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Insights for In-house Counsel

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Insights for In-house Counsel

Our regular round-up of recent developments and topics for your radar, and news of planned training and networking events for in-house counsel in 2020. Here are some highlights:

Brexit

Prospects for conclusion of the future EU/UK free trade agreement by the end of 2020

European Green Deal

Europe's aim to be climate-neutral by 2050 – challenges and opportunities

Data protection

Expect more significant fines and class actions in respect of data breaches in 2020

Personal services companies

Review just announced of plans to extend public sector business obligations under IR35 to the private sector in April 2020

Immigration rules

More detail on the new points-based system to apply post-Brexit

Electronic signatures

Lengthy Law Commission review concludes they are valid, even for deeds

Registration of overseas investors in UK property

Get ready for the new registration requirements expected to come into force in 2021

Audit – all change?

Government expected to progress plans to replace the FRC, act on competition and conflicts involving the Big Four, and review the scope and purpose of audit

Anti-money laundering

5th Money Laundering Directive takes effect on 10 January 2020

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Brexit – phase 2

EU Withdrawal Agreement Bill

The Bill to enact the agreement on exit from the EU concluded by the new Government comfortably passed through the first hurdle in the House of Commons before Christmas and if, as expected, it survives the final stages, it will usher in the UK's exit from the EU on 31 January 2020 and with it, the transition period which is due to expire on 31 December 2020. An amendment to the original Bill effectively prevents an extension to the transition period beyond December 2020. The Bill is due to complete the Commons stages this week and will then move to the House of Lords.

No-deal still a possibility

Given the likely complexity and sensitivity of the next phase of negotiations, it is hard to envisage there being a fully-negotiated EU/UK FTA in place by December 2020. A more likely possibility is a limited deal agreed by the end of 2020, forming the foundation of a more comprehensive agreement which is negotiated over a longer period, although this could be operationally challenging for businesses having to adapt to a piecemeal approach to the introduction of new regulation. The EU has indicated that a "bare-bones" deal may focus on key EU priorities such as trade in goods and fishing rights in UK waters, leaving trade in services to be agreed. We would also expect the Irish issue to rear its head again this year if progress towards an agreement falters, so many hurdles remain.

As we noted in our article here, the revised Political Declaration negotiated by the Johnson government signals a looser trade relationship with the EU than previously envisaged by the Theresa May deal, as a trade-off in favour of greater freedom for the UK to conclude treaties with other territories such as the US. The Political Declaration commits the UK only to maintaining current standards rather than keeping pace with the EU in relation to competition, state aid, social and employment standards, environment, climate change and tax matters, and early signals suggest the new Johnson government will reject a deal which involves a high degree of alignment with Europe.

If, as expected, the UK pivots towards alignment with US rules, any divergence from EU standards will complicate the negotiations with the EU and may result in trade barriers with the EU.

The challenges outlined above lead us to the conclusion that a no-deal outcome on 1 January 2021 still cannot be ruled out and no-deal planning is still prudent. The Government itself is reportedly continuing with its no-deal preparations.

Brexit legislation

The post-election Queen's Speech resurrected the various Brexit-related Bills and other legislation on trade, financial services, immigration, environment, fisheries and agriculture, with relatively minor amendments. We will keep you posted on our Brexit hub as the legislation progresses.

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European Green Deal

The European Green Deal, announced by the European Commission in December, commits the EU to becoming climate-neutral by 2050 whilst promising to help companies to become world leaders in clean products and green technologies. The ambitious and wide-ranging measures set out in the plan are aimed at achieving significant reductions in carbon emissions and the carbon neutral target will be given legislative force in a new Climate Law to be put forward in March 2020. The Commission is careful to note that no single measure will be sufficient to achieve the objective of transforming the EU's economy, which the Commission states will take 25 years.

