



brownejacobson^{LLP}

Brexit Overview

Your Corporate Structure and Brexit

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A limited part of UK company law derives from European law, and the position is unlikely to change dramatically immediately following the end of the transition period. The Government plans to make only minimal amendments to enable legislation in this area to continue to function. However, you may still benefit from reviewing your structures to determine whether they are still fit for purpose and continue to fulfil the right conditions. We can help you navigate uncertainty, mitigate any legal risks and even find ways for your organisation to capitalise through a more efficient corporate structure.

Key Issues

Societas Europaea

(public limited company subject to EU-wide laws)

Following the end of the transition period these will no longer be available to businesses incorporated in the UK. How will this affect the current entities in your group?

Cross border merger regime

UK companies will not be able to take advantage of the Cross-Border Mergers Directive. How will this impact your corporate strategy?

Recognition of UK companies across the EU

From an EU perspective, UK-incorporated companies will become third country companies. Have you assessed the legal risks of this?

European subsidiaries

These subsidiaries are being used by many groups, including from the US, to secure access to the single market. Is this an option for your corporate group?

European branches

EU branches of UK-incorporated companies will become subject to third country company rules and regulations. Have you assessed the impact on your EU branches?

Equity capital markets

The UK's continued alignment with the EU wide framework for capital markets will be subject to negotiation and possible future divergence. Have you assessed the risks to your business?

Joint ventures

Commercial terms in long-term joint venture agreements may have unintended consequences following the end of the transition period. Have you reviewed your current JV arrangements?

Accounting, audit and other compliance

It is very likely that future changes will be needed to the way you prepare accounts and conduct audits if you have operations elsewhere in the EU. For example, if you operate any branch or subsidiary elsewhere in the EU you will need to comply with the specific accounting and reporting requirements for such businesses in the relevant EU country - Companies Act 2006 compliance may no longer be sufficient.

Where you have parent companies or subsidiaries incorporated elsewhere in the EU, certain exemptions relating to the preparation of individual accounts may no longer be available. You will need to find out if you need to prepare group accounts.

All UK incorporated companies which report under EU IAS will need to report under the UK equivalent going forward.

At present, generally a company may not extend its accounting reference period more than once in any five-year period. An exception to this general rule is that a subsidiary or parent of a UK or EEA undertaking may change its accounting reference date to align with that of the other undertaking. At the end of the transition period the exception to the general rule will be restricted to UK parents and subsidiaries only.

Have you considered how this might impact your future accounting and auditing responsibilities?

'Real seat' theory

As of 1 January 2021 UK incorporated companies will become "third country" companies - meaning that the legal personality and limited liability of UK companies having their central administration or place of business in one of the remaining EU Member States may not be recognised. The position could vary depending on the relevant Member State's national law or international law treaties. Potentially, the UK company's shareholders may not benefit from limited liability and could become personally liable for the business' actions and liabilities abroad. Has this been reviewed (where relevant) and have possible alternative corporate structures been considered to mitigate potential liability risks?

Company directors

Certain EU Member States require that at least one director is an EU national - this should be carefully considered if you have UK directors on the board of your European subsidiaries (especially where they are a sole director). The position will remain unchanged in respect of UK incorporated companies, which can continue to have non-EU residents appointed as directors - although it should be noted that EEA companies acting as corporate directors of UK companies will need to file additional information with Companies House from the end of the transition period.



How We Can Help You

Initial planning

We will provide you with an overview of the key risk areas, issues to consider and a set of preliminary action points.

Risk analysis

We will work with you to produce a risk register and Brexit project plan to help you with the risk mitigation and contingency planning process.

Initial audit

We will carry out on- or off-site assessments of specific areas, as well as an overall health check covering key corporate governance and structure issues.

Bespoke advice

We will provide tailored advice on specific projects like joint venture arrangements, intra-group reorganisations and moving to a different jurisdiction.

Ongoing support

We will provide continuing legal and project management support to help you adapt to legislative and policy changes brought about by the end of the transition period.

Action Points

01**Understand the impact of Brexit on your corporate structure**

Determine the key priorities to resolve in order to position your business to best meet your own needs and those of your customers.

02**Review your strategic and group structure plans**

Evaluate your plans and consider the impact of the end of the transition period on M&A and PE/VC deal terms for transactions in contemplation.

03**Consider setting up EU subsidiaries**

Assess your need for continued unhindered access to the EU single market and the potential benefit of an EU subsidiary.

04**Assess the impact on your ongoing audit and accounting compliance requirements**

Identify any future changes to accounts preparation, audit processes, financial reporting and any other regulatory requirements.

For more information,
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