

Brexit Revisited

by

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Now that the summer Holiday is over, are your outsourcing arrangements ready for Brexit? How do you prepare your sourcing arrangements for Brexit?

It's over a year since the decision and as with any major change you can't wait until you have all the pieces to be able to prepare. To quote from Mark Sanborn "Your success in life isn't based on your ability to simply change. It is based on your ability to change faster than your competition, customers and business". This article will provide questions and answers to help you at least keep up and maybe even do better than the competition.

KEY FOCUS AREAS

- ¶ Are all your contracts up-to-date and easily accessible? Are you clear about all the obligations, spanning performance, operational and compliance? Are they managed?
- ¶ Do you understand the key levers in your agreements that can be leveraged to help with major change and provide you with the negotiations leverage if you need it?
- ¶ Are you getting what you have paid for (not just the SLAs) and can any gaps be leveraged to deliver on the changes you will need as a result of Brexit?
- ¶ Ensure you clear the decks of the backlog of issues and disagreements that can get in the way of effective collaboration (consider seeking assistance from a Mediator or Advisor to accelerate this)
- ¶ Do you have a view of the likely changes to your contracts and services? The Rumsfeld questions (known knowns, known unknowns and unknown unknowns) e.g. cost pressures, business continuity, compliance etc.
- ¶ Is an adequate and clear process in place to provide an agile response for areas of change, compromise and collaboration with your service providers?

Contract and commercial managers responsible for critical outsourcing arrangements can prepare for this unfolding business environment to respond in an agile manner as well as creating a solid base with key service providers for responding to complex changes that are difficult to predict. It will be much harder to do things alone, but service providers will have limited capacity to help so the more prepared you are the more likely you will get attention.

Here are some considerations for activities that can be initiated irrespective of the eventual plans for Brexit (these actions are also good practice in maintaining effective outsourcing governance and will be a great basis for helping your other business priorities like Agile, IoT, Digital etc.).

Is all contract documentation in one place and up to date?

It sounds basic but too often many parts of an organization are working with varying versions of the documentation and only have access to limited components of the contracts. This makes disagreements open to misunderstandings. Some key actions are crucial:

- ¶ **Common repository** – A single version of the truth will be the basis of informed planning. Ideally agree a shared repository with the service provider(s). Link this repository to all subsidiary and reporting documents developed operationally.
- ¶ **Consolidation of historical changes** – Integrate all the formal and informal changes/practices that have evolved to the services. You won't have time to read all the change notes when you have to respond to urgent business needs.
- ¶ **Manage future changes in a structured manner** – Most agreements change over time to reflect the reality of business needs. I have found that a useful process is to batch up all changes to the contract into scheduled change packages and finalize them in sync with a regular dispute / issue resolution process. This will make any necessary “commercial negotiation” easier for both parties.

Do you understand your contract well enough?

Commercially responsible collaboration requires a tough but fair approach, but first understand the contract. Do you have enough staff that fully understand the contract(s) and relative obligations well enough to be able to evaluate the impact of various scenarios that Brexit will entail? For Brexit readiness, this knowledge will be critical if you are to take a commercially responsible approach to changes. Some items to consider:

- ¶ **Contract Handbook** – Create a succinct (up to date) overview of the key components of the contracts, my experience is that a presentation format that is easy for regular reference with appropriate warning for when to “call a friend”.
- ¶ **Core team that knows the contract** – Identify a small team from various functions that are tasked to fully read and understand the contract(s) to make sure that all of the key elements can be leveraged when needed. This is a good

time to use your legal advisors to help you identify the clauses that can be helpful for Brexit.

- ¶ **Key levers** – Create a list of key change support levers that can be collaboratively used to aid planning, for example, you may have arrangements for refresh capital that can be used to fund some of the investments needed.
- ¶ **Search ability** – Now that all the documentation is in one place, make sure that all that documentation can be easily searched so that when an issue comes up, you can speedily get to the right section. This will help reduce disputes if both parties can see the commitments as written in the contract.

Are you getting what you have already paid for?

Agreements run to thousands of pages over many separate documents. Complex outsourcing contracts contain many deliverables and obligations (D&Os) on both parties in addition to the SLAs. These D&Os are often actions designed to maintain an effective environment for dealing with irregular scenarios e.g. the preparation of an exit plan or a capacity plan or capital investments aligned to an agreed refresh plan. These deliverables are often forgotten about but can provide a critical basis for the management of any changes required for Brexit. I normally develop a trackable schedule of all D&Os so that I can validate delivery. Missed D&Os can also be used to leverage the cost of future changes.

Clear the decks, do you have too many issues and disagreements getting in the way of collaboration?