Some of the key measures proposed include:

- **Energy** – promotion and integration of renewable energy sources, decarbonisation of energy-intensive industries and a sustainable products policy targeting resource-intensive industries such as textiles
- **Buildings** - a focus on renovating existing buildings to improve energy efficiency
- **Transport** - measures to support cleaner, greener and alternative transport methods, in order to achieve a 90% reduction of emissions from the sector
- **Agriculture/fisheries** – measures to support biodiversity, reduce the use of harmful chemicals, improve food processing and packaging and reduce waste
- **Pollution** – planned launch of a new zero pollution plan in 2021 covering air, water, and soil, in order to better monitor, report, prevent and remedy pollution.

The measures are expected to require investment of around €1trillion, to be funded under a new Sustainable Europe Investment Plan which will draw in part from the EU Budget, from the InvestEU Fund and from the European Investment Bank as well as private investment.

Significantly, the EU also raises the possibility of establishing a "carbon border" around the EU to prevent EU businesses outsourcing production outside the EU to avoid EU rules or replacing EU products with more carbon-intensive imports, which may affect future trade in relevant products between the UK and EU.

The new standards, and EU funding available to help businesses to meet them, will apply only to EU Member States, and it remains to be seen how the UK Government responds to them in a post-Brexit world.

It was already expected that an EU/UK future trade deal may require adherence to EU environmental standards, and the Political Declaration contains several references to the protection of the environment. The press has reported that a compromise on environmental standards could be required in order to ensure other trading arrangements can be made expeditiously. On the other hand, the UK now has its own legally binding commitment to be carbon neutral by 2050 and re-using the EU's thinking about how to achieve that would make good sense.

So, whilst the UK is expected to leave the EU prior to most of the proposed measures taking effect, the European Green Deal will no doubt be relevant to the negotiations for the UK's future trading relationship with the EU so should not be overlooked.

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Data protection

Cyber-security fines

2019 saw the first of the much-anticipated big GDPR fines make an appearance, with the Information Commisioner's Office (the ICO) announcing, last summer, its intention to fine BA a colossal £183m (equivalent to 1.5% of its annual global turnover) and Marriot £99m in respect of data breaches that took place in the previous year.

Both organisations will have had a period of six months in which to make submissions with regard to matters such as the level of the fine and the degree of their responsibility for the breach. Further news on where the ICO finally lands is expected soon.

We also expect that 2020 will continue to see a steady rise in class actions coming out of data breaches, following news last year that the courts had given permission for class actions against Google and BA in respect of breach of data protection laws.

WM Morrisons Supermarkets v various claimants

We are expecting the Supreme Court judgment in the case of WM Morrisons v various claimants shortly. To recap, in 2018, the Court of Appeal found that Morrisons was vicariously liable for the acts of a vengeful employee who brought about a data breach by posting the personal data of almost 100,000 Morrisons employees online (and then launched an action against their employer). Morrisons appealed that decision in the Supreme Court in early November 2019, and we now await the judgment of the court.

Whilst the issue is essentially one of vicarious liability, there are implications for those responsible for data protection compliance if the Supreme Court decides that it agrees with the Court of Appeal's conclusions, to make sure that their policies and procedures in terms of keeping personal data secure and controlling internal access, are as tight as possible, given the sanctions which are now available under GDPR for data breach.

SCHREMS/Facebook round 2

The saga of Max Schrems' quest against Facebook continues. His initial successful swipe, a number of years ago, resulted in the dismantling of the safe harbour regime as a safeguarding mechanism for transferring personal data from the EEA to the US, and its replacement by the current EU/US Privacy Shield.

The latest round of proceedings has resulted in a number of questions being put before the CJEU, including the validity of the current version of the European Commission's approved standard contractual clauses as a safeguarding mechanism for transferring personal data out of the EEA to the US (and to other countries which are not the subject of an EU adequacy decision).

The Advocate General (AG) released his opinion just before Christmas as an early gift to the many businesses which rely on standard contractual clauses to transfer their personal data outside the EEA. The opinion confirmed that such standard clauses remain a valid safeguarding transfer mechanism, but with a warning that they create obligations to maintain the safety of transferred data – not just to ensure that the data importer puts appropriate measures in place, but to consider the wider context and the privacy and other applicable laws of the destination country, and how this will impact on the data which is transferred.

