

in sight

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Trends: self-employment | Contracts post-Brexit | Divorce myths | Ground rents | HS2 | White Light's success

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By your side every step of the way



At B P Collins, we always aim to get to know you or your business personally, to learn what you want to achieve and develop a true partnership in order to help get you to where you want to be.

Technology has and will continue to improve the way we do things and we embrace it wholeheartedly. But the latest software will never take B P Collins away from its firm belief in the personal touch – being available whenever you need us, immersing ourselves in the nuts and bolts of your company, learning what makes you tick, and truly understanding what you want from your business, your life, or both.

In commerce, we understand that owners want different things from the companies that they've started and grown, and our cross-practice firm will help you make that happen. We anticipate things that could go wrong and help you avoid them. We endeavour to identify opportunities and ensure you avail yourself of them.

Over the course of your life, we understand that significant and emotional decisions will need to be made for you and your family. We advise those who are buying a home or just about to move in together for the first time, or perhaps thinking about planning for their future in order to protect their loved ones.

We help people make the choice that's right for them, whether it's getting your personal or business affairs in order, protecting yourself or your business against future conflict and expense or helping your family out financially – we always advise with the utmost care and foresight so you can get on with living your life, while we take care of the rest.



Simon Deans, senior partner

Employment

CHRIS BRAZIER, SENIOR ASSOCIATE

When hiring it's always important to have a signed contract in place for your new employee. It's tempting to download one from the web but it won't be tailored to your company, it may have irrelevant clauses, and might not have the right terms and conditions to protect either party.

It's also likely to be more cost-effective to create a new contract than have a lawyer review an existing one. Basic policies should also be considered, with the most important being a disciplinary and grievance procedure. Also be mindful of GDPR compliance. For example, there is an obligation on employers to be transparent as to how personal data will be used.

Business immigration

CHRIS BRAZIER, SENIOR ASSOCIATE

If you're hiring an employee, you're obliged to check if they have a right to work in the UK. Review their passport and take a copy to keep on file before employment begins.

This secures your statutory excuse, which protects you against liability from illegal worker penalties of up to £20,000 and, in the most serious cases, criminal liability.

The number of
self-employed workers
has increased to over
15%
of the labour force

THE OFFICE OF NATIONAL STATISTICS FOUND THE NUMBER INCREASED FROM 3.3 MILLION PEOPLE IN 2001 TO 4.8 MILLION IN 2017. IF YOU'RE THINKING OF STARTING A BUSINESS, HERE'S SOME KEY ADVICE.

Wills, trusts and probate

NAADIM SHAMJI, SOLICITOR

If you're acting as a sole trader, there is usually no formal business structure in place. So if you become incapacitated, it is unlikely that your business will continue to be able to operate, because the assets of that business will become inaccessible by third parties.

The way around this is to have a lasting power of attorney (LPA) in place. You might wish to appoint your spouse, or if it's a more complex business, a trusted colleague who is familiar with the business, to take over as your attorney.

If you're trading through a limited company, you would need to ensure that your Articles of Association contain appropriate provisions to deal with succession to

running the company, as the role of director cannot be delegated through the LPA.

If you leave a will then you can make clear who should inherit your business on your death, otherwise the intestacy rules may result in ownership passing in a way which was not intended.

If a self-employed person becomes incapacitated, the name on the business bank account will determine how it can be accessed by a family member. If it's in an individual's name, acting as a sole trader, an attorney under an LPA can normally have access to the account. If it's in the company's name, then a new director would need to be appointed.

Corporate and commercial

VICTORIA HOLLAND, PARTNER

It's important to recognise that if you are a sole trader then everything you own will be at risk should you have a dispute, whereas trading through a limited company should protect personal assets. It's also important to limit your liability in any contract under which you will provide your services.

Money can be tight when running your own business. Have you set out your payment terms in your contract with clients so you know when you will be paid?

It is also absolutely vital to be aware of the tax implications of being self-employed. You will have to retain money to meet tax, as this may not be deducted from what is paid to you.

Les Miserables?

Not a chance!



Reflections. Projection by 59 Production. Photo by Justin Sutcliffe.

