



# Lex et Brexit — The Law and Brexit **Davis Polk**

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## Contents

<b>Introduction</b> .....	1
<b>Cross-border models for financial services</b> .....	2
<b>Societas Europea and cross-border mergers</b> .....	8

On March 29<sup>th</sup>, 2017, the UK delivered a letter from the UK Prime Minister to the President of the European Council, Donald Tusk, which gave notice of the UK’s intention to withdraw from the European Union (“EU”) in accordance with Article 50 of the Treaty on European Union. Thus the starting gun has been fired on two years of negotiation in which both sides will attempt to agree the terms of exit for the UK and a framework for a future trading relationship. The task before the two sides is complex, with

sensitive discussions anticipated on a possible transition deal, obligations of the UK to contribute to the EU budget, the status of UK and EU citizens post-Brexit and the legal jurisdiction of the EU courts.

In the context of the triggering of Article 50, attention in the financial services sector has turned to possible models for cross border financial services activity after Brexit. The UK Government and the EU have accepted that the UK will have to relinquish its membership of the single market. If the UK and the EU cannot agree a future trading agreement during the Article 50 negotiation timetable, and no transitional period allowing market access is agreed, financial services firms based in the UK would receive no special treatment as compared with any other “third country” (EU parlance for non-EU states). In this context, we look at three models for the future trading relationship in financial services and consider some of the obstacles and drawbacks for each option.

We then turn our attention to two rarely used mechanisms for the re-domiciliation of UK companies to another EU jurisdiction: the formation of European Companies, known as Societas Europea (“SEs”), and the completion of cross-border mergers under EU derived law. Both regimes may be helpful to a UK group looking to re-domicile entities to other parts of the EU in the context of Brexit, although both have been the subject of recent judicial decisions regarding the form of transactions which are considered permissible.

## Cross-border models for financial services

### Introduction

Following the triggering of Article 50 on March 29th, 2017, attention in the financial services sector has turned to possible models for cross border financial services activity after Brexit. The UK Government and the EU have accepted that the UK will have to leave the single market, in part because the UK has made clear it will not accept lasting jurisdiction of the Court of Justice of the European Union or freedom of movement for EU citizens. If the UK and the EU cannot agree a future trading agreement during the Article 50 negotiation timetable, and no transitional period allowing market access is agreed, then the UK would likely trade with the EU on World Trade Organisation (“WTO”) terms. This would mean that financial services firms based in the UK would receive no special treatment as compared with any other “third country” (EU parlance for non-EU states).

Both sides have expressed a desire to reach an agreement on a future trading relationship, albeit on different timetables and with varying degrees of detail. For financial services, recent attention among UK banks and policy makers has focused on three different models of trading relationship:

- an agreement for mutual access and recognition of standards made via a free trade agreement (“**FTA**”), which would be agreed in accordance with the rules in the Treaty on the Functioning of the European Union;
- an “enhanced equivalence” regime, which would build on the existing third country regimes (“**TCRs**”) which exist in some pieces of EU financial services legislation to allow limited access for financial services firms established outside the EU; and
- an agreement that would provide an EU-wide equivalent of the UK’s overseas person exclusion (“**OPE**”). Under this model, market access would not be predicated on any comparison of the regulatory regimes in the EU and the UK, but instead would be allowed without restriction when the firm provides only certain types of services to certain types of clients on a cross-border services basis.

There could be a substantial degree of overlap or combination of these models, depending on the progress of the Brexit negotiations.

A breakdown of negotiations could lead to the UK being forced to rely on the existing TCRs, with all of the risks and uncertainties that such reliance would bring (please see the first issue of Lex et Brexit for more detail) Even if agreement can be reached on a general, multi-sector FTA, the EU may be unwilling to extend that FTA to cover financial services.

### Mutual access and recognition under an FTA

In her letter to President Tusk, the Prime Minister alluded to the fact that no existing free trade agreement allows for comprehensive market access for financial services firms. That said, the UK will have a regulatory legal framework that will be substantially identical to that of the EU, thanks to the UK Great Repeal Bill, preliminary details of which were released by the UK Government on March 30th, 2017. This similarity should make it easier to design an architecture to allow continued market access beyond what is offered in the existing TCRs.

