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## How BREXIT will impact business relationships with the UK in manifold ways

The UK recently notified the European Union of its intention to leave. A two years' period has been triggered by this notification during which the UK and the EU will most possibly try to mitigate the impact that this decision may have on business relationships and individuals. However, as per today, any outcome is possible, from the "hard Brexit" to solutions which would bring the UK's status vis-à-vis the EU close to that of Norway, for example.

Right after the results of the referendum held last year became known, many comments referred to the consequences of the Brexit for UK Private Limited Companies that had been used in the past by quite a few start-ups in Germany to circumvent the relatively onerous rules for setting up a German Private Limited Liability Company ("GmbH"). Many of these "Limited" had no other reason than to serve as a vehicle for start-ups in Germany; typically, they had no physical company seat in the UK, just a letterbox. According to several rulings by the European Court of Justice, these "Limited" have to be considered as validly established companies with the privilege of limited liability for its owner in applying the principle of freedom of movement of individuals and capital under Union law. Once the UK leaves the European Union, these "Limited" will, however, not be considered as legal entities by German law anymore. In consequence, the shareholders and agents doing business in the name of such a "vehicle" can be held liable for obligations and debts of the Limited. Another example of the consequences of the Brexit in corporate law is the Societas Europaea ("SE"), a company form similar to a stock corporation which has been created by lawmakers of the European Union and has found increasing interest in many European countries in recent years, including the UK. In case of a "hard Brexit" there will be no legal basis anymore for the Limited in Germany and the SE in the UK, owners of these entities should react as soon as possible, as long as cross-border transformations between the UK and Germany (and other European countries) are still possible.

Statistically, the above mentioned corporate issues are of lesser importance because the number of affected Limited companies and SE is relatively small. Far more companies will have to watch out for the impact of the Brexit in other business areas. There will be consequences for supply and service relationships, distributorship and agency contracts, franchising systems, only to mention the most significant ones. The Brexit—at least in its hard form—will have an immediate effect on

- how to interpret whether a contractual clause that defines the scope of the agreement as being the "territory of the European Union" will still comprise the UK
- agreed INCOTERMS (due to possible new tariffs and custom duties); there will possibly also be new other trade restrictions



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### *How BREXIT will impact business relationships with the UK in manifold ways*

- clauses restricting competition which as per today are permitted pursuant to one of the EU-block exemption regulations
- the applicable law to a given contract
- the place of jurisdiction for disputes on contractual obligations
- the debt collection and enforcement of judgements.

Today, all the above matters are governed by Union law, in particular by Regulations on the applicable law, on competent jurisdiction and the enforcement of judgements. With the UK leaving the Union, these statutory provisions will not be applicable anymore and this will lead to great legal uncertainty. Therefore, the best recommendation to all companies (not only from other European countries but also, for example, from the US) doing business with UK companies is to go through their current contracts and agreements with UK companies—and with companies in other European jurisdictions if the territorial scope is defined as being the “European Union”—and see what kind of action can or should be taken to avoid surprises in the near future. In some cases, agreements will provide for a termination clause which either allows to exit the relationship or start negotiations on the commercial and legal terms of the contract. In other cases, namely when the contract has a longer fixed duration, the question will be whether the Brexit will be sufficient reason for an adjustment based on the principle of “frustration of contract” (“Wegfall der Geschäftsgrundlage”).

Manufacturer of products should also have in mind that the EU has set many industrial standards such as for machines, toys, medicinal products, only to mention a few of them, which will also not be applicable anymore with regard to the UK after the Brexit. In a similar way this will be the case of registered EU-trademarks and patents.

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