Is the effective flow of collaboration and communication being clogged due to a backlog of issues and disputes built up over a number years? These issues can become a festering sore that prevents collaboration and dilutes trust and confidence. As you prepare for Brexit, you really need this backlog addressed to strengthen the goodwill that comes from a collaborative relationship. These disputes divert energy away from collaboration and focus energy on arguments. Some things you can do:

- ¶ **Visibility of all issues and disputes** – You need to have a single log of all issues and disputes so that all stakeholders can see what they are and each sides perspective and how long they have been festering.

- ¶ **Proactively identify issues** – Because of other planning activities for Brexit, you may already have a number of issues that will be coming up. Get these on the table as soon as possible so that you have greater certainty for your likely needs in the future.
- ¶ **Establish an “anti-silting” process** – Just as a river clogs up over time if not cleared due to silt build up, sourcing relationships also require regular clearing. Think about establishing a clear-out session to address and resolve built up issues. I would manage this as an off-site process with escalation of unresolved issues to sponsoring executives for a “business commercial negotiation” or some may call it a “horse trade”. Using a commercial mediator for this purpose will often deliver faster results.

Do you have a handle on your Rumsfeld questions (known knowns, known unknowns and unknown unknowns)?

There is a great deal of comment and advice on the various impacts that Brexit will have and some of these may impact your outsourcing arrangements. There are probably too many options to be able to plan for all. However, I recently conducted a joint workshop with key stakeholders from the client and service provider teams to identify a joint plan of likely changes and how we need to address them. This also allowed us to agree on the best approach to providing an agile response as more requirements emerge. Interestingly, the end result was a good combination of the key areas of concern for both. The real list of scenarios was very small but a lot of agreement was reached on process for addressing the unknown unknowns. Some key areas of proactive actions that both sides agreed on were:

- ¶ **Pressures to reduce costs** – The first request for supporting Brexit plans will be for cost reductions to help fund some of the activities - look at overlaps, duplications, and activities that can be removed / temporarily suspended to minimise wasted effort and costs on both sides.
- ¶ **Locational changes** – Services that may have to move from current location. What are the likely candidates and for these candidates do you have accurate inventory as well as the data and cost information to build a business case as soon as possible.
- ¶ **Financial modelling** – Many of the changes needed will require an initial financial model to help decide on the approach before a final decision is made. Create consistent models for building a business case with an agreed standard

set of volume and cost data so that the response on what if questions can be as agile as possible.

- ¶ **Outsourcing contract changes** – Administrative changes might be required for contracts. Many law firms have provided information on this but have the key counsel on both sides aligned to make the changes as uncontentious as possible.
- ¶ **Business continuity** – To support changes that might risk effective business operations, e.g. location changes. Ensure you have an up to date Business Continuity plan for any functions that might need to move and changes needed to these plans.
- ¶ **3rd party contracts** – Roadmap for changes to key 3rd party agreements. Make sure you know what changes you need as these come up for renewal and which ones need to be proactively extended for both parties in order to maximise protection.
- ¶ **Risks** – Management of the risk register and to evaluate those risks that need specific management as a result of Brexit.
- ¶ **Compliance** – Compliance obligations can increase during these times. Establish a clear and agreed workflow for responding to this eventuality beforehand. Here, look to your service providers for help in identifying responses accepted in other organisations. Inform key people of what is expected of them. Take their consent to act accordingly.
- ¶ **An effective exit plan** – In the worst case scenarios you may have to change service providers for some services/geographies. Do you have an up to date plan that can be relied up to make this happen as painlessly as possible?
- ¶ **Agile Governance** – How effective are your processes for the monitoring and management of issues that arise in these areas and how will the structures have to change? Make sure you consistently engage with key service providers and other stakeholders. It will help you to speedily resolve issues, actions and disputes when you need extra support.

In summary, establish a disciplined basis on which to manage the relationship where the parties can respect each other's commercial positions and find a collaborative basis on which to reduce each other's risks. If issues come up, start from a position of strength by knowing the terms of the agreement and be open to renegotiate with your strategic service providers. Not many people are prepared for Brexit in their contracts so neither party would have directly protected against the risks involved. You will therefore need your service providers support when the going gets tough so prepare the ground to effectively work with your key partners.

About the author: Elesh Khakhar is a Project Partner at LEXTA and an outsourcing industry veteran. He has been involved in the negotiations and management of over \$25bn of agreements. Elesh has worked as a client of services for a number of investment banks, as an outsourcing advisor for consultants TPI (now ISG) leading the European CIO practice and as a business development executive for a number of outsourcing service providers focused on major deals.