

German Federal Court Confirms Loss of Limited Liability for English Companies With a Real Seat in Germany

26 October 2026

At a Glance

The German Federal Court of Justice (BGH) has confirmed¹ that, following Brexit and the lapse of post-Brexit transitional provisions, an English private limited company whose place of management is in Germany loses its legal capacity and is reclassified as a matter of German law.

In practice, this means that:

- an English limited company with its effective place of management in Germany is no longer recognised as a limited liability company under German law. Whilst this reflects the established position for companies incorporated in states that are neither EU/EEA members nor treated as equivalent under treaties on freedom of establishment², the BGH has now confirmed that this also applies to the UK even if such English private limited company was validly incorporated under English law prior to the end of the transition period;
- if there are two or more shareholders, it will generally be treated as a partnership;
- if there is only one shareholder, the company's assets accrue to the sole shareholder by way of universal succession as a matter of German law;
- in both cases, "shareholders" face direct and unlimited personal liability; and
- creditors holding an enforceable title (e.g., a judgment, cost order or an enforceable notarial deed) against such English company can apply for an enforceable copy of the existing title endorsed with a clause that names a sole shareholder as legal successor. Under German enforcement law, to avoid new proceedings, this requires the facts underlying the succession, in particular the company's German place of

management, to be either obvious to the court or evidenced by public or publicly certified documents.³

The judgment is not surprising as it is fully in line with existing case law and follows the prevailing view in legal literature. The BGH did not refer the matter to the CJEU as it viewed this as an unambiguous legal position (*acte clair*). It clarifies treatment of English limited liability companies (and their shareholders) that have their real seat in Germany.

Whilst the exact scope of this issue is not publicly reported, pre-Brexit about 8,000-10,000 English limited liability companies had their real seat in Germany.

Key Takeaways and Practical Implications:

- **Prior to Brexit:** Pre-Brexit, English limited companies enjoyed freedom of establishment under Articles 49 and 54 TFEU. German courts therefore applied the so-called incorporation theory (*Gründungstheorie*), meaning such companies were recognised as limited liability entities if they were validly established as a matter of English law, even where German law would deny recognition.⁴
- **Post-Brexit, place of management becomes key:** Following the end of the transition period on 31 December 2020, English limited companies no longer benefit from freedom of establishment under the European Union Treaties. German courts therefore apply the so-called real seat theory (*Sitztheorie*) which requires recognition of foreign companies with effective place of management in Germany only in accordance with German law. While this is established case law for non-EU/EEA members and states without bilateral treaties⁵, the BGH has now confirmed this for companies incorporated under the laws of England and Wales.
- **Reclassification and unlimited “shareholder” liability:** Any English entity with real seat in Germany will lose its legal capacity as such and be reclassified under German corporate law. The real seat is not necessarily the registered seat, but the place where the administration of the company actually happens. Unless the English company had duly initiated a cross-border merger into a German entity before the relevant cut-off date (i.e., its merger plan had been notarised before the end of the Brexit transition period⁶ and the merger was then filed for registration without undue delay and in any event within two years), German courts will treat a multi-shareholder legal entity as a form of a partnership⁷ with unlimited personal liability of all shareholders and a single-member entity as a sole proprietorship (and as a result its assets and liabilities will immediately and automatically be vested in its shareholder as its legal successor by way of universal succession), again with

unlimited personal liability of such “shareholder”. This includes liabilities incurred before Brexit.

- **Direct enforcement by creditors against “shareholders”:** A creditor already holding an enforcement title issued against the English limited company may apply for an enforceable copy of such title against the sole shareholder.⁸ Pre-existing creditors can therefore gain direct access to the shareholder’s assets without new judicial proceedings, where the German seat is obvious or can be proven by public documents. Since claims established by a final judgment are generally subject to a 30-year limitation period, legacy titles against dormant English limited companies (with non-dormant shareholders) could potentially become valuable again.⁹
- **Spin-off and conversion as potential structuring tools:** Where two or more shareholders remain, the resulting German partnership can itself convert into a German limited liability company (*Formwechsel*) or spin off the legacy business and liabilities. Where there is a sole shareholder, the English company no longer exists from a German law point of view and the business forms part of that shareholder's own assets, so that any spin-off is effected out of those assets; this presupposes that the sole shareholder is a German or EU/EEA legal entity. In each case the five-year tail liability (*Nachhaftung*) applies to liabilities incurred prior to the spin-off or conversion.¹⁰
- **Financing and restructuring transactions:** The decision creates important issues for financing, restructuring and M&A transactions involving English limited companies.

Parties should assess:

- whether the company’s actual place of management is located in Germany;
- if so, who their true counterparty is, in light of this decision;
- whether a corporate parent has, by operation of law, taken on the subsidiary’s liabilities (as noted in this decision, the entity may remain a corporate taxpayer even though it has no legal capacity in civil law);
- possible change-of-control consequences;
- regulatory and accounting implications; and
- whether German assets (including real estate entries in the land register) and security granted after 31 December 2020 are held or granted by the correct legal person – and therefore the potential need to amend or perfect security interests.

For tailored advice on your restructuring or cross-border financing, contact our team.

1. NJW-Spezial 2026, 559; [Federal Court of Justice \(BGH\), judgment of 14 July 2026 – II ZR 202/25](#), published in the literary press on 1 Oct 2026. [↩](#)
2. Companies incorporated in certain third countries continue to be recognised under the incorporation theory if bilateral contracts between Germany and the jurisdiction in question are in place, as is the case for e.g. the U.S. or Canada (see EuZW 2021, 613, 614). [↩](#)
3. In the case at hand the court registrar had issued the succession clause against the sole shareholder, and the BGH held that the requirements of § 727(1) ZPO were met, the facts of the succession occurring by operation of law being obvious to the court. [↩](#)
4. CJEU dated 9.3.1999 – C-212/97, NJW 1999, 2027 – *Centros*; CJEU dated 5.11.2002 – C-208/00, NJW 2002, 3614 – *Überseering* and CJEU dated 30.9.2003 – C-167/01, NJW 2003, 3331 – *Inspire Art.* [↩](#)
5. Fundamentally *Trabrennbahn* case law, BGH, judgment of 27 October 2008 – II ZR 158/06 = NJW 2009, 289; see also BGH NZG 2016, 1187 and NZG 2017, 347. For bilateral treaties, see footnote 2 above. [↩](#)
6. German law – the Fourth Act Amending the Transformation Act (of 19 December 2018) Federal Law Gazette (BGBl.) 2018, p. 2694, in force as of 1 January 2019 – particularly allowed a merger into a German partnership, without minimum capital. The BGH relied on this route to reject reliance arguments. [↩](#)
7. Either as a *Gesellschaft bürgerlichen Rechts* or *Offene Handelsgesellschaft* (OHG), depending on whether it is trading or not. [↩](#)
8. The BGH confirmed this for payment and costs titles; enforcement of the injunction and information relief had already been declared inadmissible by the lower court and was therefore not before the BGH. [↩](#)
9. The 30-year period is the limitation period for claims established by a final judgment (§ 197(1) no. 3 of the German Civil Code), not a separate period of enforceability. Whether an old title can in fact be re-used against the shareholder depends on the requirements for the succession clause being met in the individual case, and the enforcement of long-dormant claims may be subject to further limits such as forfeiture (*Verwirkung*). [↩](#)
10. If the sole shareholder is an individual, German transformation law requires the business to be held through a registered sole trader (*eingetragener Kaufmann*) structure. For a change of legal form (*Formwechsel*), the civil-law partnership (*Gesellschaft bürgerlichen Rechts*) must likewise be registered. [↩](#)

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