



H A R L A Y
A V O C A T S

LEGAL NEWS

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FINAL CHECK-LIST BEFORE BREXIT

In light of the results of the recent UK elections, the prospect of the United Kingdom leaving the European Union (Brexit) is looking increasingly certain. In brief, here is a list of legal checkpoints to plan ahead for the exit:

Contracts : Check the territorial boundaries. If, to date, the contract has referred to Member States of the European Union, make sure that the United Kingdom will also be covered by the Contract, because the countries that make up the United Kingdom will now be countries outside the European Union.

Personal Data : Check the location of data hosting. If, to date, data has been hosted in the United Kingdom, and whilst waiting for the United Kingdom to be approved by the European Union as offering suitable levels of protection, you will need either to sign the European Commission's Standard Contractual Clauses or to transfer the data to a European Union Member State.

Industrial Property Rights : Check whether, on the one hand, the European and International trademarks naming the European Union and, on the other hand, the European and International designs naming the European Union, will have retroactive effect in the United Kingdom. If not, national trademarks and British designs will need to be filed.

Fiscal : Check (i) export requirements in order to avoid paying French VAT, and import requirements (the same treatment as Switzerland, for example), (ii) the consequences of no longer being able to apply the tax regime for corporate tax-free intra-group distributions (strict application of bilateral tax treaties) and corporate restructuring (mergers, de-mergers or contributions) as well as (iii) the consequences for risk capital investments: the requirements for removing English companies from the perimeter that allows them to tax advantage of certain tax benefits (tax credits, tax exemption schemes such as PEA or CPI, ...).

Human Resources : Check the work permits of local employees and employees who carry out UK/France cross-border missions. Check, too, for those employees who are on secondment, their status with reference to social security bodies.

Cross-border mergers : Cross-border mergers between a company in an EU member country and a British company will no longer benefit from EU directive 2017/1132/UE of June 14 2017 concerning cross-border mergers. The common core of rules arising from this directive will no longer be able to be applied to operations involving a British company.

From now on, friction and difficulties linked to differences in domestic laws threaten to complicate these operations, particularly since United Kingdom domestic law does not recognise the principle of the ipso jure universal transfer of the capital of the company that is being acquired. Further, the implementation of mergers will be complex, because the operation itself must comply with the conditions laid down in respective national laws, even where the legal provisions applicable in each of the countries are considerably different.

Impact on financial services : With the exit from the European Union, British entities will no longer have a “financial passport” allowing them to provide financial services to clients located in a European Union Member State. The validity of financial agreements officially concluded before the United Kingdom’s exit will be unaffected. Nevertheless, no new agreements can be concluded. Requests should therefore be made to transfer financial agreements to entities established within the territory of a European Union Country.

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For further information or if you have any questions, feel free to contact the partner with whom you usually work, or contact us at contact@harlaylaw.com .



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