international newsbrief

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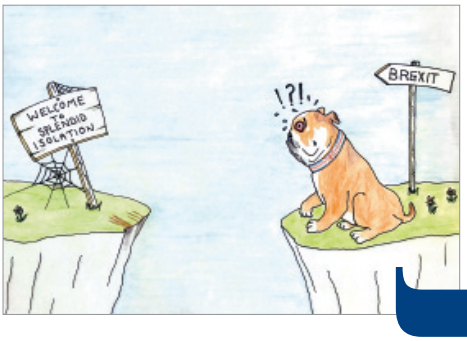
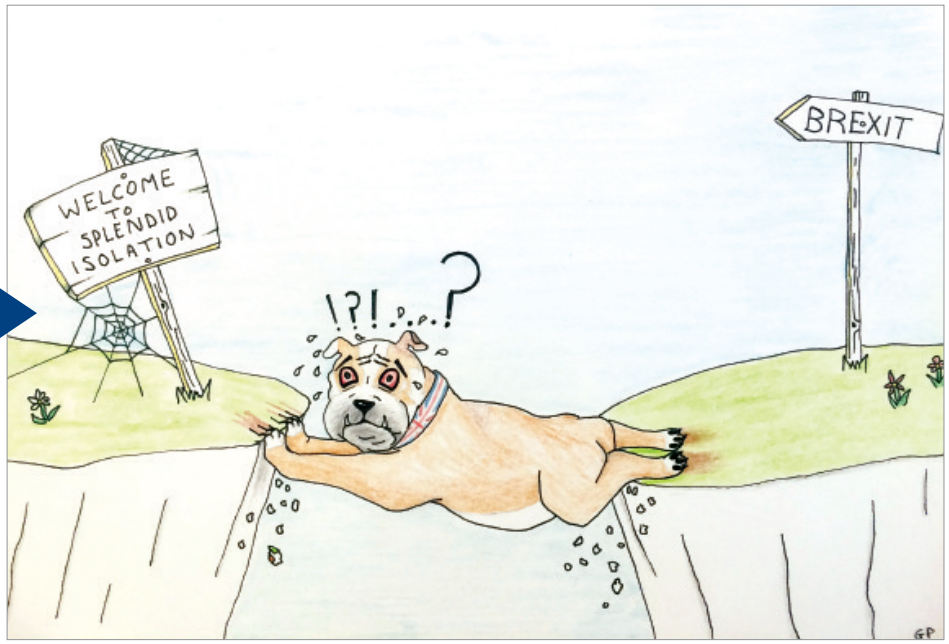
SUMMER 2016

International Newsbrief contains reports and commentary on a selection of recent topical developments in England and Wales and is specifically targeted at lawyers and other business professionals outside the jurisdiction. We also include some news of recent developments at S&B.

If you or your clients would like any advice on the issues raised then please do not hesitate to contact the author of the relevant article or your usual S&B contact.

BREXIT – THE VIEW FROM STEVENS & BOLTON





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Ken Woffenden
Managing Partner

On 23 June 2016 52% of the British electorate voted to leave the EU and 48% voted to remain. The result came as a huge shock to most people, including many who voted to leave, and triggered a political crisis. David Cameron, who took a reckless gamble in holding the referendum, was forced to resign immediately. There have been bitter leadership struggles in both the Conservative and Labour Parties. Theresa May, who was a lukewarm Remain supporter, has just become the first female British Prime Minister since Margaret Thatcher. She has already been described as very similar to Angela Merkel. The Labour Party is in the grip of civil war and has ceased to provide any credible opposition. Sterling has fallen to 30 year lows and business and consumer confidence has been badly dented. The vote has shown deep polarisation of the British electorate to an extent not previously apparent - young v old; London and other big cities v the rest of England and Wales; Scotland and Northern Ireland v England and Wales; graduates v non-

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graduates; those who have embraced globalisation v those who feel left behind by it. British politics will never be quite the same again.

At S&B we are as surprised by the result as everyone else. Like most businesses, we are also very disappointed. The EU is the biggest single market in the world and buys nearly half of the UK's exports. Brexit is likely to damage UK PLC. No one knows what will happen next. There is talk of hard Brexit, soft Brexit and possibly no Brexit because this may not be achievable on acceptable terms. There is even talk of a second referendum. Whilst we now at least have a new Prime Minister, it is unlikely that she will be able to formulate a convincing plan to address the Brexit issue any time soon. Our EU friends are understandably shocked and concerned. They simply can't understand why the UK electorate voted for Leave. We sympathise with our EU friends and we are very sorry about this unexpected outcome. It's a real mess! All we know for sure is that the UK is set for a long period of uncertainty – and, as we all know, uncertainty is never good for business.

