Although the Companies Act 2006 and the raft of secondary legislation made under it have been heavily influenced by various European Directives (notably the Company Law Directives, Accounting Directives and the Shareholder Rights Directive), Brexit will have little immediate impact on company law in the UK. Given the history of the Companies Acts in the UK and the extensive consultation process which gave rise to the Companies Act 2006 itself, the key features of company law, including the types of companies which can be incorporated, the role of Companies House as Registrar, directors’ duties and shareholder remedies, and the rules on accounts and audit are expected to remain generally the same.

Groups may wish to review their current corporate structure and consider the importance of and reliance on companies incorporated in the UK and in the EU and also the use of branches and representative offices.

UK incorporated companies which have their centre of operations in an EU Member State and vice versa should consider whether Brexit may impact on their legal status and the protections that flow from it. Currently, under the EU right of establishment rules, a company or partnership incorporated in any Member State must be recognised in that Member State even if the company is being managed from another Member State and vice versa. Once the transition period ends in December 2020, the right of freedom of establishment will be lost for the UK (unless covered in any future relationship agreement between the UK and the EU). This could have an impact in those Member States (including Germany and Austria) which apply a “real seat” theory to companies and partnerships. Partnerships and companies incorporated in the UK and which are managed from Member States which follow the real seat theory may lose their limited liability status. Companies incorporated in Member States which follow the real seat theory and which have their central management in the UK may be liable to be wound up.

The registration of a UK establishment by EU companies will not be materially affected by Brexit because the rules relating to UK
establishments apply equally to companies in and outside the EU. UK companies with subsidiaries, establishments or branches in EU Member States should also not expect any immediate change in company law matters (although they may be required to provide additional information to the relevant local companies registry). The key to the impact of Brexit for EU companies with establishments in the UK and for UK companies with establishments in the EU is not company law but the regulatory and trade framework for the type of business that they conduct, ie whether or not the ability of that entity to provide goods or services to and from the UK is affected by Brexit (see, for example, accompanying section: Banking and Investment Firms). The methods of re-domiciling from the UK to an EU jurisdiction and vice versa will be more limited following the end of the transition period. In particular, the EU Cross-Border Merger Regulation only applies to mergers between EU incorporated entities and so a UK company will not be able to undertake a cross-border merger after December 2020. In addition, a “Societas Europaea” (SE) which has a registered office in the UK can, after December 2020, choose to become a new type of UK PLC, a UK Societas, or will need to move registration to an EU Member State to retain its SE status. Those SEs with registered offices in the EU will no longer be able to move their registered office to the UK and those operating partly in the UK may be required to register a branch or establishment in the UK (they are currently exempt from registration).

Groups will also need to work through the content of each company’s statutory accounts following Brexit. A number of exemptions in relation to information in individual company’s accounts are based on information being included in an EU parent’s group accounts instead. For example, a UK company is currently exempted from having to prepare individual accounts if it is dormant and part of a group of companies with an EU parent company that prepares group accounts – it is expected that exemption will only continue to apply after the end of the transition period if the parent company is established in the UK.

More generally, companies will need to consider the impact of Brexit (good or bad) on their business, including any specific potential impact on their business model and strategy and also its more general impact via changes in exchange rates and to the economy. For companies that have publicly traded securities, one consideration will be whether that impact, as the details of the future free trade arrangements become clearer, creates an inside information announcement obligation. In most cases, future free trade related matters will not be inside information because the information about them will be in the public domain. However, particularly as regards a change in financial performance or prospects which is not in line with market expectation, companies will need to assess in the usual way whether they have inside information and their announcement requirements, in consultation with their legal advisers and brokers. In relation to periodic financial reporting, the Financial Reporting Council has issued guidance on disclosures in the light of Brexit and expects companies to keep the potential impact of Brexit on their business under review.

Companies should ensure they distinguish between specific and direct challenges to their business model versus implications of broader economic uncertainty. Brexit and future free trade agreement related risk factors will also need to be included in prospectuses and information memoranda for new securities and debt issues.

**"Brexit will have little immediate impact on company law in the UK."**

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**EU 2014/537 and Prospectus Regulation (EU 2017/1129), continues to apply in the UK until the end of 2020**

- there have not been any changes made to the Companies Act 2006 or the Accounting Regulations as a result of exit
- issues relating to groups of companies and reciprocal recognition etc may be dealt with in any future relationship/trade deal between the UK and the EU27

**At the end of transition – will there be elements of no deal?**

- At the end of the transition period, if the new trading relationship is not in place, there could be a no-deal at that point. There will be no clarity as to what will happen until towards the end of 2020 and no-deal guidance therefore remains relevant. See the accompanying section: Leaving the EU - The process and preparations
- The body of EU law in force at the end of 2020 will be imported into UK law (with necessary amendments) under the European Union (Withdrawal) Act 2018 and the UK legislation made to implement EU law will be retained, with suitable amendments – this will be called “retained EU law”
- A lot of the secondary legislation to make such amendments has already been made, including regulations to make minor amendments to the Companies Act 2006, Accounting Regulations and retained Market Abuse Regulation, but further adjustments may be required by the terms agreed for the future relationship
- The UK Financial Conduct Authority and Takeover Panel have also consulted on changes to their rules that will be necessary as a result of any no-deal exit in relation to the governance of listed companies