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# 'No-deal' Brexit alert for Cyprus businesses

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## The 'no-deal' scenario

On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the EU under Article 50 of the Treaty on the European Union (TEU).

On 11 April 2019, the European Council agreed to extend the period provided for by Article 50(3) TEU to 31 October 2019 and the United Kingdom is now scheduled to withdraw from the EU on 1 November 2019, at 00.00 (CET).

As things currently stand, a 'no-deal' Brexit under which the UK withdraws from the EU without an agreement provided under Article 50 TEU is a possible outcome.

Unless there is a further extension of the withdrawal period, under a no-deal Brexit with effect from 1 November 2019, the Treaties of the EU will cease to apply to the UK.

## The position of Cyprus

Cyprus is a member of the EU and the Eurozone. As a former British colony, it features a common law system.

Cyprus is often the jurisdiction of choice for asset management, intermediary or ultimate holding purposes, corporate finance and merger and acquisition transactions.

As a result, Cyprus companies are extensively exposed to the UK as a jurisdiction:

- ▶ Cyprus companies are used as holding vehicles within corporate groups and structures involving UK companies
- ▶ Cyprus companies are used for finance purposes in UK-driven corporate groups
- ▶ Cyprus businesses supply products and services into the UK
- ▶ Cyprus financial services firms and investment funds are present and marketed in the UK
- ▶ Cyprus businesses are distributors and agents of UK producers and suppliers.

To avoid disruption and ensure compliance in a post-Brexit world, Cyprus companies should, amongst other measures, assess the impact of changes in the key areas outlined below.

## Tax

### UK – Cyprus Double Tax Treaty of 2018

The 2018 double tax treaty concluded between Cyprus and the UK is considered crucial for tax structuring arrangements of UK companies in the EU ahead of Brexit.

The Cyprus - UK double tax treaty provides for zero withholding tax on payment of dividends, interest and royalties (subject to exceptions).

The disposal of shares made by Cyprus tax resident companies is taxed in Cyprus, except where, inter alia, the shares derive more than 50% of their value (directly or indirectly) from immovable property situated in the UK.

[Read more on](#) the UK – Cyprus Double Tax Treaty.

### Parent – Subsidiary Directive

The EU Parent – Subsidiary Directive can be invoked to effectively eliminate taxation in transactions between parent and subsidiary companies in EU member states. This Directive would cease to apply to parent and subsidiary companies located in the UK and Cyprus.

### Interest and Royalties Directive

Under the provisions of Interest and Royalties Directive, interest and royalty payments between associated companies in EU member states can be made without withholding taxes. UK-based companies with associated Cyprus companies will no longer be able to benefit from this Directive.

### VAT

VAT rules for cross-border supply from a third country would apply in a 'no-deal' Brexit scenario. Distance selling rules will no longer apply to goods moving between the UK and the EU.

Importing goods from the UK into Cyprus will result in the application of import VAT. The Cypriot authorities have clarified that the transactions for the transfer of goods from the UK into Cyprus not completed prior to Brexit will be treated as an import of goods on the date of their arrival in Cyprus and will be subject to VAT.

## Data Protection

Transfers of personal data from Cyprus to the UK will be subject to the requirements of Chapter V of the GDPR.

There is no adequacy decision issued by the European Commission in relation to the UK, which would allow for personal data to be transferred from Cyprus to the UK.

Going forward the transfer of personal data from Cyprus to the UK must be based on Standard or ad hoc Data Protection Clauses, Binding Corporate Rules. Codes of Conduct and Certification Mechanisms, or, where possible, derogations.

Cyprus companies should assess their personal data flows and ascertain the extent to which any personal data is transferred to the UK and identify which method will be applied to such transfers. Documentation (such as privacy policies) should be updated to comply with the new arrangements in place.

There is more detail on data transfers from Cyprus to a country outside the EU in [Transfers of Personal Data from Cyprus to Third Countries](#).

## Products

Customs duty will become applicable on goods shipped from the UK to Cyprus. The UK has [published the temporary rates of customs duty on imports](#) from the EU in the event of a 'no-deal' Brexit.

Cyprus companies shipping products into the UK should assess their supply chain for importer status considerations and regulatory product compliance.

