

It is now several weeks since the Brexit vote on June 23. This briefing paper evaluates the likely impact of Brexit on UK company law.

UK Company Law

- Significant change in the short to mid-term is considered unlikely. Over time provisions of the UK Companies Act 2006 and related legislation which is solely derived from European legislation may become subject to amendment if and to the extent divergences emerge. The Cross Border Merger Directive, enabling mergers between UK and other EEA state companies, may well be impacted depending on the UK's terms of exit.
- Following Brexit it is possible that UK incorporated issuers (and third country issuers treating the UK as its current home state) will be treated as third-country issuers for prospectus directive purposes; should this be the case, and in the absence of any new regime continuing to apply mutual recognition, they would need to determine a new competent authority in a EEA member state to approve the prospectus (which could then be passported to other EEA member states). The corollary would apply in terms of UK inbound and approval by the FCA.
- Material change to the exemptions to publish a prospectus is considered unlikely (bar perhaps additional relaxations possibly as an incentive to attract further investment into the UK to benefit smaller companies). The Commission's currently proposed changes to prospectus regulation appear helpful to SMEs and it may well be that the UK will implement legislation to align with such changes.
- The new Market Abuse Regulation took direct effect as an EU regulation on 3 July 2016. By virtue of its direct effect, on leaving the EU this would cease to apply and so would be open to the FCA to rewrite. That said the prevailing trend is for more, rather than less, stringent regulation on this front.
- As much of the EU Takeover Directive was influenced by the UK Takeover Code, major change to UK takeover legislation is not considered likely. Those provisions related to shared jurisdiction where the panel regulates takeover offers involving EU-listed targets will fall away. The spectre of state intervention in foreign takeovers is an area under review by the newly formed Cabinet Committee on Economy and Industrial Strategy.
- Dependent on any divergences that follow a UK exit, companies that have dual listings in the UK and an EEA member state may need to comply with both UK and European legislation in terms of transparency rules around items such as financial reporting and disclosure of ownership interests etc.

We will continue to provide periodic updates as Brexit unfolds.

Contact

If you wish to discuss any of these issues, please get in touch with your main Squire Patton Boggs contact.