IN THE FIRST INTERVIEW FROM INSIGHT’S NEW ‘HOW I DID IT’ SERIES, B P COLLINS TALKS TO BRYAN RAVEN, MANAGING DIRECTOR (MD) OF WHITE LIGHT LTD, THE COMPANY THAT HAS PROVIDED LIGHTING FOR THE THEATRE INDUSTRY FOR MANY YEARS, INCLUDING LES MISERABLES AND MISS SAIGON, AND HAS DIVERSIFIED MORE RECENTLY INTO THE CORPORATE PRESENTATION AND THEME PARK SECTORS. WE LEARN HOW BRYAN GOT TO WHERE HE IS TODAY AND WHAT HE WOULD BE DOING IF HE WASN’T MD.

How did you go from working in the hire department to becoming MD?

When I joined the company there were only 17 of us so we all did a bit of everything – I certainly remember driving the van up to the BBC about two weeks after I started as I was the only person who was available. Coming up through the ‘ranks’ has huge advantages, as I have a great understanding of the workings of the company. There is obviously a downside in that I haven’t really known any other company. But in recent years this has improved massively as we have been growing and therefore bringing in lots of people from other companies from both inside and outside the entertainment technology industry.

What things have you done that you believe have contributed to White Light’s success?

The biggest factor in White Light’s success has been its founder John Simpson. He started the company back in the 70s but then had the trust and faith in his management team in the 90s to grow the company and in 2001 we outgrew our premises in Fulham and moved to our current premises in SW19. This triggered more growth as we diversified into other areas of the industry. In 2008 we completed a Management Buy Out, with B P Collins’ assistance, with John

staying on as part of the ‘new’ owners. In more recent times, new members of the management team have invested in the company. Equally 5% of the company is now owned by an Employee Benefit Trust, which was set up by B P Collins. The next step change was the acquisition of Shock Solutions which also involved B P Collins and gave White Light access to the world of video and broadcast. Since that acquisition and the addition of audio services, our portfolio has doubled in size.

What’s the best part of the job?

Definitely the thousands of people I have met, including my partner. Our industry seems to attract “nice” people. Equally it is great to be involved in iconic projects like the Rugby World Cup, the Harry Potter Experience in Leavdsen and theatre shows like Miss Saigon and Les Miserables.

White Light has worked with some high profile shows and brands. Any insider information you can share?

When I joined the ‘West End Lighting Hire Company’ in 1987, I never dreamed that I would still be here 31 years later, having had so many amazing experiences all round the world. I have given evidence at the Houses of Parliament about the lack of

technical training in the theatre industry; I have given evidence at a fraud trial, which related to the ill-fated Millennium Dome; I have been to hundreds of opening nights and I got to be pitch side for the Rugby World Cup in 2015. But all of this is surpassed by the people I have met over the years – virtually all of these experiences were shared in some way with someone else and they were the best ones.

If you weren’t MD for White Light, what would you be doing?

My parents lived on a narrowboat on the Grand Union for many years and I always fancied running a boat yard. But after hiring a narrowboat once or twice a year, I can see that it’s a job that looks like hard work!

Read more about Bryan’s future plans for White Light on B P Collins’ website.

DAVID SMELLIE, B P COLLINS PARTNER, WORKS CLOSELY WITH BRYAN AND WHITE LIGHT. IF YOU NEED ADVICE ON GROWING YOUR COMPANY, CONTACT DAVID ON 01753 279022 OR COMMERCIAL@BPCOLLINS.CO.UK

Fact or Fiction?

Many people look forward to spending time together during a family holiday as the chance to escape from everyday life is very appealing. But research from the University of Washington has shown that there is a spike in the divorce and separation rates when this happens, perhaps because the stress of spending more time with your spouse or partner when there is a lot less distraction can make couples realise that they’re not meant to be together anymore. If you’re thinking about separating or divorcing, it’s always worth knowing fact from fiction. Test your knowledge on the right.

If you wish to separate from your spouse or partner, it is imperative to speak to an experienced family lawyer.

CALL 01753 279046 OR EMAIL FAMILYLAW@BPCOLLINS.CO.UK



In 2018, work began on the first phase of the HS2 project - a high speed train service that will run between London and the West Midlands and travel through 60km of Buckinghamshire.

Since Royal assent was given to HS2 by the Queen in 2017, the £70 million of funding has begun to be distributed to those affected by the railway construction under the Homeowner Payment Scheme. According to the Department for Transport, it gives eligible property owners living near the HS2 route in rural areas an opportunity to “share in the future economic benefits of the railway”. However, it seems that despite HS2 Ltd writing to all relevant households, around two thirds have not availed of the scheme, as there is still £13 million left in unclaimed compensation.