One thing, however, is absolutely clear - S&B remains very much open for international business. We will continue to be outward looking, never inward looking, whether or not a Brexit occurs. We have built excellent relationships over the years with all our many law firm friends throughout the EU and beyond, enabling us to provide our clients with excellent advice internationally. International work has been a major part of our growth and this will remain a top priority for us. Indeed, we and our clients will need the support and advice of our lawyer friends overseas more than ever in the coming months and years as the Brexit saga evolves – some interesting and unprecedented legal issues will arise, presenting important opportunities for all of us. We have set up a special Brexit team to start working on these and we are naturally delighted to collaborate with our overseas friends to brainstorm solutions for the benefit of our respective clients.

So please be assured that – despite the referendum - nothing has changed so far as S&B's international strategy is concerned. We will be redoubling our efforts to build and maintain strong long term relationships with friendly, like minded law firms throughout the EU and beyond. We are attending the IBA annual conference in Washington DC in September and we look forward to seeing many of you there. Whether or not you're attending that event, please feel free to contact us at any time – it will be great to hear from you.

And one more thing – whilst the collapse of sterling isn't great news for the UK, it does have upsides for those outside the UK. British businesses and property have just become a lot cheaper, which is likely to attract inward investment in those sectors less likely to be affected by Brexit, or by investors with appetite for risk. And last but not least S&B's fees, which we hope were already quite reasonable due to our location just outside Central London, have now become even better value for money! We British, obsessed as ever by our changeable weather, have a saying which sums all this up - "every cloud has a silver lining……..."!

THE UK'S WITHDRAWAL FROM THE EU: NEXT STEPS

The UK's vote to leave the European Union is likely to have a profound impact on businesses and individuals across the UK and abroad.

Now that the outcome of the EU Referendum is clear, the question is what happens next?

Will anything change straightaway?

First of all, although the UK has voted to leave the EU, there is no immediate change to the legal landscape. The UK is still a member of the EU and will remain so until the UK has left. It is also worth noting that the vote is not legally binding, but merely advisory and it is up to the UK government to decide on next steps. The key point is that at this stage the UK's relationship with the EU has not changed and EU legislation continues to apply as it did prior to the EU referendum while the UK remains a member of the EU.

A WORD FROM THE EDITOR

Charlie Maurice

Hello and welcome to our latest edition of International Newsbrief. This is also the first edition for me as the new Editor - I joined the firm in February (receiving the Editor role as a 'welcome present' from Mr Porteous) and it has proved to be an excellent way of getting under the skin of the truly international nature of our work right across the firm. I hope this diversity is reflected in the selection of articles in this edition.

Having said that, no publication aimed at an international audience can ignore events at a macro level, and (for the third edition in a row – here's to editorial continuity by public vote!) we open with Brexit. As well as our Managing Partner's thoughts on the issue, Gustaf Duhs, Head of Competition and Regulatory and Maliha Mahmood, Senior Associate, also give their view on the implications of Brexit on the legal landscape, which is part of a wider firm initiative on analysing the legal implications of Brexit for our clients and international friends. Our website also has a dedicated page on the topic where you can read our latest thoughts on Brexit-related developments as they happen.

This edition reaches you during a summer of sport, although in true English style, our footballers were keen to "take back control" of their lives with an early European exit, deservedly losing to a country who had never been in the Euros before and whose population we outnumber by 200 to 1 (#twoeuroexitsinoneweek). Which was perhaps just as well considering the behaviour of our fans in France – something we are collectively sorry for as a nation and which we hope doesn't put you off a visit to Guildford as a result (new S&B joiner summary: lovely town, excellent Marks & Spencer). That leaves us to look forward to the Olympic Games in Rio this August, which for us Brits means a revival of interest in sports we do not usually watch and a barrage of comparisons with London 2012 – unfortunately for us, Rio in the summer seems a much more enticing proposition than London! If only Guildford had won the 2012 bid…

I hope you enjoy this edition of International Newsbrief and, as ever, if you have any queries about any of the topics we discuss in these pages then please do get in touch with your usual S&B contact.

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How and when will the UK government begin the exit process?

