

# Key issues for corporate transactions and corporate law

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## Summary – the key things you need to know

- Corporate M&A activity in respect of UK corporates remains most likely to be affected by the commercial risks and opportunities presented by Brexit and the attractiveness of the UK as a post-Brexit investment location.
- The UK Companies Act 2006 will remain the cornerstone of the regulation of UK and overseas companies in the UK. Any Brexit related changes are unlikely to be significant.
- For equity capital markets issuers the key issue is whether a prospectus approved in the UK will continue post-Brexit to be "passportable" across the EU/EEA, and vice versa. This is dependent on the terms the UK agrees with the EU.
- The post-Brexit treatment in the UK of pan-EU/EEA entities, notably the European Economic Interest Grouping and Societas Europaea, and the pan-EU/EEA cross-border merger regime will also depend on the future relationship between the EU and the UK.

## Corporate M&A transactions

Corporate M&A activity in respect of UK corporates remains most likely to be affected by the commercial risks and opportunities presented by Brexit and the attractiveness of the UK as a post-Brexit investment location.

From a legal perspective, UK corporate M & A transactions are primarily governed by domestic contract law. That will remain the case after Brexit. Of course, any uncertainty over the impact of Brexit on any transaction should be taken into account and factored into the deal documents if appropriate. In due course, any Brexit-related changes to the regulatory environment, for example merger control, may similarly need to be reflected. However, beyond such considerations, the legal framework for UK corporate M&A transactions will remain the same, both before and after Brexit.

For UK public company takeovers, the UK Takeover Code, administered by the UK Takeover Panel, supplements domestic contract law. While the EU has required certain minimum harmonisation standards in this area, much of the detail in the current UK rules preceded this, remains UK-specific and is unlikely to require change.

For cross-border transactions within the EU/EEA, the EU Cross-Border Mergers Directive has provided a statutory regime whereby a private or public company in one member state, including the UK, can merge with a company in another member state. The main benefits of the regime come from mutual recognition across EU/EEA member states. So, the regime's post-Brexit status for the UK is dependent on it remaining part of the single market or there

being a negotiated agreement about them. In practice, however, there have been relatively few mergers under this regime.

## Equity capital markets issuers

The EU Prospectus Directive enables an issuer of securities to "passport" its prospectus offering of those securities to other EU/EEA member states. If the prospectus complies with the Directive and the competent authority of an EU/EEA member state has approved it, the issuer can use it to raise capital across the EU/EEA without further consents or approvals.

If the UK does not agree any equivalent to the EU Prospectus legislation with the EU, a UK issuer wishing after Brexit to make a pan-European public offering of its securities will need to apply to the competent authority in an EU-regulated market for approval of its prospectus. This was the case before "passporting" began in 2005 and is the current regime for "third country issuers". Conversely, the UK government could also require separate UK regulatory approval for EU-approved prospectuses used to market securities in the UK.

Another issue is that a new Prospectus Regulation, which has direct effect in member states, came into force in July 2017 but will only apply in its entirety to prospectuses issued from July 2019. On the current Brexit timetable the UK is likely to have left the EU by July 2019. At that point the Regulation will, therefore, no longer be directly applicable in the UK. However, as the UK government's plan is to convert EU-derived law into UK law at the point of Brexit to avoid legal uncertainty, it seems likely that the UK will put in place equivalent rules. The availability of "passporting", however, is ultimately dependent being part of the single market or coming to a negotiated agreement.

## Regulation of companies

Most of the law governing the establishment and operation of companies in the UK, although influenced by successive EU minimum harmonisation directives, has remained a matter of domestic law. It is contained mainly in the Companies Act 2006 and the secondary legislation made under that Act. The implications of Brexit for this legislation are unlikely to be significant, though as with all areas there may, over time, be divergence from EU-derived provisions.

The European Economic Interest Grouping, a partnership-like entity with independent legal personality, and Societas Europaea, a European public limited company involving companies from at least two different member states, are both pan-EU/EEA entities designed to foster cross-border activity. Like the cross-border merger regime, their main benefits come from mutual recognition across the EU/EEA. Their post-Brexit status for the UK is therefore also closely linked to whether the UK remains part of the single market and, if not, whether there is a negotiated agreement about them. However, in practice, neither entity has been widely used.

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