

Singhania & Co. Solicitors

Newsletter - August 2020 Issue

CORPORATE LAW

Withdrawal of the UK from EU and impact on UK Corporate Law

The European Commission has published a notice to stakeholders dated 3 July 2020 (“**Notice**”), stating that after the expiry of the transition period ending on 31 December 2020, EU law will no longer apply to the UK. The Notice outlines consequences as regards the implementation and application of EU law in the UK. The key highlights inter alia are as follows:

UK Incorporated Companies

After the expiry of the transition period, all companies incorporated in the UK will be considered as third country companies. The EU Member States will be under no obligation to recognise the legal personality (including limited liability) of companies that are incorporated in the UK but have their principal place of business or central administration in the EU Member States. Therefore, as a consequence, such UK incorporated companies may not have a legal standing in the EU and their shareholders may be personally liable for the debts of such company. This will however depend on the national or international law or treaties applicable in a particular EU Member State.

Branches

Similarly, with regard to branches of a company incorporated in the UK but located in a EU Member State, such branches will be considered as third country companies and therefore, rules applicable to branches of third country companies will apply to them.

EU rules on disclosure and management

EU directive 2017/1132 of the European Parliament and of the Council dated 14 June 2017 (“EU

Directive”) relating to certain aspects of company law viz. incorporation, capital maintenance and alteration would no longer apply to UK incorporated companies.

Cross-border mergers

Procedural rules for cross-border mergers of limited liability companies set out in the EU Directive would no longer apply to UK incorporated companies. The Notice provides that where a cross-border merger involving a UK company is pending after the expiry of the transition period, the national law for mergers applicable in third countries would apply to such merger as of the end of the transition period.

Listed companies

EU Directive 2007/36/EC of the European Parliament and of the Council dated 11 July 2007 deals with the exercise of certain shareholder rights in listed companies. This EU directive applies to companies which have their registered office in a EU Member State and the shares of which are admitted to trading on a regulated market situated or operating within a EU Member State. The Notice provides that this directive would no longer apply to companies having their registered office in the UK or which are only listed on a stock exchange in the UK. Further, the Commission Recommendations 2005/162/EC and 2004/913/EC relating to independence of directors and their remuneration do not apply to the UK after the expiry of the transition period.

Takeover bids

The EU directive 2004/25/EC of the European Parliament and the Council dated 21 April 2004 in relation to takeover bids with respect to securities traded in the UK does not apply after the end of the transition period.

Note

The Notice provides that those companies that are

incorporated in the UK and have their central administration or place of business in the EU should seek legal advice.

This Notice does not affect EU antitrust law, EU merger law, European international insolvency law and EU labour law. Other notices will be published in respect of the above.

LITIGATION

Operation of the judicial system during Covid-19

The effects of the coronavirus outbreak has been nothing short of challenging particularly on the operation of the judicial system and access to justice with court hearings being moved online. The outbreak has had a major effect on the operation of courts.

Operation of courts

Due to the coronavirus outbreak, hearings should be conducted remotely where possible and the courts will have to use technology to conduct business. In order to ease the transition to remote hearings, a new practice direction known as PD 51Y was brought into force on the 25 March 2020.

The directions *inter alia* are as follows:

- ❑ Where it is not possible for the hearing to be conducted in a court building, the court may direct the hearing to take place privately where it is necessary to do so.
- ❑ Parties will be expected to work with the court to make remote hearings work.
- ❑ Where the court conducts a hearing privately, the hearing will be recorded.
- ❑ If a remote hearing is audio or video recorded, the general public can apply to gain access to the hearing.

Introduction of Practice Direction 55C

Practice Direction 55C came into force on 23 August 2020 and will be effective till 28 March 2021.

For possession claims brought before 3 August 2020:

- ❑ The claim will not be listed, heard or referred to a judge until one of the parties serves a 'reactivation notice' stating that they want the case to be listed.

- ❑ The reactivation needs to make aware to the defendant and their dependants, the effect of the COVID19 pandemic.
- ❑ The court is required to give 21 days' notice of any hearing listed or relisted in response to reactivation notice.

For possession claims after 3 August 2020, the claimant must use the accelerated procedure claim form.

Time Extensions

Due to the pandemic, numerous court deadlines have been extended.

The court granted an order doubling the period for which the parties can agree extensions to procedural deadlines from 28 days under the CPR 3.8 (4) to 56 days.

Parties can extend the time by written agreement for up to 56 days under the court's permission.

Inspections by Tribunals

The following rules are applicable:

Internal property inspections have been suspended from 19 March 2020 for a period of six months.

Land and building inspections are suspended between March and June.

Service of Money Claims

The court can exercise discretion to set a judgement aside, if a claim is not received by the other party due to the pandemic and the judgement is granted.

DISCLAIMER

This document intends to provide general information on a particular subject/s and is intended to merely highlight the developments in law. It is not exhaustive nor is intended to be exhaustive or a substitute for legal/professional advice. The information provided herein should not be relied upon without appropriate legal advice and does not constitute legal advice and should not be acted upon in any specific situation. Singhanian & Co. Solicitors shall not be responsible for any loss whatsoever sustained by any person relying on this material.

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