Through the Homeowner Payment Scheme, owner occupiers living between 120 and 300 metres either side of the centre-line of the planned railway line are eligible to receive £7,500, £15,000 or £22,500, depending on the distance.

I can obtain a “quickie divorce” myself which will resolve all claims between me and my spouse with no need for specialist legal advice.

True / False

As I am a woman and the primary carer of the children, I am entitled to 70% of the assets.

True / False

As we lived together for 10 years, I have the same rights as a married person.

True / False

As a father it is impossible that I will have an order that the children live primarily with me because the court favours mothers.

True / False

I am able to move to a different country or area of the UK without consulting the other parent as the children spend most of their time with me, even though there is no “living with” court order.

True / False

The fact that my actions caused the breakdown of my marriage will automatically impact my financial settlement.

True / False

Answer: every single point is ‘False’.

HS2: Homeowner Payment Schemes

ARE YOU OWED COMPENSATION?

After an owner occupier has received a letter from HS2 Ltd confirming eligibility, they need to instruct a solicitor to advise them on the terms of the payment and check and certify their identity, in order to recover the compensation. Payment can only be made through a solicitor and not direct to the homeowner. HS2 will cover the solicitor’s costs up to £500 plus VAT.

Although the scheme will be open for applications until 2027 - a year after Phase One of the railway opens - it’s best to avoid any last-minute rush. And as the process can take up to two months for eligibility to be confirmed, it’s best to start as soon as possible.

Contact Elliott Brookes, property litigation solicitor for advice.

CALL 01753 279035 OR EMAIL ENQUIRIES@BPCOLLINS.CO.UK

EVERYONE’S TALKING ABOUT:

The prickly issue of ground rents

THE ISSUES SURROUNDING ONEROUS LEASEHOLD PROVISIONS, MAINLY EXTORTIONATE GROUND RENTS AND LEASEHOLD HOUSES, HAVE NOW BECOME SO PUBLICISED THAT THE GOVERNMENT IS TAKING STEPS TO REGULATE THE LEASEHOLD MARKET, AS OUTLINED IN THE HOUSING WHITE PAPER PUBLISHED ON 21 DECEMBER 2017. CHARLOTTE ERNEST, ASSOCIATE IN B P COLLINS’ RESIDENTIAL PROPERTY PRACTICE, TAKES A CLOSER LOOK AT GROUND RENTS AND WHAT THE FUTURE MAY HOLD.

The government’s proposals are ambitious, with plans to ban sales of leasehold houses, save for necessary exceptions such as shared ownership, to set ground rents on new long leases to zero and “to make the process of purchasing a freehold or extending a lease much easier, faster and cheaper”, to highlight just a few points. More recently in July, the housing, communities and local government select committee of MPs said it will investigate how the leasehold market is working for consumers later this year.

Such drastic proposals reflect the widespread negative response to the issues the government intends to tackle. Over the past two centuries, ground rents have been transformed from peppercorns to prickly sores, culminating in their current state as irrevocable thorns in leaseholders’ sides. Despite some developers setting aside vast sums to prune such clauses, it is yet to be seen how much foliage will be stripped back.

There are two main issues for property owners - excessive ground rents and escalating ground rent, which come under regular reviews during the lease term, often without a cap. Both have a clear impact on affordability and potential value or re-sale of a property.

Some developers have addressed the issue through use of RPI ground rent clauses but these are starting to be seen as wolves in sheep’s clothing. The clauses tend to render rent reviews as upwardly only – any decrease in RPI is more than likely to be discarded under the lease. The veil is being lifted on these; many lenders will now insist on further investigation where there is an RPI clause linked to ground rents, with some smaller lenders refusing to lend at all. As accord for RPI as a measure for inflation dwindles, its links to ground rents is also likely to dwindle, and it is perhaps for law firms advising developers to steer clients away from such clauses altogether.

Advice for homeowners

If you’re looking to buy a leasehold property, it is vital to listen to the advice of a good solicitor. If the ground rent under a long lease becomes, during the lease, more than £1,000 per annum in London or more than £250 per annum outside London, there could be a trigger for statutory regimes and the lease could be forfeited when the ground rent isn’t paid, which could obviously be a huge issue for homeowners. So you need to make sure that you’re on top of your ground rent payments - paying in full and on time.

