



Legal Alert

17 February 2021

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The impact of Brexit on Czech Corporate Law

Le Brexit? C'est arrivé!

As many of you may well be aware, the United Kingdom actually, finally, left the formal influence of European Union on 31 December, 2020, following a slightly tortuous transitional period that started on 1st February, 2020.

While the transition period appeared to be more than enough time to reach a final deal on what the relationship between the United Kingdom and the European Union would look like after 31st December, 2020, as became painfully apparent, this did not quite work out and the rather rushed agreement reached around Christmas last year appears to have as many holes in it as an idle Scottish fisherman's net, as exporters and importers are discovering to their cost.

An area less talked about in the media is how the Trade and Cooperation Agreement between the United Kingdom and the European Union impacts on corporate law and on the day-to-day business of corporate relationships between United Kingdom companies and their Czech counterparts, now that the United Kingdom is to be treated as a third country in relation to the European Union and can no longer take advantage of some of the European Union's corporate law goodies.

It should be pointed out that while Trade and Cooperation Agreement has not yet been approved by the European Parliament, it is expected to be so and has been provisionally applied since 1st January.

What corporate law fields are affected by Brexit?

In this Legal Alert, we will look at what we consider to be the areas of corporate law that any firm with Czech-United Kingdom relationships should be aware of, being the impact on:-

- ▶ British entities conducting business in the Czech Republic,
- ▶ European companies (Societas Europaea),
- ▶ Cross-border transformations and

- ▶ The provision of financial services.

British entities doing business in the Czech Republic

The Single Market rules that British companies used to enjoy to allow more or less seamless trading in and with the Czech Republic have, of course gone, and barriers to trade have been put up. Some well-advised firms have anticipated this and moved parts of their operations to European Union countries in order to avoid the barriers, such as customs checks and VAT issues.

This option is still available to United Kingdom entities and may be attractive to those that have a significant volume of business with the European Union; recent press reports have indicated a significant upsurge in enquires by British companies into setting up shop in European Union states, including in the Czech Republic.

This may involve establishing a Czech subsidiary to conduct Czech or wider European Union business or via the establishment of branch in the Czech Republic to continue their activities.

Are there any significant barriers to doing this?

Membership in Czech legal entities

In short, not many.

The withdrawal of the United Kingdom from the European Union does not fundamentally affect the ability of United Kingdom companies to be shareholders in Czech companies. In addition, British nationals may remain members/shareholders of companies and cooperatives incorporated under Czech law.

Importantly, the Trade and Cooperation Agreement enshrined the principles of national treatment and most-favoured-nation treatment in the field of investment. This means that within the acquisition of an ownership interest in business corporations, no other (stricter) restrictions can be set for persons from the United Kingdom than those for nationals of the Czech Republic.

For United Kingdom nationals, it is also forbidden to restrict membership in the top management positions, as well as on the boards of



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business corporations based on the nationality of such a member.

One important area where these rules do not quite apply is in respect of certain regulated professions, which impose special requirements upon membership in a company, e.g., the practise of law.

Branches

Certain information obligations in Act on Public Registers now apply to British companies with involvement in Czech companies, given that the British entities are considered foreign persons.

British entities conducting business in the Czech Republic through a branch are now required to enter in the Commercial Register the amount of subscribed share capital in the relevant currency, if required, and the law of the state by which the foreign person is governed.

The above should be registered with the Commercial Register without any undue delay as this is required for the new facts that have arisen; there is no special provision for the end of transitional period for British entities. Sanctions by way of a penalty of up to CZK 100,000, may apply for non-compliance where the registration proceedings are initiated by the court on its own motion and the entity does not provide the necessary cooperation within the period set out by the court.

The retention of English as an official language of the European Union means that unofficial translations of English language documents into Czech will be sufficient, according to the criteria of the Act on Public Registers, so no officially certified translations will be necessary.

However, United Kingdom Companies House documents that need to be submitted to the Commercial Registry to prove certain facts about the relevant United Kingdom company during a corporate process, such as its incorporation, directors and officers etc, will need to be apostilled and be accompanied by an unofficial translation.

Licensed trades

BUT....

One area that may cause difficulties for a United Kingdom company

looking to establish itself in the Czech Republic is with respect to applying for a licence for certain regulated trades, with British entities facing a heavier administrative burden when applying for a trade licence.

British entities are now obliged, as third country entities, to submit to the Trade Licensing Offices all documents with an officially certified translation and an apostille, i.e., verification of the authenticity of the signature and/or stamp on the documents concerned.

In respect of applications for trade licences and concessions after 1st January, 2021, British nationals who will have applied to be the authorised person in the application must also submit proof of a 90+ day stay visa or a long-term residence permit to the Trade Licensing Office. In addition, the trade licence will be limited by the duration of the respective residence permit and will need to be renewed thereafter.

The position in respect of existing trade licences, i.e., those obtained by British nationals prior to 1st January, 2021, is less clear. The Trade Licensing Offices have not yet decided whether such individuals must provide proof of residence as stated above, even after the event. As there is no transitional regulation on this subject, it is yet to be legally interpreted and decided. We are monitoring the situation and we will be happy to provide you with further information.

Recognition of qualifications

Prior to 1st January, United Kingdom academic, professional and vocational qualifications were automatically recognised by the Czech authorities in matters such as in trade licence applications and also in respect of membership of professional bodies such as for lawyers, medical doctors, vets, architects, etc.

