



## **Brexit Alert for Legal Counsel** Corporate law considerations: branch offices

After continued UK-EU talks, there were three crucial votes in the UK parliament (12, 13 and 14 March 2019). The first vote saw another defeat for the (adjusted) withdrawal agreement. On 13 March 2019, UK MPs rejected a “no-deal” Brexit under any circumstances (vote is not legally binding). Finally, on 14 March 2019, the UK parliament voted in favour of requesting an extension to Article 50. Theresa May will ask for a third “meaningful vote” on her deal during the course of next week, by 20 March 2019. The result of that vote will reportedly help determine the length of delay to be requested. The EU27 will need to unanimously approve any request to delay Brexit.

With the continued uncertainty brought by the above developments, and a (albeit delayed) “no-deal” scenario still a legal default, Belgian companies should consider the nature of their corporate presence in the UK and the possible impact if no agreement is reached (i.e. no EU-UK trade deal or preferential / transitional access to the Single Market). The same applies for UK companies regarding their corporate presence in Belgium (and elsewhere in the EU).

Over the past decades, the UK has implemented the EU directives and regulations with respect to the harmonisation of company law across the EU. These rules define, to a large extent, how companies and other legal entities operate within the Single Market, how they register and how they operate across borders within the EU. These rules include, among others, provisions with respect to the establishment, maintenance and reporting obligations imposed on branch

offices. Typically, less stringent rules apply to branches of EU based companies, as opposed to branches from companies subject to the legislation of jurisdictions outside the EU.

From a UK point of view, the UK Government confirmed that *"The government will ensure that the UK continues to have a functioning regulatory framework for companies and that, as far as possible, the same laws and rules that are currently in place continue to apply. This will be done by using the powers in the EU Withdrawal Act 2018 to correct deficiencies in our statute book arising from our exit from the EU"*. This should offer comfort that no major impact is to be expected even in case of a "no-deal" Brexit.

As a result of Brexit however, the less stringent rules that apply within the EU will no longer apply and UK branches of EU based companies will become subject to provisions that currently apply to UK branches of non-EU based companies. The same applies to EU branches of UK based companies, which will be treated as other third country branches post-Brexit. Guidance on the current requirements can be found on the [UK government's website](#).

Currently, the (additional) requirements applicable to UK branches of non-EU companies are the following (high-level summary):

## A. Accounting documents, change of accounting reference date or accounting requirements

The requirements in relation to accounting documents, the accounting reference date or accounting rules applicable to non-EU companies with a UK branch are the following:

- (1) **Duty to provide accounts to the Companies House:** a non-EU company with a UK branch that is required to *prepare, audit and disclose accounting documents* under its own law must deliver such accounting documents to the Companies House within three months from the date on which the documents should be disclosed in accordance with its own law. Please note that the accounting documents include the accounts of the company for a financial period, any annual report of the directors, any report of the auditors on the accounts, and any report of the auditors on the directors' report. These rules are similar to the rules currently applicable to EU companies with a UK branch.
- (2) **Duty to inform the Companies House of a change in accounting reference date or accounting requirements:** a non-EU company with a UK branch that is required to *prepare, audit and disclose accounts* under its own law must inform the Companies House of any change in its accounting reference date and/or accounting requirements (currently, an EU company with a UK branch is not required to inform the Companies House about its accounting requirements).

## B. Details to be displayed on business letters, order forms and websites

Non-EU companies with a UK branch currently have the duty to state the following particulars on all business letters, order forms and websites used for business operations in the UK:

- (1) Location of UK branch's registration;
- (2) UK branch registration number;
- (3) The company's country of incorporation;
- (4) The identity of the registry, if any, in which the company is registered in its country of incorporation;
- (5) The number (if applicable) with which the company is registered in that registry
- (6) Head office location;
- (7) The company's legal form;
- (8) Whether the liability of company members is limited;
- (9) Whether the company (if applicable) is being wound up or is subject to other insolvency proceedings; and,
- (10) If there is a reference to the share capital amount on business letters, order forms or websites, the reference must be shown as paid up capital.

The disclosure of this information must be ensured in easily legible characters.

Currently, EU companies with UK branches must only mention the particulars listed under above points (1) and (2) on all business letters, order forms and websites that are used for business operations in the UK. In case of a "no-deal" Brexit, UK branches of EU companies will have to comply with the above-mentioned additional requirements and adapt their business letters, order forms and websites.

### C. UK branch name and change of name

The name that the non-EU company wishes to register for its UK branch is currently subject to a range of controls and restrictions, including controls and restrictions that prevent:

- (1) The use of a name composed of characters that are not permitted under the UK Company and Business Names Regulations 2009;
- (2) The registration of a name that already exists in the Companies House index of company names;
- (3) The use of a sensitive word in a name;
- (4) The adoption of a name suggesting a connection to Her Majesty's government or certain other public bodies; and,
- (5) The use of offensive names.

If not all requirements are met, the name will be rejected and the company will be asked to choose another.

Currently, the restriction mentioned under the above point (1) is the only restriction that applies to an EU-company that wants to use its own corporate name as UK branch name. The other restrictions listed above for non-EU companies are already applicable to EU-companies that want to use a name other than its own corporate designation as UK branch name.

With a "no-deal" Brexit, all of the above-mentioned additional controls and restrictions will become applicable to EU companies' UK branches if the branch name changes

(regardless of whether the new name will correspond to the company's name).

In conclusion, albeit some Companies House formalities that need to be fulfilled by EU companies with UK branches, there will be no fundamental change as far as company law provisions are concerned, even with a "no-deal" Brexit.

## Your contact



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