The AG's opinion is non-binding (though is often an early indication of where the CJEU will come down), and we therefore await the CJEU's eventual decision, expected soon, with interest.

New eprivacy regulation – what has happened to it?

2020 had been hotly tipped to be the year in which we would finally see agreement of the much-heralded new version of the EU's Regulation on Privacy and Electronic Communications. However, a stalemate has resulted in the recent announcement that Member States have decided to go back to the drawing board and attempt to come up with a new proposal.

So, it looks like the current legislation, including rules on obtaining opt-in style consent for all but strictly necessary website cookies, is here to stay for at least a little while longer. It is highly unlikely that the new regulation will be in place before the UK leaves the EU, though it will still affect those businesses which market to EU citizens.

Data protection

GDPR guidance

Both the European Data Protection Board (EDPB) and the ICO were busy issuing practical guidance on a variety of issues in 2019, including GDPR's extra-territorial scope (in the case of the EDPB), and, currently at consultation stage, the ICO's draft guidance on data access rights under GDPR.

It is also worth looking out for the ICO's accountability toolkit, the consultation for which closed in December 2019, and guidance on the use of AI and the steps which organisations should consider when developing AI decision-making systems.

General Election/Brexit fall out

As far as we know, post-Brexit plans for data protection haven't changed: under the EU Withdrawal Act, GDPR will become part of English law, anglicised where necessary to ensure that it operates effectively.

Data transfers to the EU can continue without the need for additional measures to be put in place, but from the end of **December 2020**, unless there is an extension to the transition period, personal data moving from the EEA to the UK will need to be transferred using a GDPR safeguarding mechanism such as standard contractual clauses. It is hoped that if/when the EU grants an adequacy decision, this additional hoop will fall away, but such a decision is by no means guaranteed. Much will depend on wider negotiations on a trade deal, and, for example, on how relations with the US develop under the new Government, particularly with US tech companies who may be looking forward to greater access to UK personal data.

California Consumer Privacy Act

And finally, a quick reminder that **1 January 2020** marked the effective date of the much talked-about CCPA, which is relevant to businesses which collect or store personal information about Californian residents and meet certain size threshold tests (those which have annual gross revenues over $25 million, buy, deal with the personal information of 50,000 + consumers, households or devices, or derive 50% or more of annual revenues from selling consumers' personal information).

Briefly, the CCPA imposes transparency obligations on such businesses, and creates enhanced rights for those Californian residents who benefit from it in relation to their data, including the right to refuse the sale of their information by a business.

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Competition

National security scrutiny of mergers

December's Queen's Speech reiterated the Government's intention to proceed with legislation giving it significantly broader powers to scrutinise mergers on grounds of national security. The new regime will apply to mergers outside the defence sector, such as those involving critical infrastructure. It will also apply to businesses which are key suppliers of businesses deemed to be important to national security. The timing remains uncertain but we would not expect the legislation to be passed until later this year. The reforms follow moves by a number of major jurisdictions, such as the US (under its CFIUS regime), Germany and Japan to tighten up scrutiny of mergers on national security grounds. For more detail, see this briefing.

These reforms follow a number changes introduced in June 2018, which were intended to be a short term measure pending implementation of broader reform. For more detail, see this briefing. A number of recent mergers have since been scrutinised under this new regime, which introduces a lower financial threshold and expands the Government's scrutiny power to cover certain categories of high tech business (e.g. quantum computing). Some of those investigations have underlined how the UK authorities are willing to scrutinise transactions involving financial investors, as well as so-called hostile parties or states (see this briefing).

We would expect the proposed new regime to operate in a similar way, although it will apply to a substantially wider range of mergers. This means that acquiring parties should be wary of assuming that they will not be investigated merely because they are based in the UK or in a "friendly" state; the key question to ask is whether the business being acquired meets the criteria for raising national security concerns.

