going forward need to register UK and EU rights separately.

QUESTIONS

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