From a legal perspective, there are several ways in which an exit could be achieved:

- **Article 50:** Article 50 of the Treaty on the European Union provides the framework for an EU Member State to leave the EU:
  - Under Article 50, the UK would have to give notice to the European Council of its intention to leave and would have two years from that date to negotiate the terms of its exit. If terms are not agreed by the two year deadline the UK would automatically exit and EU law would cease to apply. Any extension to this two year period would have to be agreed by all the remaining EU Member States. In addition, the terms of the exit would have to be approved by the European Council and the European Parliament. Note that any exit agreement under Article 50 is unlikely to address the UK's future trading relationship with the EU, which may be subject to a separate negotiation.
  - Article 50 provides that an EU Member State may decide to leave *"in accordance with its own constitutional requirements"*. In the UK this arguably requires authorisation from Parliament and that therefore Article 50 cannot be invoked unilaterally by the Prime Minister. This is because the Prime Minister's action would override the European Communities Act 1972 and only an act of Parliament can override an existing act of Parliament. The majority of MPs are in favour of remaining in the EU and therefore, despite the outcome of the EU referendum, it is not clear that Parliament would pass legislation giving the Prime Minister a mandate to invoke Article 50. However, politically this may be unpalatable to the 52% of the population who voted to leave the EU.
- **Informal negotiations:** It is possible that the UK government would seek some form of informal negotiation with the EU first before invoking Article 50, given the dire consequences of the two year deadline expiring without agreement on a new deal having been reached. This would require the agreement of the remaining 27 EU Member States, which may not be forthcoming.
- **Unilateral action:** There is also the possibility that the UK parliament could unilaterally pass legislation to take the UK out of the EU, however, this would be extremely controversial as it would be a breach of international and EU law and would not be well received by the other members.

London's bankers on a dry run of their new commute

What are the options for exit?

It is currently unclear what the UK's relationship with the EU will look like after any UK exit from the EU. We set out below some possible options:

- **The Norwegian model:** The UK could leave the EU but join the European Economic Area (EEA) as a non-EU Member State, like Norway. This model is the closest to the status quo and would minimise the practical consequences of leaving the EU. However, it may be politically unacceptable because the free movement of people would continue to apply and the UK would therefore not be able to limit immigration from the EU, which was a central issue in the EU referendum campaign. In addition, the UK would still be required to comply with much of EU law (Norway has estimated that it complies with 75% of EU law) but it would no longer have a role in the legislative process.
- **The Swiss model:** The UK could leave the EU but join the European Free Trade Association (EFTA) whilst remaining outside the EEA, like Switzerland. By joining EFTA, the UK could enter into bilateral trade agreements with the EU and other countries, however each agreement would need to be negotiated separately which is likely to be complex and time-consuming. Switzerland has over 100 separate treaties. Again, the Swiss model includes the free movement of people, which may not be politically acceptable.
- **The Turkish model:** The UK could leave the EU and enter into a customs union with the EU, as Turkey has done. This would allow the UK to access the single market for goods without customs duties. However, the UK would have to impose the EU-set common external tariff on imports from outside the customs union and the EU would negotiate trade agreements in goods without UK involvement. In addition, the arrangement would only cover goods and not services. UK services providers, including financial services, would not have access to the single market on equal terms with EU members.
- **The Canadian model:** The UK could seek to negotiate a free trade agreement with the EU, as Canada has done (although the deal has been agreed, it is not yet in force). The Canadian deal took

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Does Theresa May prefer a hard or soft Brexit?

over seven years to negotiate and allows tariff-free trade in goods and provides for the removal of certain non-tariff barriers in relation to both goods and services, including financial services. Free movement of people is not required.

- UK alone: The UK could leave the EU and rely on its membership of the World Trade Organisation (WTO) as a basis for trade with the EU, which would allow the UK the same access to the EU as the US or China. Under this model, the UK would not be subject to EU law and would not have to abide by the free movement rules.

What are the implications for the legal landscape?

A UK withdrawal from the EU would have implications for different sources of EU law:

- EU treaty provisions and EU regulations are directly effective in the UK and do not need to be implemented by the UK through domestic legislation. However, if the UK leaves the EU then if the UK wants to retain some of these laws, for example in relation to data protection or employment, they will have to be reviewed and implemented into domestic legislation.
- EU directives are not automatically applicable in the UK and need to be given effect in the UK through domestic laws. Where this has been done through statutory instruments adopted on the basis of the European Communities Act 1972, and if this Act was repealed, these statutory instruments would fall away unless there was a specific provision made to retain them.
- The judgments of the Court of Justice of the European Union would no longer apply automatically in the UK. This may well result in a divergence between EU and UK case law. The UK would also lose the ability to seek decisions on interpretation from the Court of Justice.

Depending on which trade model the UK ultimately negotiates with the EU, the UK may still be required to comply with a large proportion of EU law. For example, assuming the UK retains access to the single market, UK businesses would have to comply with a significant amount of EU law in order to continue to trade in the EU. However, if the UK is not part of the EU it would not be involved in the legislative process and would not be able to influence the development of EU law.