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Tax

DAC 6

EU Directive 2018/822 (DAC 6) introduces a new tax reporting regime in the UK from **1 July 2020**. These rules will come into force regardless of the Brexit process. DAC 6 applies to cross-border arrangements which satisfy certain "hallmarks".

Although the first disclosures are not required until this summer (2020), the rules will apply retrospectively to any arrangements put in place **on or after 25 June 2018**. The scope of the reportable arrangements under the relevant EU Directive is very wide and not limited to aggressive tax planning – in a number of circumstances, no tax advantage is even needed to arise from the arrangement. If disclosure is required, a substantial amount of information must be provided, including the identities of all participants and advisers, and a summary of the arrangement, including explaining why it is caught.

In July 2019, the Government published, for consultation, draft implementing regulations as well as a consultation document which set out some information as to how HMRC envisages applying the regime. Interested parties (including industry bodies and law firms) provided detailed feedback in response to the consultation (in the main, pointing out that the Government's proposed approach was too far reaching and would lead to an excessive reporting compliance obligation). Updated implementing legislation is expected to be passed, and further HMRC guidance published, early this year. We will provide a further briefing on these rules once those updated proposals have been published.

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Tax

Review of plans to extend new off-payroll rules to the private sector

Some individuals choose to work for a business organisation through their own company (known as a "personal services company" or "PSC"). For employers, such an arrangement has the advantage that, unlike payments to employees, fees paid to PSCs do not generally attract withholding tax obligations and social security contribution liabilities. Further, the owner of the PSC can choose to extract value from their company in a more tax efficient way such as the payment of dividends.

For some time, the Government has been concerned that PSCs are being used to disguise what is essentially an employment relationship as self-employment.

To combat avoidance in this area, legislation was introduced that made it impossible to avoid UK tax simply by providing services through a personal services company. The rules (known as "IR35" after the press release that originally announced them and as the "off-payroll working rules") deem payments made to a PSC to be employment income if, were it not for the existence of the PSC, the relationship between a business organisation and worker would be treated (for tax purposes) as one of employment. These anti-avoidance rules apply wherever the organisation is incorporated or resident.

Until recently, where IR35 applied, it was the PSC that was responsible for accounting for the income tax and social security contributions due. The Government modified the rules in 2017 with the effect that, in the case of off-payroll workers in the public sector, it is the business (or other person paying the PSC's fee) that has to collect the tax and social security contributions.

The Government perceived this change as having improved compliance with IR35 and, as a result, announced that it would be extended to the private sector from **April 2020**. This would create greater administrative and financial burdens for businesses engaging workers through PSCs and would apply even if the business does not have a presence in the UK for tax purposes.

Stop press: The new Government has just launched a review into the implementation of these IR35 changes, but there is no suggestion that the changes will be delayed. The review will conclude by mid-February.

For more information on this topic, please refer to the following articles:

Off-Payroll Working Rules: The final proposals revealed – Does it apply to my business?

Off-Payroll Working Rules: The final proposals revealed – What do you have to do under the New Rules?

PERSONAL SERVICE COMPANIES: IR35

Assuming the proposals go ahead as planned, from April 2020, businesses in the private sector engaging off-payroll workers will, where IR35 applies, have to withhold tax and social security contributions from payments made to the worker's personal services company. Previously, this obligation only applied to public sector businesses.

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Finance

LIBOR discontinuation

As previously reported, LIBOR (a forward-looking reference rate widely used in financial and other commercial contracts) is likely to be discontinued after the end of 2021. **During 2020**, we expect to see more available products linked to alternative rates, where previously they were linked to LIBOR. For sterling, rates derived from SONIA (the Sterling Overnight Index Average), will be used as a replacement in many cases.