Cyprus companies will also need to consider whether the new UK Conformity Assessed (**UKCA**) marking applies to their goods. UKCA is a new UK product marking regime to be used for certain goods being placed on the UK market following a 'no-deal' Brexit.

In some cases, Cyprus businesses may be able to use CE marking in selling goods in the UK for a limited time after Brexit. Cyprus businesses will need to establish if they are caught by UKCA post-Brexit.

## Services

The provision of services from the UK into Cyprus will be treated as services from a third country and will be subject to EU and Cypriot law accordingly. They will also be subject to commitments and qualifications under WTO agreements, which vary according to sector.

The provision of services by Cyprus companies into the UK will cease to be treated on an equal footing with UK companies. The UK has adopted legislation that will come into force in the event of a 'no-deal' Brexit.

## Financial Services

Cyprus firms providing financial services into the UK under the single licence passporting regime may be able to take advantage of temporary regimes allowing the provision of services to continue for a period of time.

The European Securities and Markets Authority and national EU regulators, including the Cyprus Securities and Exchange Commission (CySEC), have agreed Memoranda of Understanding with the UK's Financial Conduct Authority (FCA), for the case of a 'no-deal' Brexit.

One of these MoUs covers supervisory cooperation, enforcement and information exchange between CySEC and the FCA, for the sharing of information relating to market surveillance, investment services and asset management activities.

## Investment funds

Cyprus-registered Alternative investment funds (**AIFs**) managed by an authorised alternative investment fund manager (**AIFM**) and undertakings for collective investment in transferable securities (**UCITS**) being marketed in the UK before exit day under EU law may continue to be marketed after Brexit, provided that the fund manager notifies the FCA within the prescribed deadline.

Cyprus companies will have to assess whether they require any authorisations or licenses to continue providing their services in the UK.



## Intellectual Property

Cyprus companies that hold registered EU trademarks and designs registered with EUIPO are expected to have a UK equivalent right granted on a 'no-deal' Brexit. Applications pending before EUIPO on Brexit will have to be refiled.

Currently, the right to control distribution of goods is exhausted when those goods are placed on a market in the EU by the rightsholder or with its consent. The UK will continue to recognise the EU exhaustion regime for a temporary period. This means there will be no change to the rules affecting parallel imports of goods, from Cyprus into the UK.

UK and Cyprus copyright works (books, films, music) will continue to be protected in the EU and UK under international copyright treaties. The UK has legislated in relation to EU law-derived copyright rules and specific advice should be sought where appropriate.

The European patent system is governed by the European Patent Convention and will not be affected by Brexit.

## Enforcement of judgments

The recognition and enforcement of UK judgements in Cyprus will be governed by Cyprus law.

The Foreign Judgments (Reciprocal Enforcement) Law of 1935, Cap 10, as amended (**Cap. 10**) is modelled on the Foreign Judgments (Reciprocal Enforcement) Act 1933. It is expected that the provisions of Cap. 10 or common law principles will continue to form the legal basis for the recognition of UK judgments by Cypriot courts.

The Hague Convention on Choice of Court Agreements provides a similar though significantly less extensive body of rules that ensure the recognition of exclusive jurisdiction clauses and the enforcement of judgments obtained pursuant to them.

According to the UK Government, the Hague Convention on Choice of Court Agreements will apply to an exclusive jurisdiction clause between a UK domiciled counterparty and an EU domiciled counterparty agreed on or after Brexit.



## Governing law

Cyprus courts will continue to recognise choice of law clauses, irrespective of where the contracting parties are domiciled, under Rome I and II.

The UK government appears prepared to unilaterally retain Rome I and Rome II. English courts are therefore expected to apply the same rules as currently to determine applicable law.

## How we can help

The comments set out in this insight are not exhaustive in any scenario. They serve only to illustrate key areas of impacts of a no-deal Brexit from a Cyprus perspective. Professional advice from both

Cyprus and UK counsel should be sought on any legal issues.

Other risk areas, including, for example, customs and excise, immigration, sanctions, employment and the environment entail not referenced in this review must also be evaluated.

We are consistently ranked as the top tier-ranked Cyprus law firm on European Union law and regulatory matters, by *The Legal 500* and other ranking houses. Our expert lawyers can help you assess and address issues that may impact your business as a result of a 'no-deal' Brexit.

[Contact us](#) to discuss your precise requirements or read more about [our practice](#).