What is the potential impact of Brexit on businesses?

There may be a significant impact on any businesses that trade with the EU. Some key issues to consider are as follows:

- Pricing mechanisms in contracts may assume that there are no tariffs, quotas or other barriers to trading in the EU. Pricing mechanisms may therefore need to be reviewed to take account of any extra costs that may arise if the UK no longer retains free movement of goods and people.
- The impact of any tax changes or tariffs that may be imposed.
- The regulatory regime in the UK may diverge from that in the EU and contracts may need to be reviewed to assess whether parties still have the ability to perform if regulatory changes occur.
- The cost of performance may be affected by currency fluctuations and market volatility.
- Contracts should be analysed to assess whether there are any rights to renegotiate terms or adjust pricing as a result of material adverse change clauses, or any changes to the ability to perform or changes to the cost of performance.
- Whether any restructuring of the business may be needed, for example if a presence in the EU is required businesses may consider the possibility of establishing a subsidiary in another EU Member State,
- Sectors which are regulated, such as financial services, may be affected by the possible loss of passporting rights for UK based business wanting to do business in other EU member states. The extent to which such rights are retained will depend on what new deal is negotiated. Short term negative impact is likely due to the increased uncertainty.

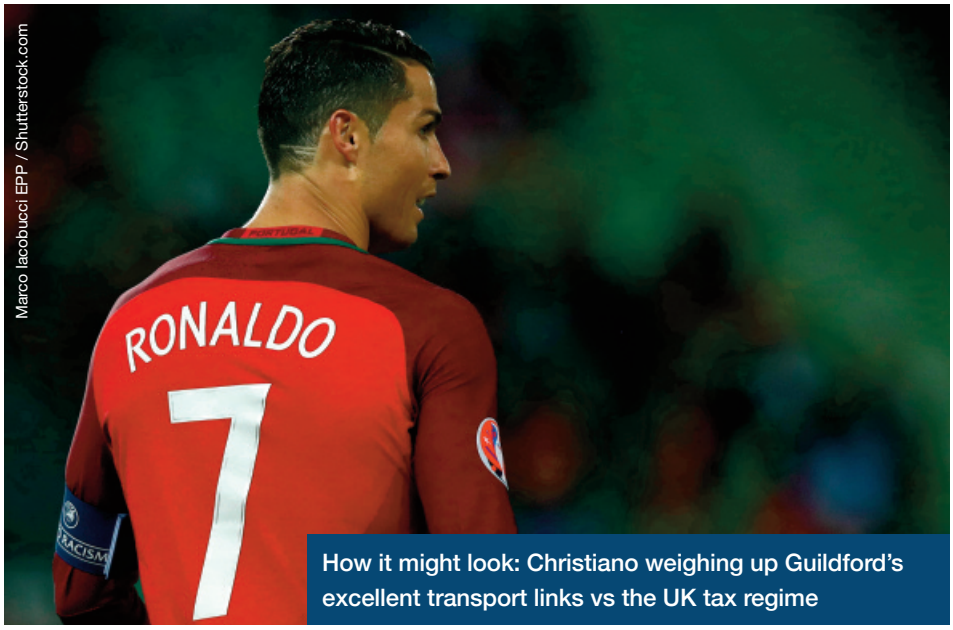
For more information, please contact **Gustaf Duhs** Partner and Head of Competition and Regulatory on gustaf.duhs@stevens-bolton.com or **Maliha Mahmood**, Senior Associate on maliha.mahmood@stevens-bolton.com

BREXIT!

We have created a separate area of our website where you can read our thoughts on Brexit-related issues as they arise over the forthcoming period. Please see **http://www.stevens-bolton.com/news/brexit-what-are-potential-legal-implications/** for more information, including a series of practice-specific briefing notes as follows:

- Brexit - The UK's withdrawal
- Brexit - The Potential impact on businesses
- Brexit - The Intellectual Property questions
- What does Brexit mean for immigration
- What Brexit means for disputes in brief
- Brexit - The impact on pensions
- Brexit - The effect on commercial contracts
- Brexit and Data Protection in the UK

RAID ON NON-UK RESIDENTS



Marco Iacobucci EPP / Shutterstock.com

How it might look: Christiano weighing up Guildford's excellent transport links vs the UK tax regime

It's no secret that the UK government needs to find new sources of cash to fund the growing costs of running GB plc. There has always be a focus on maximising tax receipts from UK residents but in the last few years we have seen a new trend for trying to tap non-UK residents for a few extra pounds to swell the coffers.