However due to structural differences in the way LIBOR and SONIA are currently calculated and quoted, transition requires a number of changes to documentation. In circumstances where a term reference rate is required (for example, because a 3-month term LIBOR rate was previously used to calculate interest payments) a compounded version of SONIA may be used, based on daily SONIA quotations over a reference period. However market conventions for such calculations are still emerging and firms receiving LIBOR-linked interest are not expected to give up the difference between LIBOR and SONIA, which results from the term credit risk premium that is built into the LIBOR rate, but not into SONIA.

There will inevitably be implications for legacy transaction documents in the event that LIBOR ceases to be quoted and the documentation does not provide for a successor rate.

UK Finance has published an excellent guide for business customers (here) which encourages companies to analyse and assess affected products, consult with their finance providers and review alternatives.

Existing contracts will require review to identify if fallback clauses explain what happens in the absence of LIBOR. Businesses should also consider other transition elements such as the impact on IT systems, accounting and tax matters.

THE DEMISE OF LIBOR

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Governance and financial reporting

2019 was always going to be a big year for the future of company audits. Sir John Kingman had presented his independent review of the Financial Reporting Council (the "**FRC**") (the "**Kingman Review**") in December 2018, in April the Competition and Markets Authority ("**CMA**") published its market study on statutory audit services (the "**CMA Study**") and in December Sir Donald Brydon's independent review into the quality and effectiveness of audit (the "**Brydon Review**") completed the trio of big audit-related reports.

The collapse of Patisserie Valerie and Thomas Cook during the year gave additional urgency to the recommendations made by these reports but the uncertainty created by Brexit and the election in December 2019 meant that Parliament has not yet implemented any of the recommendations.

New regulator to replace the FRC

The stand-out proposal of the Kingman Review is to replace the FRC with a new regulator which would be called the Audit, Reporting and Governance Authority. The new regulator would be directly responsible to Parliament and would have wider powers than the FRC. The previous government announced that it would follow the recommendation and had launched a consultation on the scope of the extended powers. The outcome of this consultation has not yet been published.

The "audit expectation gap"

The key feature of the Brydon Review was to examine the "audit expectation gap" and to consider whether the scope of the statutory audit should be extended to bring it into alignment with the perceptions of market participants. Prior to publication of the review, Brydon himself talked about people's frustration with the current "narrow, backward-looking and increasingly rules-obsessed approach to audit". Some of the measures recommend in the review would constitute a significant departure from current practice.

The key suggestions are:

- the creation of an auditing profession which is distinct from accounting
- an extended scope for the going concern statement which would add a medium-term statement of resilience and a long-term consideration of the risks to resilience
- an advisory vote by shareholders on the company's audit and assurance policy every three years, and
- a requirement for directors to confirm (in addition to the current rules on distributable reserves) that a proposed dividend does not endanger the company's solvency for a prescribed future period.

BIG CHANGE FOR THE BIG FOUR?

The CMA Study looked at two key issues: the market power of the Big Four audit firms and perceived or real conflicts arising from the non-audit business of the audit providers. The CMA proposes to tackle the first issue by requiring larger companies which use a Big Four auditor to appoint at least one firm from outside the Big Four as a joint auditor. This requirement would initially apply only to companies in the FTSE 350. The CMA also proposes that the Big Four should split their audit function from their other business. This split is meant to be purely operational and not structural so would not require the break-up of these firms.

Governance and financial reporting

Next steps on audit reform

No implementing legislation has been published yet for any of these reviews. The Conservative manifesto contained a commitment to strengthen the UK's audit regime and in the post-election Queen's Speech, the Government committed to developing proposals on company audit and corporate reporting, including a stronger regulator.

New reporting requirements for 2020

Companies are gearing up for the new reporting requirements which were published in 2018 and which apply in relation to **financial years beginning on or after 1 January 2019**. The reporting requirements applying to both private and public companies meeting the relevant threshold relate to:

- section 172 of the Companies Act 2006 (the "section 172 statement");
- engagement with employees;
- engagement with customers, suppliers and others in a business relationship with the company; and
- corporate governance arrangements.

