



Corporate law

SEPTEMBER 2019

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 rest of the EU and also the use of branches and representative offices.

UK incorporated companies which have their centre of operations in another 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 UK ceases to be a member of the EU, 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 currently apply equally to companies in and outside the EU. UK

The section is part of our [Brexit Legal Guide](#).

Brexit sources of information relating to corporate law:

No Deal

- If the [Withdrawal Agreement](#) endorsed by the EU Council on 25 November 2018 or the [Political Declaration](#), or some version of both, are not approved by 31 October 2019 and there is no change to the exit date, the UK will cease to be a member state on that date without any transitional period
- The body of EU law in force at that time will be imported into UK law (with necessary amendments) under the [European Union \(Withdrawal\) Act 2018](#) and UK legislation made to implement EU law will be retained, with suitable amendments – this is called 'retained EU law'
- A lot of the secondary legislation has already been made, including regulations to make minor amendments to the [Companies Act 2006](#), [Accounting Regulations](#) and retained [Market Abuse Regulation](#)
- The Government has published a series of 100+ practical no deal notes with advice for companies, including

companies with subsidiaries, establishments or branches in other 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 another EU jurisdiction and vice versa will be more limited following Brexit. 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 post-Brexit. In addition, a 'Societas Europaea' (SE) which has a registered office in the UK can, post-Brexit, chose to become a new type of UK PLC, a UK Societas, or will need to move registration to another EU member state to retain its SE status. Those SEs with registered offices elsewhere 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 Brexit 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 Brexit arrangements become clearer, creates an inside information announcement obligation. In most cases, Brexit related matters will not be inside information because the information about Brexit itself 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 the Brexit vote 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 risk factors will also need to be included in prospectuses and information memoranda for new securities and debt issues.

ones on [Accounting if there's no Brexit deal](#), [Auditing if there is no Brexit deal](#) and [structuring your business if there's no Brexit deal](#)

- The UK [Financial Conduct Authority](#) and [Takeover Panel](#) have also consulted on changes to their rules that will be necessary as a result of a no-deal Brexit in relation to the governance of listed companies

Deal/transitional period

- If approved by the UK Parliament, the Withdrawal Agreement, or some version of it, will set out arrangements for the UK's withdrawal from the EU - when the UK will cease to be a member state
- A transition period will follow the date of the UK's EU exit up till at least the end of 2020, possibly the end of 2021 or 2022
- During transition, EU law will continue to apply in and to the UK and the UK will continue to trade as part of the Single Market
- The Withdrawal Agreement will be accompanied by the Political Declaration on the future relationship between the UK and the EU. This will comment on the future trading relationship between the EU and the UK
- Means:
 - directly applicable EU legislation, such as the [Market Abuse Regulation \(EU 2014/596\)](#), [Audit Regulation \(EU 2014/537\)](#) and [Prospectus Regulation \(EU 2017/1129\)](#), will continue to apply in the UK until at least 18 months after exit
 - there will not be any immediate changes to the [Companies Act 2006](#) or the [Accounting Regulations](#) upon exit
 - issues relating to groups of companies and reciprocal recognition etc may be dealt with in any future relationship agreement between the UK and the EU27
 - any attempts post-Brexit to remove certain regulatory burdens on business which were previously derived from EU legislation may be impacted by any such future relationship/trade deal

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

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