It started back in 2013 with the introduction of new tax rules aimed at companies (and certain other entities) owning UK residential property. These rules (the Annual Tax on Enveloped Dwellings or ATED) imposed not only a capital gains tax charge when the property was sold but also a hefty annual tax calculated by reference to the property's value. When they came in, the rules only applied to properties over £2million but now apply to residential properties with a value of over £500,000 – given property prices in London, this catches a lot of properties.

This change was swiftly followed by a measure which means that non-UK individuals (i.e. not just property owning companies) will be subject to UK capital gains tax when they sell their residence.

Alongside these changes are increases to the Stamp Duty Land Tax (SDLT) rates payable when a property is purchased. Higher rates have applied since 2012 if the residential property is acquired by a company (15% tax). Overnight, the Budget 2016 put an additional 3% on the applicable rate for anyone acquiring an "additional" property regardless of where the person's existing property is located. This is particularly pertinent for non-UK residents who are likely to own another property in their home jurisdiction – it does not matter that only one property is owned in the UK.

To cap it all off, the UK government has announced that from April 2017, non-UK domiciles will no longer be able to shelter UK residential properties in offshore structures to sidestep UK inheritance tax on their death.

So, in summary, a non-UK individual buying UK residential property will now have to stomach additional SDLT, UK capital gains tax on disposal and is likely to be subject to UK inheritance tax on the asset when they die. Holding via a structure no longer solves this problem as it once did and brings into play annual charges and compliance.

All of this means that investment in UK residential property may not be the magnet it once was – even if the UK housing market continues to perform the way it has historically, any return will be eaten into by the tax downsides.

So, is there any good news? The latest changes will come into force from April 2017 and so there is a window of opportunity for individuals to review their affairs and take advice about whether steps should be taken to unwind structures. The crucial message for both those thinking about buying and those who already own UK residential property is to seek advice about the UK tax implications sooner rather than later.

David Cameron may have found a way to get additional cash in the short-term – but will this act as a disincentive to investment in the UK which ultimately will bring revenues down? Theresa May gets to find out.

For more information, please contact **Rosie Todd**, Partner, Personal Wealth & Families on rosie.todd@stevens-bolton.com

S&B APPOINTED AS LEGAL ADVISERS TO UK MEDICINES VERIFICATION ORGANISATION

S&B's Life Sciences team has been successfully appointed as legal advisers in relation to the establishment and functioning of the UK Medicines Verification Organisation (UKMVO).

The UKMVO will be formed by the major UK stakeholders in the medicines distribution chain, namely the ABPI, BAEPD, BGMA, CCA, HDA, and NPA, and will be responsible for the implementation in the UK of the requirements of the Falsified Medicines Directive (FMD). The objective of the FMD is to protect patients from falsified medicines which might make their way into the legal distribution chain. The FMD will implement stricter control, tighten the supply chain and require additional safety features, such as serialisation codes and tamper evidence devices as well as a pan-European system to verify the authenticity of medicinal products at the point of dispensing.

S&B's role will be to incorporate and establish the UKMVO, work with the UKMVO to help put in place the IT system required for verification and authentication of medicines, as well as other legal arrangements such as the funding necessary to implement the IT system and the agreement with the central European MVO. Rick Greville, a Director at the ABPI, said *"We are delighted to be working with Stevens & Bolton on what will be an exciting and challenging project."*

This is an extremely interesting project and we are delighted to be involved and to be able to support the stakeholders in the UK with this important development.

RECORD YEAR FOR S&B – TRIO OF ACCOLADES ACROSS TOP LEGAL AWARDS

S&B representatives, led by Ken Woffenden, are presented the award by Alistair Campbell.

It has been a record year for S&B across all three of the UK's major legal awards.

The firm was runner up and "highly commended" in the UK Law Firm of the Year category at the British Legal Awards back in November; followed in March by being crowned National/Regional Law Firm of the Year at the Legal Business Awards; and finally being runners-up in the Regional Firm of the Year category at The Lawyer Awards in June.

In winning at the Legal Business Awards, the firm was chosen ahead of 6 others from across the UK, by a judging panel which included many of the top general counsel in the UK. This is the second time the firm has been awarded this accolade, having first won in 2009 and the firm has been shortlisted each year since 2012.

The award recognises the UK-based national or regional firm (with headquarters outside of London) that has made the most significant progress over the past year in advancing its strategy, looking for evidence of effective leadership, impressive financial performance and increased market share across the firm's major practice areas.

Ken Woffenden, managing partner of S&B, said: "We are delighted to have won this highly prestigious award and to receive top accolades in all the major UK legal awards in the past year. It reflects the hard work and dedication of everyone in the firm – a fantastic team effort. I would like to thank all of them and also all our clients and friends for their support for the firm – we really appreciate it."

