

# Brexit Bitesize

## PRACTICAL CONSIDERATIONS FOR M&A TRANSACTIONS

It is too early to say with any certainty what the long term impact of Brexit will be on M&A transactions involving the UK. However, there are some important practical considerations for those active in the M&A markets both in the interim period and the longer term.

### 1 Due diligence

In the interim period, buyers should consider widening the scope of due diligence to identify matters which may become problematic, depending on the nature of the UK's relationship with the EU going forward. These include:

- Illegality/change in law provisions which may give a counterparty rights to terminate existing arrangements
- Grants and investments made by EU bodies where eligibility criteria limit availability to recipients within the EU/EEA
- Employment and contractor arrangements for UK nationals working within the EU, as well as nationals from other EU member states working in the UK
- Licences which define territorial rights by reference to the "EU" or "EEA"



### 2 Completing transactions

In the short term, volatility in the markets and lack of confidence in sterling may result in an increased use of financing conditions, commitment letters and provisions allocating the risk of exchange rate movements in the period between exchange and completion. On a long term basis, changes to merger control regimes could mean that the current "one-stop-shop" will cease to apply between the UK and EU. If that proves to be the case, where a transaction exceeds both the UK and EU filing thresholds, filings will potentially need to be made with both the UK and the EU competition authorities. Similar issues may arise in relation to "change of control" filings required under certain regulatory regimes.

### 3 Post-completion integration

Post-completion integration activities may become more cumbersome depending on the changes made to current registration regimes. For example, if pan-European IP rights such as Community Trademarks and Community Design Rights cease to apply, separate registrations may be needed for IP rights in the UK, increasing the cost and administrative burden of integration.

### 4 On-going and historic transactions

It is unlikely that events over the last few weeks will trigger standard "Material Adverse Change" provisions for transactions that have signed but not yet completed. However, MAC clauses should be checked to confirm if a party has the right to walk away. Where deals have completed in the last 12-24 months, market volatility and fluctuations in foreign exchange rates may impact post-completion price adjustments which fall to be determined in the short term.

For more information on this update, please contact:

**Kate Ball-Dodd**  
Partner, London  
E: [kball-dodd@mayerbrown.com](mailto:kball-dodd@mayerbrown.com)  
T: +44 20 3130 3611

**Connor Cahalane**  
Partner, London  
E: [ccahalane@mayerbrown.com](mailto:ccahalane@mayerbrown.com)  
T: +44 20 3130 3571

**Katherine Woods**  
Senior Associate, London  
E: [kwoods@mayerbrown.com](mailto:kwoods@mayerbrown.com)  
T: +44 20 3130 3711

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