

Holst, newsletter



Brexit - Company related considerations

The exact consequences of Brexit are still unclear. However, Britain's leaving is going to have impact on Danish companies in the British market as well as British companies in the Danish market. The advice of Holst, Advokater is therefore that you prepare your company for the exit. This newsletter gives you a brief insight on what might become some of the corporate consequences of Britain's exit of the European Union.

Mutual recognition

Within the European Union, there is a requirement for mutual recognition in regard to companies. The 28 member states are therefore obliged to recognise a company registered in another member state. The requirement for mutual recognition ensures companies' right of establishment in other member states.

As a consequence of Britain's exit of the European Union, this requirement will no longer apply between the UK and the remaining 27 European states. This means that the UK no longer is obliged to recognise companies registered in Denmark (or another EU country) and vice versa.

In practice, this means that the UK for instance is no longer obliged to recognise the limited liability or legal entity of for example a Danish company, if the limited liability of the company is not recognised either by national British law or pursuant to international treaties. Shareholders in Danish/EU registered companies may therefore be liable for the company's obligations.

Cross-border mergers and transfers may be more limited as the EU Cross-Border Merger Regulation will no longer apply.

Transfer of a UK company to Denmark therefore makes it necessary to wind up the UK company and set up a new company in Denmark. It might therefore be a good idea to complete planned cross-border transactions while the UK is still part of the EU.

Branches

When it comes to branches, Britain's leaving the European Union may have severe consequences.

Branches of a company registered in the UK will no longer be subject to the EU's branch rules, but to the rules of third country branches. Thus, the legal basis for processing branches may change radically with the UK's exit. Shareholders in British registered companies with branches in the 27 remaining member states should therefore carefully consider what legal consequences this might have.

Europeans (and Danes) who want to start a branch in the UK must be aware that they will no longer be able to rely on their European rights to easily set up a branch after the UK has left the European Union. From the moment the UK is out, Europeans must comply with British law in order to set up a branch. Furthermore, the companies must be aware, that Brexit might cause the loss of access to the internal single market.

European companies (SE - Societas Europaea)

The European company form, SE, is based on an EU regulation and is reserved for companies based in the EU member states. It is still unclear how British law will affect the presence of SE companies in the UK, after Brexit has taken effect. SEs with registered offices in the EU operating partly in the

UK may be required to register a branch or establishment in the UK.

Acquisition of business information

EU rules on compulsory disclosure of certain company information in the business registers will no longer apply to the UK.

Furthermore, access to information on British companies may become more difficult as the UK business register will no longer be connected to the Common Business Register (BRIS), which provides easy access to business information. Similarly, information on companies registered in the UK from the e-justice portal will no longer be available.

Freedom of movement for workers

A large number of Danish companies in the British market have employees who live and work in Britain. This is made simple and easy by the principle of freedom of movement for workers in the European Union.

The increasing number of foreign workers in the UK due to freedom of movement has been one of the freedoms attacked by EU sceptical Brits and changes are therefore much likely to happen over time.

Without mutual agreement between Britain and the 27 remaining member states, the principle of free movement for workers will no longer apply to UK citizens working abroad or EU citizens working in the UK.

For international companies this means an intervention in their flexibility of labour utility because in order to use staff from the UK in the EU or outsource workers to the UK in the future, visa and working permits are required.

Uncertainty creates lower productiveness among your employees. In this regard, companies should therefore make sure that their workforce is entitled to keep on living and working as now even if the principle of freedom of movement for workers is not going to be preserved. Based on the national set of rules governing the matter, companies should therefore ensure that their employees are still entitled to stay and work in the country in which they reside in now.

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