The key features in relation to financial services that an FTA could include are:

- A set of principles or general criteria to allow both sides to determine whether the two regulatory regimes are comparable in terms of their outcomes, enforcement and operations. These principles would not be as prescriptive as the EU’s criteria for equivalence for the purposes of the TCRs and would be agreed as a bespoke arrangement between the two sides, rather than an assessment purely within the gift of the Commission. Global standards such as those promulgated by the BCBS, IOSCO, the FSB and others could provide a core

*“The free trade agreement between the United Kingdom and the European Union ... should be of greater scope and ambition than any such agreement before it so that it covers sectors crucial to our linked economies such as financial services and network industries” – Theresa May letter to Donald Tusk, March 29<sup>th</sup> 2017*

base for these principles. Where broad comparability can be agreed and maintained, broad market access would be permitted between the two sides.

- A formalized consultation process to afford the UK a seat at the table when new regulations are being designed. One of the disadvantages of the existing TCRs is that the UK would have no involvement in the design and calibration of financial regulation at the level of the European Supervisory Authorities (“ESAs”); the perception in the UK is that it would be merely a “rule taker” in relation to financial services in such a scenario where it only retained market access through the TCRs.
- A process that would allow for market access to be maintained as new legislation comes into force following the consultation referred to above.
- Provisions to allow information exchange, reporting and monitoring between the UK and EU regulators.
- A dispute resolution body, perhaps made up of representatives of the relevant national regulators and/or the judiciary, which would allow for the monitoring of any divergence in regulatory standards and provide rulings on whether such a divergence is material enough to justify the suspension or termination of the arrangements.
- A process to allow for the withdrawal of market access (or termination of the FTA) on either side following a ruling from the dispute resolution authority that any substantive divergence in regulatory standards has occurred without rectification within a set period of time. Such a withdrawal would ideally trigger a transitional period to minimize the cliff edge effect of a sudden withdrawal of market access.

## Potential Pitfalls

### Political

Despite relatively warm words towards each other at the start of the negotiating period, there may be substantial political difficulties in reaching an agreement on financial services. A number of EU member states have already expressed the belief that the absence of such a deal would prompt UK based financial services firms to move staff and assets from the UK in a boost for local EU financial services centres such as Paris, Amsterdam, Frankfurt and Dublin. Furthermore, many Member States wish to ensure that the UK should not enjoy near full market access without agreeing to binding obligations to “play by the rules” of the single market.

As part of this, some EU politicians have said that any market access arrangement would need to be rejected if the UK sought to diverge from EU norms in terms of the level of regulation or taxes. In a wider context, there is a view in the EU that the UK should be required to pay some sort of price for its decision to leave; there is an expectation that the political priority of maintaining the unity of the EU and discouraging other leavers will override any economic concerns.

“Great Britain after leaving will be a third country...We have to find a way of working together, but we have the obvious interest that places like Amsterdam, Paris, Dublin and Frankfurt can win as they lose.” - **Manfred Weber, Leader of the European People’s Party, the largest political grouping in the European Parliament, in a press conference on April 3, 2017.**

“ Any free trade agreement should be balanced, ambitious and wide-ranging. It cannot, however, amount to participation in the Single Market or parts thereof, as this would undermine its integrity and proper functioning. It must ensure a level playing field in terms of competition and state aid, and must encompass safeguards against unfair competitive advantages through, inter alia, fiscal, social and environmental dumping” – **European Council draft negotiating guidelines, March 31<sup>st</sup> 2017**

At a more granular level, the negotiation of free trade agreements have not, to date, resulted in agreements which allow for the level and scope of access and mutual recognition for financial services described above. The EU has not historically allowed third country firms a similar level of access as could be achieved through passporting, even where the third country concerned has concluded some form of free

trade agreement with the EU. The history of the now dormant Transatlantic Trade and Investment Partnership (“TTIP”) negotiations shows the challenges inherent in trying to agree regulatory coherence and mutual recognition in the financial services sphere. That said, given that the UK and

EU will, in all likelihood, be starting from the same regulatory and legal base, the prospects for some sort of agreement are better than they might be compared with the US and the EU.