HOW ARBITRARY IS ARBITRATION? A FEW TIPS ON MANAGING THE PROCESS EFFECTIVELY

Outdated? Moi?

There is currently considerable concern amongst the judiciary and other members of the English legal establishment that commercial parties are increasingly choosing arbitration over court proceedings as the means by which disputes subject to English law are resolved. One might ask why the concern if, as appears to be the case, London continues to hold its own alongside the likes of Dubai and Singapore as the dispute resolution centre of choice?

The answer lies in the perceived adverse impact on the development of the English common law of a reducing number of significant cases passing through the court system, leading to less judicial consideration and development of the legal principles necessary to keep up with the commercial world in the 21st century. This creates a potential vicious circle in which commercial parties see an outdated legal system and look to alternatives both in terms of procedure and substantive law, with less work not just for the English courts, but for English lawyers, experts and arbitrators too.

Arbitration vs. Litigation

All of which begs the question as to what it is about arbitration that commercial parties see as beneficial as compared to litigation through the courts, and whether they may be overlooking other factors which would make the latter a more attractive, or perhaps a safer option. Certainly, it is a choice which is unlikely to be, or at least should not be premised on a belief that resolving a dispute through arbitration will be significantly faster and less expensive than doing so through the courts:

- The specialist divisions of the High Court, including the Commercial Court for very large commercial disputes, the Mercantile Court for lower-value disputes, and a newly-created Financial Court for high value or high importance disputes in the banking and financial services world, are well-administered and can see trials scheduled as quickly as would be the case for an arbitration hearing.
- As to cost, the prosecution or defence of a claim is likely to require a similar amount of lawyer input whether in court or arbitration proceedings, and whilst court fees have risen in recent years they do not come close to the level of fees that will be payable to the arbitral body and tribunal.

That leaves confidentiality and finality of outcome as the key differences, the attraction of each of which is readily apparent to commercial parties contemplating that they may one day fall into dispute. Why allow the washing of dirty laundry in public when it can all be kept private and, on the basis that when it comes to a dispute you are bound to be the party in the right, why compromise your ability to enforce the award in your favour by leaving open the possibility of endless appeals? The benefit of confidentiality to the parties, if not to the evolution of the substantive law, is reasonably obvious. But what about signing away of a right of appeal?

In broad terms, the right of appeal is limited by our 1996 Arbitration Act to errors of law, but even that right of appeal is then excluded by the rules of arbitral bodies such as the ICC and the LCIA (unless specifically included by the parties in their contractual wording). The reality is therefore that, in most cases, the losing party will have no effective right of appeal, even where the tribunal has simply "got it wrong" on the law. Unfortunately, there is no guarantee at all that any tribunal will come to the correct decision, including on the law, and one might conclude that a carefully-considered decision is more likely from a judge who is conscious that his or her decision may well be subject to review on appeal and general public scrutiny than from an arbitrator who can be confident that it will not be.

The Tribunal

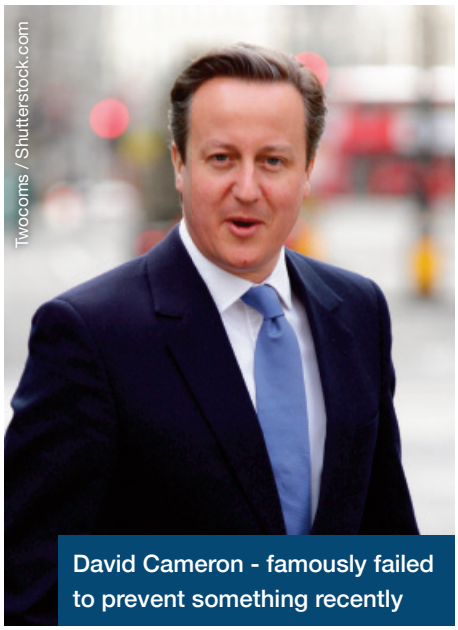
A tribunal will usually consist either of a single arbitrator, appointed by agreement of the parties or, perhaps more likely, by an appointing body nominated by the parties; or of 3 arbitrators, one appointed by each party and one by an appointing body nominated by the parties. In reality, a party will have no control over the composition of a single arbitrator tribunal where the arbitrator is imposed on the parties once they have failed to agree on a nominee. It will, though, control the appointment of a third of a 3 person tribunal and its chances of securing the right outcome may be significantly increased if it exercises that control sensibly.

