
Briefing

Brexit and Corporate Structures: Planning for Uncertainty



INSTITUTE OF DIRECTORS
IN IRELAND

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Although the outcome of negotiations between the UK and the EU still is uncertain nonetheless it is possible to identify some areas of focus for Irish companies with UK directors, a UK presence or UK companies within their corporate group.

Legal Presence

Corporate structures are put in place for a variety of reasons and often include an Irish registered company with a presence in the UK, for example, a UK incorporated subsidiary or holding company. These structures will need to be reviewed to determine whether they are still effective for their intended purpose and / or that they continue to fulfil conditions necessary to avail of relevant exemptions, particularly those availing of tax reliefs or accounting and reporting concessions.

Considerations

EEA Resident Director

The Companies Act 2014 (the “Act”) requires every Irish registered company to have at least one director who is resident in an EEA member state failing which an insurance bond is required or a certificate (from the Registrar of Companies) that the company has a sufficient economic link is necessary. A company relying on a UK-resident director will need to consider whether a bond needs to be secured or whether the director should be replaced with or supplemented by another director who is resident in an EEA member state or to obtain the appropriate certificate from the Registrar of Companies.

Guarantee by Holding Company

Under the Act there is a procedure whereby a subsidiary company can file consolidated financial statements of its holding company (established under the laws of an EEA member state) rather than to file its own accounts, provided that the holding company provides a guarantee of the subsidiary's commitments and liabilities. If the relevant holding company is established in the UK, then any such arrangement will need to be re-considered.

Filing Exemptions

The Act provides that a holding company that is a subsidiary undertaking of an EEA-registered undertaking may avail of the exemption from the obligation to file group financial statements where certain other requirements are satisfied. These may need to be considered in light of a group's current filing arrangements.

Mergers, Reconstruction and Amalgamation

Cross-border mergers involving UK-registered companies will no longer be permitted under the Cross-Border Merger Directive because for that to apply at least two of the merging entities must be governed by the laws of different EEA member states.

It is a consideration in determining whether Reconstruction and Amalgamation of Companies Relief under section 80 of the Stamp Duties Consolidation Act 1999 can be validly claimed that the acquiring company must be a limited liability company incorporated in a EU member state or in an EEA member state.

Branch Operations

A UK company that has registered as a branch in Ireland will become a third country business. The documentation to be filed in the Companies Registration Office in Ireland will change (although otherwise there ought not to be any material adverse change in the company law circumstances of the UK company's Irish branch).

Conclusion

In reviewing their corporate structures, businesses should ask whether they will need to establish a new legal presence or business presence elsewhere in the EU whether by way of incorporation, branch or by a strategic merger or acquisition. If that is the case, then matters such as regulatory consents (where relevant) and contract implications will also need to be considered.

Further information is available from



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Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.



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