## Timing

It is apparent that the UK, and some in the EU, are contemplating an FTA which would be unprecedented in scope, detail and complexity compared with any other existing trade agreements (except EEA or EU membership). To achieve this before the end of the negotiating period will be challenging, even if there was the political will to do so, for three main reasons:

- The EU negotiators have been unequivocal in stating that they believe that the negotiation of any future trading relationship will only occur once the arrangements of the UK's exit (the treatment of EU citizens and payment of an exit charge by the UK in particular) have been finalized.
- The two year negotiating period set out by Article 50 is in fact constrained by the need to factor in the implications of French and German national elections and the need to obtain final approval from the European Parliament for a deal negotiated by the European Commission.
- Depending on its scope and terms, it is possible that any UK-EU FTA would require the approval of some of the national parliaments and assemblies of the Member States before it could come into effect.

In practice, then, the UK and EU negotiators may only have 12-18 months to conclude an FTA, unless a substantial transitional period allowing continued single market membership is agreed. For comparison, the EU-Canada Comprehensive Economic and Trade Agreement (“**CETA**”) took approximately 7 years to negotiate, and CETA does not contain access arrangements for financial services which override the existing TCRs.

## New regulatory architecture required

As explored in previous editions of *Lex et Brexit*, in some EU laws passporting rights have been extended in a limited fashion to third country firms. To the extent that an FTA does provide for a standalone bespoke regime for UK financial firms based on mutual recognition, this may require further legal changes to existing EU law, and the national law of member states, in order to accommodate the special status of the UK. This presents another potential political hurdle to be overcome and may affect timing.

To the extent that a new standard setting body and/or dispute resolution body is set up as a result of the FTA, EU, UK and national law would need to be amended if such entities are to have any “teeth” to police the boundaries of the FTA arrangements.

It is unclear whether there would be political will to establish such a new architecture, especially when the EU is faced with a number of policy challenges in dealing with supra-national regulation generally. The apparent direction of travel at EU level seems to be towards greater ceding of powers of co-ordination and legislative leadership to the ESAs; it is not clear whether this objective could be compatible with the establishment of a new architecture for financial regulation in Europe to accommodate the UK's exit.

## Reform and extension of the existing TCRs

If the creation of a bespoke mutual recognition/access arrangement under an FTA would be difficult because of timing and political issues, some commentators have suggested a model that would involve the UK using the existing regulatory architecture and the provisions of the existing TCRs.

The TCRs, in their current form, allow third country firms to provide some (but not all) financial services in the EU without the requirement for full local authorization. This is on the basis that the EU has decided that aspects of the regulatory regime of the third country are “equivalent” to the relevant parts of EU financial services legislation. As noted above, to take advantage of the TCRs the UK would need to ensure that its legislative framework is equivalent to that of the EU at Brexit and it would need to ensure that any further EU legislation is reflected into UK law in a form that would allow that equivalence to be maintained.

At present, the TCRs do not cover the range of services and activities that are currently included in the passporting regime; the missing areas include the provision of payment services, deposit-taking, commercial lending and some retail fund management activities. Some commentators have suggested that the UK should use the negotiating period to request that the EU extend and amend the TCRs to allow such activities to be covered. This could be done as part of the FTA described above on a bespoke UK basis, or it could be incorporated as part of wider re-design of the TCRs and the equivalence concept (work which is already at an early stage at the EU level). That wider re-design could, and to prevent any suggestion of discrimination by the EU might need to, be available to all third countries, rather than just the UK.

The other major difficulty with the existing TCRs is that they allow an equivalence assessment by the Commission to be reversed in relatively short order (certainly within a matter of months), without the ability of the relevant third country to challenge that decision through any independent body. To address this, a dispute resolution mechanism could be added to the TCRs in each of the relevant EU laws to ensure that no immediate removal of “equivalence” could occur without consideration by the independent dispute resolution mechanism, and to provide for an automatic transition period to occur once equivalence had been withdrawn. Again, these changes could be sought as part of the wider FTA described above to provide specific treatment within the TCRs for the UK, or could be advocated as part of an overhaul of the TCRs for all third country firms.

## **Potential pitfalls**

### **Political**

Regardless of whether the suggested changes to the TCRs can be accomplished, equivalence decisions may well have a political element, for similar reasons to those described above in relation to the FTA. Compared with other countries that currently take advantage of the TCRs (such as the US, Switzerland and Japan) we expect that the UK would face additional scrutiny in relation to any divergence from EU law. On the UK side, there is also considerable resistance to being forced to be a “rule-taker” in relation to EU financial services law (being forced to follow the letter of EU legislation), although others have argued that this is a price the UK should be willing to pay in order to ensure some form of preferential market access.