Whilst each party's chosen arbitrator will constitute a minority on the tribunal, the right appointee will have the ability and perhaps the opportunity to influence the reasoning of the arbitral body's "neutral" appointee, or even the other party's own appointee, whereas the wrong one will not. For a dispute which is subject to English law, that person will not just be a qualified English lawyer, but preferably one of the highest standing: usually, one would be thinking of a retired judge from the highest quarters of the judiciary or a Queen's Counsel. By contrast, the wrong appointee for the same dispute would be someone who was not a qualified English lawyer and was therefore unable to effectively follow and analyse the evidence and legal submissions or, therefore, to exercise the same influence.

It follows from all of the above that where confidentiality in relation to disputes is all-important such that the jurisdiction of the courts is to be excluded in favour of arbitration, proper thought should be given when agreeing the contract terms to ensuring, by the use of appropriate wording where necessary, that any statutory rights of appeal shall apply. Even if the right of appeal is preserved, but especially if it is not, it will always be important to seek advice in relation to any choice of arbitrator.

For more information please contact **Andrew Quick**, Partner, Dispute Resolution on andrew.quick@stevens-bolton.com

THE OMISSION MISSION – PLANNED INTRODUCTION OF NEW FAILURE TO PREVENT OFFENCES



David Cameron - famously failed to prevent something recently

This article considers the current move towards making companies in the UK liable for 'failure to prevent' offences.

One of the more interesting developments from the UK's global Anti-Corruption Summit from a legal perspective was the extension of a so called corporate "failure-to-prevent" offence beyond its current application to bribery, so that it could also apply to tax evasion and money laundering.

It is an offence under s.7 of the UK Bribery Act 2010 for corporations to fail to prevent bribery. The reason for having a 'failure to prevent' offence is that companies can generally only be found liable for acts of employees/agents if the wrongdoer was a directing mind and the act was the will of the company. The offence under s.7 of the Bribery Act gets around this issue by making the offence strict liability of having failing to prevent bribery and by then making available a defence of having implemented 'adequate procedures' to prevent bribery.

The move towards introducing a failure to prevent offence to a wider set of offences may in part be due to recent prosecutions under the Bribery Act. The first successful conviction under s.7 saw Sweett Group Plc, a UK-listed provider of construction services, ordered to pay £2.2 million (£1.4 million fine plus £851,152 confiscation amount and £95,000 in prosecution costs). This followed an investigation into corrupt payments made by a Dubai-based former employee of its subsidiary company, Cyril Sweett International Limited, in order to secure a hotel development contract. Sweett was unable to demonstrate it had in place adequate procedures, designed to prevent illegal activity from occurring.

A consultation is currently underway to introduce a new corporate offence for failure to prevent the criminal facilitation of tax evasion. This offence is to be modelled on the s.7 bribery offence, with a company being criminally liable for acts of its "associated persons", the only defence to which will be to show "it had in place procedures designed to prevent persons associated with it from committing tax evasion facilitation offences".

It is thought that an offence for failure to prevent money laundering would follow a similar structure, with the creation of an offence coming first and the burden of proof on a company to prevent the offence following, with some form of compliance defence. The draft legislation for the tax offence covers both UK and foreign tax evasion offences.

As with the existing bribery offence and the proposed tax evasion and money laundering offences are likely to apply to any "relevant body" wherever formed. In other words, the offence will apply regardless of whether any relevant acts or omissions of the corporate took place in the UK or elsewhere. Corporates neither formed in the UK nor with a presence in the UK may also be affected if funds are transmitted from or via the UK or where communications take place in or via the UK. Having extra-territorial effect is likely to impose a very significant compliance burden on companies.

The National Crime Agency have further agreed to ensure an effective multi-agency investigation to target the most complex high-end money laundering cases by October 2016. Beyond 2016, the 4th Anti-Money Laundering Directive is due to be transposed by June 2017 and an update to the National Risk Assessment is due to be conducted in 2017.

For more information please contact **Gustaf Duhs**, Partner and Head of Competition and Regulatory on gustaf.duhs@stevens-bolton.com

TALKING HEADS

In this edition of International Newsbrief we interview *Gary Parnell, Partner and Head of TMT Sector*

1. ***Hi Gary, welcome to Talking Heads. Could you start by giving a short overview of the S&B TMT practice?***

At S&B a significant number of our clients are TMT businesses, whether established corporates, SMEs, start-ups or entrepreneurs. Like any good professional services firm, we align our services to the needs of our clients, which means we have a wealth of specialist, legal experience tailored to businesses operating in the TMT sector. So, in addition to being able to advise on specific tech and media law matters, we service all other legal needs of the sector, advising on anything from corporate, commercial, IP, dispute resolution, real estate, employment, pensions and immigration matters. In terms of head-count our TMT team comprises over 25 lawyers whom are very well equipped to serve the needs of TMT clients and each legal practice area within S&B has a number of partners and associates dedicated to the sector.

