Brexit – Consequences for corporate restructuring in Europe

Ben Trask
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Scheme of arrangement as a suitable instrument in the future?

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Agenda

• Brexit - Current state of play
• Potential post Brexit outcome scenarios
• UK restructuring
• The Scheme of arrangement – still suitable for the future ?
• Brexit impact on international restructuring
• EU reactions and recent steps
Brexit - Current state of play
**Current state of play**
Brexit Process – Where do we currently stand?

- **June 23**
  - British EU Referendum “Brexit”

- **February 8**
  - House of Commons final vote on Article 50

- **June 8**
  - UK general election

- **June 23**
  - Principals agreed

- **March 29**
  - UK invokes Article 50 to leave the European Union.

- **March 29**
  - Deadline for UK’s withdrawal from EU – Extension?

- **Autumn**
  - Austrian and German Parliamentary Elections

- **July 1**
  - Begin of Austrian EU presidency

- **October**
  - Target for completion of negotiations including transitional arrangements

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Current state of play
How might Brexit impact Austria

United Kingdom

124 Austrian companies operate British subsidiaries in the United Kingdom

> 17,000 employees

> €5.0bn revenues

€2.7bn of imports from the UK to Austria

Austria

176 companies in Austria are subsidiaries of British parents.

> 16,500 employees

> €3.5bn revenues

€4.1bn of exports from Austria to UK

Current state of play

Important trading partners

Development balance of trade

Source: WKO

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Current state of play
Austrian physical exports to the UK

Austrian exports to UK by product group

- Transport equipment: 32.4%
- Machinery: 25.4%
- Chemicals and related goods: 20.1%
- Crude materials and fuels: 6.8%
- Food, beverages, tobacco: 4.2%
- Commodities: 10.2%
- Other manufactured goods: 10.2%
- Other goods: 4.2%

Source: WKO, Eurostat
Current state of play
Impact on the Auto industry

1. Auswirkung auf Österreichs Automobilexporte in das vereinte Königreich
   Umsatzerlös: -106 Mio. €
   "Ohne Brexit" 2019 vs. "Harter Brexit" 2019

2. Überleitung des deutschen Umsatzerlösabfalls auf Österreichs Autoteil-Markt
   80% des Umsatzerlasses auf Fahrzeugteile zurückführen
   60% der Fahrzeugteile werden nach Deutschland importiert
   6,5% der importierten Fahrzeugteile stammen aus Österreich
   Umsatzerlösabfall: -210 Mio. €

3. Rückschluss auf Basis von Exportquoten österreichischer Autoteile
   Umsatzerlösabfall: -165 Mio. €
   39.5%
   50.0%
   Rest of EU
   Germany

Direkter Effekt: -106 Mio. €
Indirekter Effekt: -375 Mio. €
Rückgang Branchenumsatz: -480 Mio. € bzw. -1,5%
Potential post Brexit outcome scenarios
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There are currently five macro outcomes towards which the UK Government can push

- **STAY** ~zero probability
- **LEAVE** high probability

**Eventual outcome**
- EEA (Norway) medium probability
- EFTA (Switzerland) medium probability
- FTA (Canada) high probability
- WTO (Australia) low probability

**Transitional period?**
- Free movement to retain Single Market access
- Immigration top political issue in UK
- UK controls on movement of EU nationals high probability

Free movement of EU nationals low probability

Greater structural change for business

Transaction 50 triggered
UK Restructuring
UK Restructuring
The UK is currently the European, if not global, hub for cross border and complex restructuring

UK currently center of global restructuring industry – why?

- History – commonwealth / common law
- Language – everything is in English
- Predictable legal system - Commercial, experienced and pragmatic judges
- Effective statutory and common law framework for restructuring – the Scheme
- Availability of professionals – greater concentration of lawyers and accountants in the square mile than any other place on earth (good or bad? – discuss!)
- Location of financiers – (currently) financial capital of Europe
- Membership of the EU – automatic recognition of UK judgements across EU
The Scheme of Arrangement
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What is a Scheme?

- Arrangement / compromise between a company and its members or creditors (or any class of them).
- Very flexible tool – all commercial terms are determined and agreed by the parties in the Scheme docs
- **Not** an insolvency process => No moratorium
- Very well established - been on statutes since 1800s. Currently Part 26, Companies Act 2006
- Many other commonwealth countries (and former) have similar or the same mechanism available
- Scheme approved by a majority of creditors in number representing 75% in value (of each class)
- Sanctioned by the court at a formal court hearing (after hearing to convene meetings)
- Binding on all creditors (whether / not they vote in favor of it)
- Quick process – 5-10 weeks between restructuring terms being agreed and Scheme becoming effective
The Scheme of arrangement
Still suitable in the future?

- Uncertainty over Brexit (law enforcement & applicable law)
- UK restructuring facing increased competition
- Changing landscape of fiscal policy - quantitative easing & low interest rates
- UK has been at the forefront of encouraging improving standards and regulations
- Moratorium, cram-down & more effective minority creditor protection in work/under consideration
- A brand new restructuring process replacing the scheme of arrangement?

Schemes: very useful tool in a restructuring professional’s armory, but not a perfect solution and not always the right solution...
The UK Scheme will likely be around in one form or another in another 100 years time
Brexit impact on international restructuring
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Implications for existing transactions & potential impact of future legislative changes

- No impact on the law
- Existing EU law continues to apply
- Separate insolvency regimes in each EU Member State
- EU Regulation on insolvency proceedings
  EC1346/2000 - EU-wide effect on cross border
- COMI
- Forum shopping
EU continental reactions and recent steps
A number of other EU countries are looking to implement their own procedures similar to the UK Scheme

❖ Austria

• Current status: Law on Reorganizations inflexible, time consuming, difficult to utilize in practice. Proceedings take place under bankruptcy provisions (AIA)

• Purpose: Modernization by furthering efficiency. Avoiding insolvency while going concern is at risk. Enhancing depth and liquidity of Austrian capital markets. Attracting creditors to lend, companies to restructure

• Reference to the UK Scheme of Arrangement

• Legislative agenda for 2017: New court-approved out-of-court restructuring solution

• Austrian Ministry of Justice: The new Law is currently under consideration by a working group within the Austrian Ministry of Justice)

❖ Netherlands: New draft bill January 2017

❖ Spain
Short-Profile

Ben Trask joined Deloitte Austria in 2014 to help develop the FAS practice & grow the restructuring business across the CEE region. Ben has 16 years restructuring, insolvency & turnaround experience, leading a number of successful national & international restructuring engagements in that time. He joined Deloitte UK in 2007 having previously worked for KPMG in London and Bermuda.

Highlights of recent experience

• Financial restructuring of a CEE DIY retailer (EUR1bn debt)
• Financial restructuring of Dubai World (EUR50bn)
• Operational improvement of a FTSE listed services business
• Crisis management and stabilization of a FTSE listed property manager (EUR0.5bn debt)
• Managed wind-down of the UK’s largest care-home operator
• Advising European financial institution on strategic options, wind-down strategy & operations (€5bn CEE loan portfolio)
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