The issue of escalating rents is also very much at the top of the government’s agenda. With negative opinion increasing, this has had a knock-on effect on mortgage lenders. They are starting to see escalating ground rents in a less favourable light and are starting to refuse to lend against certain properties that have escalating ground rents above a certain rate.

If you are looking to buy a property, your solicitor should be able to highlight if the escalating ground rents are unreasonable and advise to proceed with caution as potentially there could be an issue when you come to re-mortgage or sell the property, as it may be valued less than what it was bought for.

Already, solicitors are having to refer some escalating ground rent clauses to mortgage lenders (and in turn their valuer) to determine whether the clauses have a detrimental effect on the mortgage offer.

Advice for developers

A good solicitor may also advise a developer that if they can sell the freehold of houses, and/or set ground rents more in line with their original intended purpose, a strong example is set for the rest of the market to follow - as well as a potential headache avoided should the legal reforms come to fruition.

Law Commission’s project on residential leasehold and commonhold

In February 2018, the Law Commission announced its proposals to investigate previous failings of commonholds, with a view to re-gearing the same as a way to side-step current leasehold issues. The Law Commission was aiming to look into lease assignments, with a view to seeing these as new contracts being formed between the freeholder and incoming leaseholder, so that any unfair terms can be challenged under the Consumer Rights Act 2015.

While the system is weighted as it presently is, developers may be keen to continue as they are. And, while commercially this may be beneficial at present, a good solicitor will inform clients of the direction leaseholds are heading – especially the number of measures both the government and Law Commission have proposed to tackle existing lease provisions.

For example, in July the Law Commission published a variety of recommended reforms to make it easier for the owners of the estimated 4 million leasehold properties in England to “enfranchise” their leases and obtain full ownership of their homes.

Introducing a fixed formula for those looking to buy their freehold, of annual multiples of ground rent (as exists in Northern Ireland and Scotland) is one notable proposal.

Moreover, the Law Commission has examined a model that would set the cost of freehold at 10 times annual ground rent. It is also considering introducing longer lease extensions than the statutory 90 years.

This has been followed by a detailed consultation on a new enfranchisement regime in respect of leasehold houses and flats. We will soon see whether these solutions will be implemented retrospectively. But hopefully there will be some redress for people that have already purchased a leasehold property. The reforms and the proposal are welcomed and if implemented will be a much needed change for homeowners to ease the cost burden and simplify the process of calculating ground rents.

There is a middle-ground to be found between notional and unconscionable ground rents, and developers may be well advised to show that they are capable of reaching this ground themselves, before such clauses are dispensed with entirely.

B P Collins’ residential property team will always keep their clients abreast of any future changes to ground rents to ensure home owners and developers have the most up to date advice. Every lease is unique and we will always tailor our advice to each individual case.

For more information or advice, contact Charlotte or a member of the residential property team.

CALL 01753 279064 OR EMAIL
RESPROPERTY@BPCOLLINS.CO.UK

DIY contracts

The sinkholes of small business



David Smellie, partner in the corporate and commercial team, believes that DIY contracts are a bit like sinkholes. The road covering a sinkhole looks like it's doing its job as cars drive over it every day. But if it collapses, the impact can be catastrophic as there were no solid foundations underneath providing support. In the same way if a dispute arises between you and the other party to your contract, then your DIY contract will be scrutinised very closely and although it may have looked the part when first created, it could soon become clear that it offers little protection, and the expense and time spent dealing with a dispute could be disastrous for your business.

DIY contracts

There is no getting away from the fact that contracts can be downloaded from the internet for little or no cost. This, of course, is a huge draw for companies that wish to keep costs down. Business owners may also feel that all contracts look the same anyway and there will never be a need to refer to their DIY agreement ever again as things are going so well with the other party, so why invest in one which has been legally drafted?

This approach can bring huge risks as no one knows what the future holds. What if your co-shareholder wants to sell his shares or the business? What if a co-founder isn't pulling their weight? What if a supplier reneges on what they promised to deliver? If there are ambiguities, discrepancies or omissions in your DIY contract then any dispute that arises could become protracted, costly and result in high court fees and lost management time.

Legally drafted contracts

In a meeting with your lawyer you should be encouraged to consider a variety of different outcomes to the various relationships involved in your burgeoning business. Your lawyer should find out about your relationships with your suppliers, clients or partners and take time to understand how your business operates so as to produce a carefully drafted, tailored contract which will offer you protection should you ever need it. It will include relevant clauses and clear terminology.