2. ***And do you see the practice continuing in the same vein moving forwards, or are there additional areas on which you'd like to focus moving forward?***

In one sense, yes we do wish to continue in the same vein – building on our full-service legal offering to TMT businesses and cementing and expanding our relationships with TMT sector clients. On the other hand, given our very good relationships with friendly law firms across the globe, I also think we are in a great position to further expand our global TMT client-base, whether targeting tech clients who need legal support overseas or offering English-law support to technology clients based in other jurisdictions. The overall message from S&B's TMT group must be one of continuing expansion.

3. ***One of the challenges must be the broad remit of 'TMT' as a sector area and the growing need for law firms to engage with technologically advanced clients. How do you go about differentiating your practice to potential clients and what do you think makes a good TMT practice?***

What really sets us apart from our peers is our cross-disciplinary experience in this sector and, consequently, our understanding of all of the key issues and challenges that TMT businesses face (which as you know are forever evolving). We spend a lot of time with our clients discussing these issues, which ultimately may or may not bear any relation to sought-after legal advice – but it is always good to talk. This gives our clients a great deal of comfort and confidence when working with S&B on specific legal matters and is certainly a key differentiating factor for us.

It also helps that a number of lawyers at S&B are self-confessed tech-geeks (don't worry - I put myself squarely within that group!), so talking shop with our more technologically advanced clients tends to come naturally!

4. ***Finally, could you tell us a bit about yourself, your background in technology and how you draw on this experience in advising your clients?***

It has been a long and winding road for me. In the early years I spent the best part of a decade within the telecoms sector working as a project manager at BT, looking after IT and defence sector clients. Thereafter I had a spell as a full time musician (needed to get the childhood dream out of the system I'm afraid!). Interestingly enough it was during this latter spell that I first plied my trade in contract negotiations, setting me on course for my next adventure - the law. And it is there that I have remained ever since.

The beauty of industry experience is that it gave me a thorough grounding in how tech businesses operate, which I still find very useful today in my day job as a technology lawyer and TMT sector-head. Technology has of course moved on (my first mobile phone was about the size and weight of a brick!), however the issues seem in large part to be the same.

Many thanks, Gary!

My pleasure!

EU MODEL CLAUSES UNDER ATTACK – IMPACT ON THE TRANSFER OF PERSONAL DATA OUTSIDE THE EEA INCLUDING TO THE US

This icon was solely developed in response to Max Schrems

The EU Data Protection Directive 95/46/EC restricts the transfer of personal data to a country outside of the European Economic Area (EEA) unless that country has an adequate level of protection in place for the protection of individuals. There are a number of ways a data controller may ensure an adequate level of protection is available and certain territories are deemed to have adequate safeguards in place, for example Canada and Switzerland. The USA is not included on the list of adequate territories. Other ways to deal with this is to rely on the parties entering into European Commission approved model clauses or to rely on the entity in the US being registered under the "Safe Harbour" regime.

Recently Mr Schrems, brought personal data transfers from the EU to the US into question when successfully challenging Facebook in relation to reliance on the "Safe Harbour" agreement. A decision by the European Court of Justice (CJEU) was reached on 6 October 2015, making the decision on the Safe Harbour regime invalid. Following this, many companies, turned instead to rely on the set of standard, European Commission-approved clauses, known as the 'Model Contract Clauses'. The model clauses provide an alternative mechanism for transferring data outside the EEA and are favoured due to the speed and low cost involved in their use.

Ireland's Data Protection Commissioner recently revealed plans to refer the Facebook case back to the CJEU. This time to assess the adequacy decision on the use of the model clauses, and claims that they do not provide satisfactory redress to EU citizens in relation to how personal data is handled once transferred outside the EEA.

If the CJEU decides that the decision approving the model clauses is invalid, then numerous companies, including Facebook and other companies within and outside the EEA which currently rely on the model clauses will be impacted. This will also apply pressure on the EU-US Privacy Shield which is the proposed replacement of Safe Harbour and currently under negotiation.

Those dealing with personal data issues will have significant issues to deal with at present including dealing with transfers abroad and the introduction of the new General Data Protection Regulation which will replace the current regime in May 2018. This position remains the case even in light of Brexit, particularly given any likely timescales in which any exit might be effected.

For more information please contact **Beverley Flynn**, Partner and Head of Data Protection on beverley.flynn@stevens-bolton.com

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