This is no longer the case in respect of professional qualifications (such as academic diplomas, vocational practice, professional trainings, and other special qualifications required by laws in order to perform the so-called regulated professions) obtained in the United Kingdom after the end of the transitional period, in respect of which the holder will have to apply for academic recognition (nostrification).

Qualifications obtained in the United Kingdom before 1st Janu-



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ary, 2021 will still be considered as qualifications acquired in the European Union even after the end of transition period.

European company (Societas Europaea)

Transformation of European company based in Great Britain

European companies (SE) have not been taken up with any great relish in the United Kingdom but still have been a useful corporate form for United Kingdom companies with significant cross-border activity with the European Union. The rules on how SEs will work as between the United Kingdom and the European Union have changed.

United Kingdom-registered SEs automatically converted into a new United Kingdom corporate form called a 'United Kingdom Societas', which is intended to be a temporary measure. The United Kingdom has advised United Kingdom Societas to change such corporate entities into more standard United Kingdom corporations, such as a limited liability company or a PLC .

United Kingdom Societas branches established in the Czech Republic now have to meet the same requirements as any other branches of other entities from third countries, i. e. they are obliged to register their branch within the Commercial Register to conduct business in the Czech Republic.

European companies (SE) with a branch in the United Kingdom

On the other side, SEs (including those with their seat in the Czech Republic) with a branch in the United Kingdom have an extra information obligation to the United Kingdom Companies House from 1 January 2021, which the existing European companies (SE) must meet before 1st April, 2021. The obligation consists of providing United Kingdom Companies House with information on:

- ▶ the law under which the company is incorporated,
- ▶ the address of its principal place of business or registered office,
- ▶ the company's purpose,

- ▶ the amount of share/registered capital issued and
- ▶ the company's accounting period and period of disclosure.

In addition, these companies must also publish additional information on their websites, such as on the company's legal form, limitation of liability, information on liquidation, insolvency or similar proceedings, etc.

From 1st January, 2021, it is also not possible to relocate the registered office of a European company (SE) from the European Union to the United Kingdom and vice versa, taking away a flexible corporate tool for companies with significant business between the United Kingdom and the European Union.

British entities as shareholders of European company (SE)

Neither Czech law nor European Union prevents British natural or legal persons from remaining shareholders or becoming shareholders in SEs that are or will be incorporated with their registered office in the Czech Republic.

However, British companies cannot set up an SE via certain methods, for example, by merger of two or more companies incorporated under the law of a Member State and having their registered office and central administration in the European Union, if at least two of them are subject to the legislation of different Member States. This is because British companies no longer meet the necessary criteria of European Council Regulation (EC) No 2157/2001 on the Statute for a European company for the formation of European companies.

To summarise, British entities no longer qualify under the requirements for establishing European company (SE), but they may be their shareholders.

Cross - border transformations

The United Kingdom is no longer subject to European Union regulation of cross-border company transformations.

The Act on Transformations of Companies and Cooperatives, which incorporates the relevant European regulations, will no longer be applicable to the cross-border transformations of Czech and British



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companies, as the term *foreign legal entity* is defined as a person governed by the law of a Member State (other than the Czech Republic) and which has its registered office, actual seat or central administration in a Member State. The United Kingdom entities no longer fall into this category.

As of 1st January, 2021, it is therefore not possible to carry out, for example, a cross-border transfer of a registered office without the company being wound up in the original state and newly incorporated in the other one.

Also, cross-border mergers involving a British entity are no longer an option and need now be performed via an acquisitions, either by share deal or asset deal.

One final, but important point, to be considered when preparing an M&A transaction involving a British entity, is that the Act on verification of foreign investment has been adopted in the Czech Republic, allowing Czech authorities to scrutinise and in certain cases also restrict foreign investments of non-European Union origin into so called "critical infrastructure" and "strategical markets" (e.g., banks, telecommunications, energy facilities, water management, etc.). Accordingly, an acquisition of any such critical infrastructure or in strategic market by a British entity may be subject to review by the Czech authorities.

Provision of financial services

The provision of financial services by United Kingdom entities within the Czech Republic was allowed during the transition period. The Czech Brexit Act however stipulates that the United Kingdom financial services providers should wind down their operations and are expressly prohibited from entering into new contracts with Czech-based customers. United Kingdom financial services providers have been invited by the Czech National Bank to settle their obligations or to apply for a licence under Czech law.

It is well known that United Kingdom financial services firms can no longer operate in the European Union based on their United Kingdom licences, i.e., an end to passporting, as the Trade and Cooperation Agreement did not provide for any special regulation on financial services. Therefore, there is no explicit law which would allow United

Kingdom financial services providers to continue the conduct of their business in the Czech Republic and they have to apply for a specific licence according to the nature of the services they provide, e.g., banking licence, payment services licence, trade licence (factoring).

This means in addition that any element of United Kingdom financial services provision in M&A transactions involving Czech entities should be scrutinised very carefully to ensure regulatory compliance.

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As outlined above, Britain's withdrawal from the European Union has many consequences. Therefore, if you are one of the entities mentioned in this Legal Alert, we recommend revising the areas in which Brexit could have an impact on you, your private and public rights and obligations.

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