If you never have a dispute then you will not need a formal contract or agreement. Lots of businesses get away with using DIY contracts or even having no contract at all. However should a dispute arise then legally

drafted contracts will be worth every penny. It's an investment for your future.

We understand small business

We understand a small business's requirement to keep costs as low as possible. If you can tell us exactly what you'd like to achieve, we will provide an approximate fee for producing the agreement that you are looking for and we always work in a way that is as cost effective as possible.

A solicitor with commercial expertise and a comprehension of the complexities of the law will produce an agreement that is appropriate for your business needs and fit for purpose.

WHAT COULD HAPPEN IF MY CONTRACT ISN'T DRAFTED BY A LAWYER?

- A video production company regularly creates footage for your website. You now wish to change to another supplier, but as there was no clause in your contract confirming ownership of material, a dispute arises as to ownership of the footage and the video production company tries to stop you using the footage until the dispute is resolved.
- You are selling your shares in your company and a large part of the purchase price that will be paid in the future depends on future sales of the company, however the agreement does not provide how the Buyer is to conduct itself after completion. The Buyer moves all business to a new company. This could result in a dispute as to what, if any, future consideration is payable.

For more information or advice, contact David.

CALL 01753 279022 OR EMAIL
COMMERCIAL@BPCOLLINS.CO.UK

My partner has passed away.



A year in the life of someone going through probate.

January 2018

Today, my partner passed away. He was only 50. I know it's a cliché, but you think these things always happen to other people. He called me to say that he was running a few minutes late as something needed to be finished off at work and he would meet me and the kids for some supper at our favourite restaurant. He never made it though. He died in a car crash on his way to meet us. We said 'I love you' and he said to give the girls a kiss and that he couldn't wait to see us before hanging up.

We met when we were both in our thirties and knew straight away that we were meant for each other. He made me laugh and he was the kindest man I knew. I moved into his home after six months of meeting. He ran his own small business and once we had the girls, I gave up work to raise our family but had started my own cake business recently. We always meant to get married and make it 'official' but we never got round to it. When he hit 50 we started talking about making a will but we were so busy raising a family and with jobs getting in the way, there never seemed to be a good time.

And now he's gone. I'm a widow at 45 and the girls are 14 and 12. We are completely devastated.

February 2018

I can't concentrate, I can't sleep and the girls are finding it very difficult. Everyone has tried their best to comfort us but no one knows how we really feel. I'm also starting to worry about money. We had some savings in our joint account but I need to start thinking about other sources of income to see us through until I can go back to work.

March 2018

My partner's business has gone under, as all his clients have had to go elsewhere. But the girls and I need money and I'm shocked that I don't have automatic entitlement to his business bank account even though we lived with each other for so many years and had children together. The process to access this is now so convoluted and lengthy, I don't have the headspace for it. Things are going to be tight for a while.

April 2018

Another month brings another hurdle. As we never got married, the intestacy rules say that our children automatically inherit my partner's estate including the home that I've paid into for years, but as they are under 18, they are not eligible to apply for a grant of administration. Therefore, I have to apply to the courts to deal with the estate. But there's a huge problem. I have to sue my own children to access it, which means that they have to have their own legal representation. Although I'm doing it for us, it feels a little sickening. The court costs are eyewatering too.

June 2018

I've now found out that because we were unmarried and the estate is over the inheritance tax threshold of £325,000, I've got to pay a tax liability. If we had been married anything which I inherited would have been exempt from inheritance tax.

December 2018

Everything is crumbling down around us. Although I now have a grant of representation to deal with the estate, I'm ashamed to say that as we didn't have life insurance, the inheritance tax I owe has to be paid by selling our home. It was only a three-bedroom semi, but it was one of the things that the girls relied on to be consistent when everything else was falling apart. They're so worried that all of their memories of their dad are going to disappear as soon as the house is sold. I can't help thinking that we've failed them.

I just wish my partner and I had planned ahead so my family would have had a more secure future. The emotional and financial damage has been immense.

Although this scenario may seem extreme, there are many families in similar situations who may not realise the implications.

SPEAK TO SHARON HESELTON OR A MEMBER OF OUR WILLS, TRUST AND PROBATE TEAM TO HELP YOU TO PLAN YOUR FUTURE. CALL 01753 279030 OR EMAIL PRIVATECLIENT@BPCOLLINS.CO.UK

1. What is the least amount of notice that an employer can give to an employee who has worked for them for two and a half years?

