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# Briefing

## **Be Brexit Ready:**

### Irish Corporate Structures



INSTITUTE OF DIRECTORS  
IN IRELAND

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Considerable uncertainty remains on what will be agreed in terms of the relationship between the UK and the EU once the transition period ends. However, it is essential for businesses to consider Irish company law implications of Brexit for certain corporate structures such as those UK entities with Irish businesses and, Irish entities with UK directors or a UK 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.

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## **Irish legal presence**

### *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, unless it can obtain a certificate that the company has a sufficient economic link with Ireland. 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 alternatively if the company may be able to demonstrate a real and continuous link to economic activity in Ireland in order to obtain the appropriate certificate (by application to the Revenue Commissioners and the Registrar of Companies).

### *Guarantee by holding company*

Under the Act there is a procedure whereby an Irish subsidiary company can file consolidated financial statements of its holding company (once such holding company is established under the laws of an EEA member state) rather than 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 an Irish 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.

### *Cross-border mergers*

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. Cross-border mergers involving a UK company that are currently contemplated or which are in progress should be completed by the end of the transition period because the relevant court will not have jurisdiction to make the necessary orders to give effect to the merger after that date. It will still be possible effect a cross-border merger by business transfer but this will not have the same efficiencies of automatic transfer of assets and liabilities and of automatic dissolution of the transferor company.

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 an EU member state or in an EEA member state.

### *UK qualified auditors*

Irish companies, with UK qualified auditors, may need to appoint different auditors. It remains unclear whether UK qualified auditors, currently recognised in Ireland, will in future be considered to be third country auditors and so have their registrations in Ireland withdrawn. They would then be subject to the same assessments as auditors from non-EEA member states for the equivalence of their audit regulatory framework and the adequacy of their competent authorities before they would be recognised here to act as auditors.

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## Branch operations

A UK company that has registered as a branch in Ireland will automatically become a third country company (without the need to actively re-register as such) so that the rules relevant to branches of third country companies will apply. The documentation to be filed in the Companies Registration Office in Ireland will change from 1 January 2021, particularly in relation to accounts where exemptions for EEA companies will no longer apply. Otherwise, there ought not to be any material adverse change in the company law circumstances of the UK company's Irish branch.

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## Conclusion

If businesses have not already done so, in reviewing their corporate structures, they 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. Brexit could affect businesses in several different ways, depending on what happens in the coming months, but its effect on corporate structures and restructuring are amongst the certainties that need to be addressed.

*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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