

THE IMPACT OF BREXIT ON EXISTING UK COMPANY LAW AND ITS FUTURE DEVELOPMENT

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Every business involved in UK automotive is organised into some form of corporate entity which, usually, provides limited liability to its owners and a clear control structure through the board of directors. UK company law has developed closely with EU law over the last 40 years and is very unlikely to change radically once Brexit occurs. We will look at areas that might be ripe for change following Brexit and assess how these may impact businesses and what should be done now to plan for the future.

As with many areas of law in the UK, our company law has been heavily influenced by our membership of the EU and the wish to ensure that member states have similar regimes for the existence of companies and other trading bodies.

Although there is a broad range of corporate entities (companies limited by guarantee, unlimited companies, limited liability partnerships, partnerships, etc.) this note focuses on limited liability companies as formed under the Companies Acts of 1948, 1985 and 2006. The vast majority of trading companies use public or private limited companies so this will be of relevance to most people.

For completeness we do mention the very specific EU concept of *Societas Europa* at the end of this note.

We have set out this note in the form of a Q&A:

Will my company change on Brexit?

Brexit itself will not cause any change to the legal status of companies incorporated in and operating within the UK. Although a good deal of UK company law is based on EU

directives, the Companies Act 2006 and other domestic UK legislation will continue in force as at present unless and until the UK Parliament votes to amend it. For companies which are incorporated in the UK but have their central administration or principal place of business in the EU-27, see "[Will the shareholders still have limited liability?](#)" below.

Can a UK company trade in the EU?

Almost certainly, yes. The problem at present is that no-one knows on what terms trade will be able to take place. Unless the UK remains within the existing EU customs union, or an alternative free trade area (such as that which applies to Norway), trade across state borders will be subject to some form of customs, duty or tariff regime which will be likely to impact on pricing and profit margins. If there is no deal between the UK and remaining EU member states on trade terms, the default position is that World Trade Organisation rules would apply.

Can I have EU nationals as directors on my board?

There has been no suggestion that citizens of other EU member states cannot continue to hold office as directors of UK companies. Any EU citizen already living and working in the UK will be entitled to remain after Brexit. There is a further proposed "transition period" of around two years within which EU nationals who do not already live and work in the UK will be allowed to do so, but the terms of this proposal (including the rights that those persons would enjoy) are not yet agreed.

What will happen to my EU subsidiaries?

Subsidiaries incorporated in other EU member states will continue to be subject to their own domestic laws. As set out above (see "[Can a UK company trade in the EU?](#)"), inter-group trading between UK and EU companies may be subject to some form of customs, duty or tariff regime. They will not cease to be subsidiaries automatically as a result of Brexit.

Will my EU parent company have to do anything?

In the short term, no. UK citizens who are directors of companies incorporated in other member states will be able to continue to hold office (and to live and work in other EU states where they are already doing so).

Will the shareholders still have limited liability?

The European Commission has issued a notice in relation to how UK incorporated companies, as "third country" entities, will be regarded under European law. This states that "Member states will not be obliged to recognise the legal personality and limited liability of companies which are incorporated in the UK but have their central administration or principal place of business in the EU-27". Such recognition would depend on the position under the relevant domestic laws and on international law. UK companies with their central administration or principal place of business in the UK would be unaffected.

Will the company still have to file accounts?

Yes. As stated above (see "[Will my company change on Brexit?](#)"), UK company law will remain in force as currently unless and until amended by Parliament.

Ditto confirmation statement (formerly annual return)?

Yes.

Will it cost any more to administer a UK company?

UK company law will remain in force and there are no proposals to change the identity, structure, cost base or charges of Companies House as the relevant Government agency for dealing with the administration of companies in the UK.

Can I have the same auditors across a UK/EU group?

This will depend on whether or not the auditors have a presence in the relevant EU member states (for example, a local office which has the necessary local authorisations to

audit companies incorporated in that state).

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