- a) Seven days
- b) Fortnight
- c) One month
- d) Two months

2. What does constructive dismissal mean?

- a) There is a serious breach of contract by the employer which entitles the employee to treat it as terminated
- b) An employee is responsible for gross misconduct and the employer dismisses him / her instantly
- c) If an employer dismisses the employee without giving him / her the notice agreed in the contract
- d) Where an employee is dismissed for an unfair reason

3. Which of the following statements is correct?

- a) An employer is permitted to set a compulsory retirement age if they can objectively defend it
- b) If an employee's job is redundant then the person can be fairly dismissed, if the correct procedures are adhered to
- c) If an employer dismisses for a reason that is capable of being fair, they still have to provide evidence that the procedure that they used for the dismissal was a fair one
- d) All statements are correct

Employee dismissal

Test your knowledge

DISMISSING AN EMPLOYEE CAN BE DIFFICULT FOR ALL PARTIES INVOLVED BUT MAY HAVE TO TAKE PLACE TO ENSURE A BUSINESS SURVIVES OR PERHAPS BECAUSE THE EMPLOYEE WAS NOT PERFORMING AS HE / SHE SHOULD. THERE ARE SPECIFIC PROCEDURES THAT NEED TO BE FOLLOWED, OTHERWISE AN EMPLOYMENT TRIBUNAL MAY TAKE PLACE.

4. Which organisation produces the Code of Practice on Disciplinary and Grievance procedures?

- a) Advisory, Conciliation and Arbitration Service
- b) Arbitration, Advice and Reconciliation Service
- c) Advisory, Negotiation and Conciliation Service
- d) Arbitration, Conciliation and Consultation Service

5. When is there a legal obligation on an employer to provide 'collective consultation' as well as 'individual consultation' on redundancy?

- a) Whenever one redundancy is being made
- b) Where an employer is recommending to dismiss five or more workers
- c) Where an employer is recommending to dismiss 20 or more workers
- d) It is not a legal requirement to offer a collective consultation but it is considered best practice

6. Which one of the following is not a redundancy situation?

- a) A business is closing down
- b) A particular site is closing down
- c) An employee is not performing so the employer decides to do away with the role
- d) Where there is a reduction in the need for employees to do particular kinds of work

7. What is the maximum compensation an employee can receive for unfair dismissal based on discriminatory reasons?

- a) Unlimited in certain cases
- b) £83,682
- c) £25,000
- d) £15,240

8. What is the usual time limit for an employee to make a claim against unfair dismissal, without taking into account any extensions due to the ACAS conciliation period?

- a) One month starting from effective date of termination
- b) Three months starting from effective date of termination
- c) Six months starting from effective date of termination
- d) 12 months starting from effective date of termination

WITH EMPLOYMENT LAW CHANGING SO FREQUENTLY, WE ARE MINDFUL THAT EMPLOYERS MAY FIND IT HARD TO KEEP UP TO DATE WITH THE LATEST REGULATIONS. AS PART OF OUR COMMITMENT TO HELPING YOU MINIMISE RISK, PLEASE GET IN TOUCH FOR A COPY OF OUR GUIDE TO CURRENT FACTS AND FIGURES RELATING TO EMPLOYMENT LAW.

For advice, contact Hannah King.

CALL 01753 279029 OR EMAIL
EMPLOYMENTLAW@BPCOLLINS.CO.UK

Contracts post-Brexit:

Are yours fit for purpose?

The UK government has said that the vast majority of EU legislation will be adopted into UK law after Brexit. But there is no certainty until the transition is complete. What effect might Brexit have on important terms in commercial contracts and what can be done now to Brexit-proof our Thames Valley companies?

Territories and references to the EU

If your company supplies and distributes goods or services to the EU including the UK, it's imperative to review your commercial contracts before Brexit, particularly if it defines a territory as 'the European Union'. If the same contract is still in place after Brexit, there may be confusion as to whether the UK is still included in that description.

To help achieve clarity, one option is to list the UK along with all of the other individual member states that your company does business in. This way, there is less scope for ambiguity, even after Brexit.

Governing law clause

A well drafted contract will have a governing law clause stating which country's laws will be used to interpret the contract. It's common for companies across the EU to choose English law because it has well-defined legal principles. The effect of the EU Regulations known as 'Rome I' means that, currently, Member States must respect a contract's choice of law. After Brexit, the UK will no longer be bound by Rome I, and time will tell whether the substance of Rome I will be retained in domestic law.