The EU is currently looking to tighten and harmonise the criteria for equivalence to be granted across the financial services sector. It is certainly conceivable that achieving an equivalence determination will become more, rather than less difficult, in the future. In this climate it is questionable whether there will be much EU appetite to expand and arguably loosen the standards around equivalence through the ceding of power to a new dispute resolution mechanism.

### **Timing**

Since the Brexit referendum result last year, the European Commission has not indicated at any point that it would be willing to run an equivalence decision process in parallel with the Article 50 negotiations. The European Commission and the ESAs are under no legal obligation to begin that assessment process until the UK has actually left the EU.

Even assuming a relatively quick assessment of the UK’s equivalence after the date of Brexit, (perhaps during a transitional period where market access for UK firms is maintained) some of the TCRs provide for further substantial time delay before a third country firm is able to obtain registration from the relevant ESA and then to begin providing services.

### **Need for legislative change**

By definition, a fundamental re-casting of the TCRs would be a substantial legislative undertaking, even if such amendments were to apply only in relation to the UK. In timing terms, material amendments to the main framework legislation for financial services have typically taken 12-18 months to wind their way through the EU legislative process.

As with the proposal for an FTA, the powers of any new dispute resolution authority would also have to be incorporated in EU financial services legislation.

## An EU wide OPE

The UK has historically included a relatively wide ranging “overseas person exclusion” as part of its domestic legislative framework. Some have suggested that either as a standalone measure, or in combination with the provisions of the FTA discussed above, the EU could create an EU wide version of the UK OPE.

### Key features of the UK OPE

UK financial services law provides an exclusion for certain specified regulated activities carried on by an “overseas person”. An overseas person is defined for these purposes as a person who carries on regulated activities but does not do so, or offer to do so, from a “permanent place of business” maintained by him in the UK. A non-UK institution relying on the OPE would therefore need to limit the activities of its employees or employees of a subsidiary in the UK as far as possible to avoid any possibility that the UK regulators may consider that it has a permanent place of business in the UK. Typically, such firms require their staff to abide by some basic “rules of the road” to comply with the OPE, including restrictions on the use of UK office facilities and limitations on contact with UK clients when visiting the UK.

It follows that a non-UK institution with a UK branch would be unable to rely on the OPE, including in respect of activities of employees based outside UK, as the UK branch would be a permanent place of business in the UK.

The OPE is also limited in that it applies only to specified UK regulated activities, including the activities of dealing in investments as principal or agent, arranging deals in investments, arranging regulated mortgage contracts, advising on investments, and entering into mortgage contracts as lender and administering regulated mortgage contracts. In practice it cannot usually be used to provide services to retail clients.

### Similar national regimes in the EU

Some other EU countries have exclusions and/or exemptions which allow some non-EU firms to conduct business with particular categories of clients, or based on a reverse solicitation / “passive freedom to provide services”. That said, the availability of these regimes differs considerably, and we are not aware of another EU country that permits as wide ranging an exclusion as that contained in the UK OPE.

It has been suggested that an EU wide OPE based on the scope of the UK version could be a useful additional tool for UK firms in sectors where the relevant regulatory regimes have not qualified for mutual recognition under the FTA.

### Potential Pitfalls

As noted above, the existing OPE-type regimes in the EU vary in scope and application; many other EU countries do not embrace the concept at all. In practice, it may be very difficult to convince the EU to implement an EU wide version of the OPE. As with the other solutions explored above, this would require new or amended framework EU legislation, which would have to go through the EU legislative process. Many EU countries have also exhibited considerable hostility to the concept of an OPE in the past based on their concerns for levels of investor protection.

If the FTA or other agreement did not contain provisions to implement an EU-wide OPE, the UK could attempt to bilaterally negotiate with each of the other EU Member States to amend their domestic law. Such amendments would presumably be subject to the ability of the relevant Member States to withdraw such a regime at short notice, so might be of limited utility to UK firms.

The most significant challenge would likely be that an EU-wide OPE would not cover all the regulated activities currently covered by the EU passporting regime. Notably, it is very unlikely that an EU-wide OPE would allow non-EU firms to provide services to retail clients.

