

Corporate structuring projects and the Brexit – Time to act now? Potential Brexit consequences you need to be aware of

The Brexit will affect cross-border restructurings relating to the UK – we show you the changes you can expect.

If you are currently dealing with the planning or implementation of cross-border corporate restructuring projects relating to the UK, you should keep in mind the potential consequences of the Brexit and plan accordingly. We show you the consequences you can expect.

Corporate restructuring projects – in other words, changes in the legal organization of a group – are prone to delays. This is true not only for the implementation phase but also for the planning phase, during which e.g. tax implications and the legal implementation with due regard for company law and labor law must be examined in detail. In addition to that, not all corporate restructuring projects are run under immediate time pressure, especially if their aim is to realize long-term efficiency gains. And while “important and urgent” other projects keep the legal and tax departments busy, the “important but not urgent” restructuring projects often end up being put on the back burner. In light of Brexit this is not without risk, in particular for projects involving the UK.

Components of a restructuring project

Corporate restructuring projects typically consist of numerous individual steps and components, including the following common elements:

- Transfer of assets or rights (i.e. shares in companies, moveable goods, real property, rights or amounts of money)
- Formation, cancellation or amendment of intra-group contracts (i. e. finance, service or license agreements, inter-company agreements)
- Measures taken under transformation law (i.e. mergers, spin-offs, changes of form)
- Corporate law processes (i.e. formation of a new company, liquidation, rebranding, transfer of the registered office, capital increase or decrease)
- Labor law processes (i.e. signing and termination of employment contracts, transfer of employment relations)

All elements can entail cross-border implications.

Implications of Brexit for UK-related projects

If several components entail cross-border implications from an EU member state to the United Kingdom, a number of significant changes concerning the implementation are expected to occur after Brexit.

Some of the potential effects on the individual components Brexit may give rise to are summarized below.

Transfer of assets or rights	The possible elimination of tax advantages for intra-group transactions between the EU and the UK granted by the parent-subsidiary directive (Directive 90/435/EEC), requires particular attention to an accurate assessment of the transferred capital goods.
Formation, cancellation or amendment of intra-group contracts	Since from the data protection point of view, the United Kingdom risks being a “third country” after Brexit, it is reasonable to be particular prudent during transfers of personal data from the EU to the UK – even within groups. The debate on the Safe Harbor provisions which have been declared invalid by the ECJ in 2015, demonstrates the difficulties involved in the data transfer with third countries.
Measures taken under transformation law	Brexit may lead to the inadmissibility of cross-border conversion measures, in particular mergers between member states and the United Kingdom. It may also be feared that with the removal of protection granted by the Mergers Directive, numerous restructuring projects with UK- relevance can no longer be treated tax-neutral.

Corporate law processes	Brexit may involve significant liability risks for the shareholders of a liability limited UK company (i.e. the Limited) headquartered in an EU- member state.* Still unclear is also the fate of the Societas Europaea (SE) with registered office in the United Kingdom.
Labor law processes	The removal of the free movement of workers which is provided in the TFEU may lead to the strengthening of residence conditions for foreign employees in the United Kingdom. It is also possible that the requirements for employees coming from the United Kingdom and being delegated to a member state may change. The provisions on the transfer of undertaking (TUPE) would not be directly affected by Brexit, but the absence of applicability of Directive on Business Transfers (Directive 2001/23/EC) to the UK may lead to a post-Brexit de-harmonization of the TUPE regulations.

* Click [here](#) for an outline of the legal risks for “German” Limiteds.

Résumé

It remains to be seen what detailed impact Brexit will have – some of the effects described above may be less severe than feared and might be weakened or entirely averted through international treaties. However, it is certain that restructuring projects with UK-relevance carried out over the next few years will always encounter legal uncertainties – and that the well-known and proven “toolbox” in planning and implementing restructuring projects will only remain available for a limited period of time. Those who prefer operating on familiar territory should therefore aim for an early implementation of UK-related restructuring projects.

Discover more

"Der Betrieb" - Article [Brexit](#)

UK Limited - [Brexit: „German” Limited – unlimited?](#)

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