Therefore, expressly stipulating the governing law (both before and after Brexit) helps avoid costly and unnecessary arguments about how the contract should be interpreted.

Jurisdiction

A well drafted contract will also have a jurisdiction clause, specifying a Member State's courts that are to have either exclusive or non-exclusive jurisdiction to hear any disputes arising out of that contract. The English court is an attractive choice in cross-border contracts because it has an excellent reputation for its independence, expertise and wide range of powers.

Currently, the Brussels Recast Regulation provides that courts of Member States have an obligation to respect another Member State's exclusive jurisdiction if that's what the parties to the contract have chosen. So, if the contract says that English courts have exclusive jurisdiction, but one party

BREXIT IS LEADING TO UNCERTAINTY OVER THE EFFECT OF MANY CLAUSES IN STANDARD COMMERCIAL CONTRACTS. RAJIV MALHOTRA, DISPUTE RESOLUTION ASSOCIATE, ASKS IF YOUR CONTRACTS ARE FIT FOR PURPOSE.

issues a court claim in Germany, the German court has an obligation in most cases to pause that claim and check whether it should be heard in the English courts instead.

After Brexit, this becomes unclear. The UK will no longer be a Member State and so, using the above example, the German court has no obligation to submit to the jurisdiction of the English court, even if that's what the parties have chosen. This may lead to situations where one party attempts a tactical advantage by choosing the courts of a slower, less established jurisdiction to increase costs and frustrate the other party. A poorly drafted jurisdiction clause can unnecessarily increase costs and the chances of satellite litigation. Clarity is crucial.

KEY ACTIONS TO STRENGTHEN YOUR CONTRACTS AHEAD OF BREXIT:

1. Have regular contract audits with a solicitor to help future-proof your contracts.
2. If your current contracts do not give you full protection post-Brexit, aim to renegotiate the terms.
3. If renegotiating is not possible, and your contract is economically unviable, then termination may be your only solution. Make sure you seek legal advice before moving forward, otherwise it could be a breach of contract.
4. Ambiguity in contracts often leads to higher legal costs when resolving a dispute. Legal advice can help achieve a properly drafted contract with clear terms.

FOR ADVICE, CONTACT RAJIV ON 01753 279035
OR EMAIL DISPUTES@BPCOLLINS.CO.UK

How did you do?

ANSWERS:

1 (8 a) 2 (9
3 (5 a) 4 (3 a) 5 (2 a) 6 (1

All correct: Congratulations!

6-7 correct: Well done. But there could be some risk to your business's reputation and finances if all procedures are not carried out correctly.

5 or less correct: Perhaps it's time to get in touch with B P Collins' employment team

Gin & Books

B P Collins' *Gin & Book Club* has been a huge success. Thank you to everyone who has come along to sample gorgeous gins and discuss some fantastic books.

We'll be back in 2019 so watch out for more details on our website, Twitter and Instagram. Contact us if you'd like to be added to the mailing list.



Award winning team

Congratulations to *Lucy Wood*, wills, trusts and probate partner, for winning Berks, Bucks & Oxfordshire Law Society *Lawyer of the Year* and to *Simon Carroll*, dispute resolution senior associate, for being shortlisted.

Well done to *Emily Halley* who was shortlisted for *Young Conveyancer of the Year*, seeing off stiff competition from across the South East, while the property team were finalists in the *Thames Valley Property Awards*.

News round-up

At the heart of Bucks

A special thank you to all the charities that submitted nominations for B P Collins' *£10,000 fund* in conjunction with *Heart of Bucks* - and congratulations to Bucks Mind, The Princes Risborough Centre, Chiltern Child Contact Centre, Alexander Jansons Fund and Prestwood Youth & Community Action Group for being selected to receive grants.

In our next edition we'll be sharing more about the charities selected and the *positive impact* of our donations.



Food for thought

It is forecast that *13 million* people may get dementia but only 1 million have a *lasting power of attorney* in place.

Need advice? Get in touch with our wills, trusts and probate team who can help.

#ByYourSide

www.bpcollins.co.uk

enquiries@bpcollins.co.uk | 01753 889995

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B P Collins LLP, Collins House, 32-38 Station Road, Gerrards Cross, Buckinghamshire, SL9 8EL