Such an exclusion, if implemented in the same form as the UK OPE, would also place significant constraints upon the activities of UK personnel in dealing with clients based in the EU, certainly compared with the freedom of action permitted by the existing passporting regime. The prospect of UK based bankers having to obey detailed “rules of the road” when travelling and meeting with clients in the EU is unlikely to be welcomed. Such an OPE would also not be available at all in EU

jurisdictions where the UK legal entity has a licensed branch, meaning this solution may be of limited use to those financial groups planning to operate post Brexit, in part, through a network of branches.

## Conclusion

The UK Government's vision for a wide-ranging FTA to replace single market membership is certainly welcome, but in the financial services sphere there are a number of political, timing and legislative obstacles to overcome to make this vision a reality. In particular, there does not appear to be any particular appetite from the EU side to provide any form of special treatment for UK firms, except in those areas where third country treatment for the UK might conceivably result in systemic issues for the remaining EU states (clearing of derivatives being the most notable example of such an issue).

In practice, international financial services groups will likely continue to execute contingency plans for a Brexit where the UK eventually becomes a third country without any special market access, while at the same time lobbying both sides to try ensure that an FTA, enhanced TCRs or an EU wide OPE (or a combination of all three) are put into place.

Given the obstacles outlined here, it may also be prudent for the UK to include in its negotiating strategy a fall-back position: that the UK should be granted equivalence under the TCRs immediately upon Brexit. Furthermore, UK financial services firms, clearing houses and benchmark administrators should be able to apply for ESMA recognition or registration on a "presumed equivalence" basis during the negotiation period and/or the transitional period, rather than having to wait until Brexit actually occurs before that process can begin. Clearly, the existing TCRs do not, as we have previously observed, provide a panacea for the loss of passporting rights, but the UK should as a minimum try to make sure that UK firms can make use of them as soon as possible after Brexit.

## Societas Europea and Cross-border mergers

### Introduction

UK groups with group members in at least two member states of the European Economic Area ("EEA") can use two EU-derived regimes to re-domicile to another European jurisdiction: the formation of European Companies, known as Societas Europea ("SEs"), and the completion of cross-border mergers. These regimes are designed to provide, on the one hand, a corporate structure that facilitates the reorganisation of business on a European scale and, on the other hand, pan-European provisions to facilitate cross-border mergers between various types of limited liability companies governed by the laws of different member states.

Both regimes may be helpful to a group looking to re-domicile entities to other parts of Europe in the context of Brexit, although both have been the subject of recent judicial decisions regarding the form of transactions which are considered permissible.

### SEs

An SE is a European public limited company that can be created and registered in any EEA member state. In the United Kingdom, the SE regime is governed by the Council Regulation (2157/2001) on the Statute for a European Company (the "**SE Regulation**") and the European Company Limited-Liability Company Regulations 2004 as amended (the "**UK Regulations**"). A UK registered SE is analogous to a UK public limited company and can (but need not) be admitted to listing on a stock exchange.

There are several methods of formation of an SE, but those potentially of most interest to groups looking to re-domicile an English incorporated company in the wake of Brexit are:

- the merger of two (or potentially more) public limited liability companies, where the two merging companies are incorporated in different member states; and
- the transformation of an existing public limited liability company incorporated in a member state, provided that for at least two years the company has had a subsidiary company governed by the law of another member state.

To date, the formation of SEs has not proved to be especially popular in the UK, and according to Companies House records, there are only 50 SEs registered in the UK.

This lack of interest in the SE regime in the UK is down to a number of factors, including the increased complexity of complying with a mixed European and national regime, and the potential requirement for employee participation in the SE. (Unlike in some other jurisdictions in the EU, no such participation is presently required for a UK-incorporated company.) Added to these disadvantages is the lack of incentive for UK companies to pursue this route currently; it is presently possible for a UK company to operate across Europe by establishing branches in other jurisdictions, and the effect of formation of an SE by merger is largely replicated through the cross-border merger regime discussed below without the need for the surviving entity to become an SE.

The principal advantage of an SE, however, is that its registered office can be transferred to another EU jurisdiction without winding up the SE or creating a new legal person. With the onset of Brexit, for those companies that see benefits arising from being registered within the European Union (including airlines and financial services firms), formation of an SE either by transformation or by merger may prove to be an attractive means of creating optionality about where to re-domicile before the likely completion of Brexit in 2019.

For example, an SE could be created in the UK and its registered office subsequently transferred to another European Union jurisdiction prior to Brexit. Under the SE Regulation, after having been registered as such for two years, an SE can convert into a public limited company under the law of the jurisdiction of its registered office. Therefore, an English public limited company could re-domicile, for example, to Ireland and ultimately become an Irish plc by operation of law without a winding up or creation of a new legal person.

In the financial services sphere, however, we would expect that any transfer of registered office of an SE will trigger a requirement for a new authorisation in the transferee jurisdiction, notwithstanding any licences held by the SE in the original country of registration.

### **The cross-border merger regime**

A merger is a form of corporate restructuring which involves the dissolution of one or all of the companies concerned in order to leave one surviving entity. For the purposes of the EU regime, a cross-border merger requires the participation of at least two companies incorporated in different member states of the EEA.

In the United Kingdom cross-border mergers are governed by the Companies (Cross-Border Mergers) Regulations 2007 (as amended) 2007 (the “**CBMRs**”), which implement the European Directive (2005/56/EC) on Cross-Border Mergers of Limited Liability Companies.

Since the introduction of the CBMRs, UK companies have most frequently used the cross-border merger regime to implement intra-group reorganisations although, there have been several arm’s length transactions involving cross-border mergers. The cross-border merger regime could provide another avenue for UK companies wanting to re-domicile to the EU.

In the financial services space, to the extent that a merging EU company holds a regulatory permission, it may be possible to structure the cross-border merger so that the EU licensed institution is the surviving merged entity, hence avoiding the need to obtain a new regulatory licence for that entity (although to the extent the merged entity will carry on regulated activities in a jurisdiction that it did not before the merger, such as the UK, it may need to apply for additional licences/permissions).

### **Recent development in UK case law**

Whilst both the SE and cross-border merger regimes could provide helpful tools for a group looking to re-domicile entities to other parts of Europe in the context of Brexit, both have been the subject of recent judicial decisions in the English courts delineating the limits of the transactions that can be carried out pursuant to the regimes.

In particular, in the case of Easynet Global Services Limited (“**Easynet**”)<sup>1</sup>, the High Court refused to approve a cross-border merger involving 22 UK incorporated companies in a group and one dormant, non-trading Dutch company without appreciable assets (“**Dutchco**”). The court was of the view that the participation of Dutchco had a trivial impact on the proposed transaction which, in substance, was a domestic reorganisation, and the only purpose of Dutchco was to bring the reorganisation of the English companies within the scope of the CBMR. Accordingly, despite the participation of companies incorporated in different member states of the EEA, the proposed transaction lacked a sufficient cross-border element for the court to approve the merger.

Consequently, there is currently some uncertainty as to the availability of the CBMR as a means of completing a group reorganisation where the only cross-border element is satisfied by the participation of a newly-incorporated or dormant company.

In the subsequent case of Portman Insurance Plc (“**Portman**”)<sup>2</sup>, a merger was proposed pursuant to the SE Regulation whereby an English company would merge with its wholly-owned, dormant, non-trading French subsidiary (“**Portman SA**”) to form an SE. The proposed merger and formation of an SE was one step in the wider reorganisation of the AXA Insurance Group, with the purpose of rationalising its European group structure.

In delivering an initial judgment regarding compliance with the requisite formalities by Portman the High Court in Portman considered itself bound to follow the *Easynet* decision to the extent that it was applicable. It concluded, however, that the participation of Portman SA was not a device as the company had a genuine part to play in forming the SE, which was taking place as part of the wider reorganisation. Accordingly, if an English company could not be transformed into an SE because it did not have a subsidiary company governed by the law of another member state for the requisite two year period, it may be possible for that company to participate in a merger under the SE Regulation with an existing dormant, non-trading company elsewhere in the group, or a newly-formed company, provided that the involvement of that company is not purely a “device” to bring the transaction within scope of the regime. The High Court is expected to provide a final ruling on whether to approve the merger and formation of an SE in the coming weeks which may also provide further detail on these considerations and so the extent to which regime may be available in the context of the Brexit timetable.

In the context of Brexit, we expect that the argument that the involvement of a dormant or newly-formed company was not such a “device” would hinge on the role of that company, and the new SE, in the broader restructuring / reorganisation of the group in light of Brexit.

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<sup>1</sup> *Re Easynet Global Services Limited* [2016] EWHC 2681

<sup>2</sup> *Re Portman Insurance plc* [2016] EWHC 2994

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