There are different qualifying conditions for each of these obligations, some linking to the definition of "large" company under the Companies Act 2006 and others based on the number of employees. These are outlined in our **summary table of reporting requirements**.

Groups should be considering whether their subsidiary companies, as well as the parent company, are caught by the requirements. In the case of section 172 reporting, if either (i) a subsidiary company (but not the parent) meets the qualifying conditions, or (ii) neither parent nor subsidiary meet the qualifying conditions, but in either case the parent prepares consolidated group accounts and meets the conditions on a consolidated basis, the parent company will need to publish a section 172 statement. In the case of (i), the subsidiary will also have to report separately.

The level of detail which will be included in the section 172 statement remains to be seen, as so far the only examples are from companies who have voluntarily included information ahead of the new requirement applying to them. From **early 2020**, we will start to see the first statements being published. The **BEIS Q&As** contain some helpful information and the FRC has provided some guidance in its recent **Annual Review of Corporate Governance and Reporting** and in its earlier **Guidance on the Strategic Report.**

Official List companies will also need to comply with the new rules on pay ratio reporting and share price impact reporting – please see our summary table on reporting requirements (see above) for further details on these obligations.

Payment practices – a reminder

Although the requirement for large companies to report on their payment practices and performance came into force in 2017, many organisations are failing to publish the required information, which could lead to being barred from government contracts or even the spectre of regulatory enforcement. For more on this topic, please see our recent **client briefing** which contains a Q&A summary of the obligations and next steps.

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Pensions

Pensions Schemes Bill and scheme funding

The Government has published a new Pension Schemes Bill that broadly mirrors the one introduced towards the end of the last Parliament. This covers, among other things: changes to defined benefit scheme funding legislation to require schemes to have a long-term strategy; new notification duties for certain corporate activities; and new criminal and civil penalties for acts or omissions which put benefits at risk.

Those engaged in corporate activity will need to make notifications to the Pensions Regulator and pension scheme trustees in more circumstances than at present and perhaps at an earlier stage. These circumstances are expected to include the sale of a material part of a business and the granting of security that has priority over debt to the pension scheme. They will also have to consider even more carefully than now whether any proposals could adversely affect the security of defined benefit pension scheme members' benefits and may also need to declare how any detriment will be mitigated.

Political events have delayed the Pensions Regulator's consultations on a revised approach to defined benefit pension scheme funding. Ultimately there will be a new code of practice but first there will be a consultation on a new framework, perhaps **early in 2020**. The Regulator is expected to tell schemes and sponsors to focus on long-term funding objectives, for example buy-out, consolidation or self-sufficiency, with trustees expected to have a journey plan under which the scheme reduces its dependency on the employer as the scheme becomes more mature.

Meanwhile, the Regulator continues to focus proactively on the level of deficit reduction contributions compared with dividends and other shareholder distributions.

GMP equalisation

Trustees of affected schemes have been considering how to address GMP (guaranteed minimum pension) equalisation, following the Lloyds Banking Group case. An industry group is issuing guidance on various aspects. Whilst many schemes have been taking steps to equalise transfer values and lump sum benefits, full equalisation decisions are currently hampered by issues with legislation and the potential for adverse tax consequences for some members.

Actuarial assumptions

It appears that the Retail Prices Index (RPI) will be modified from **2030** (or possibly **2025** if the Government agrees) so that it is aligned with the Consumer Prices Index with owner-occupied housing costs (CPIH). CPIH increases are typically smaller than RPI increases, so schemes that revalue and/or increase pensions in line with RPI increases may see their actuarial liabilities reduce. Some schemes are also considering the implications of this change for their inflation-linked investment and inflation hedging strategies. There may be scope to allow for the anticipated reduction now in assumptions for scheme valuations and corporate accounts. Another change that can reduce pension liability values is the use of CMI 2018 mortality tables instead of CMI 2017 for assumed pensioner life expectancy.

Pension protection levy

Current economic conditions are expected to mean significant increases in the pension protection levy for **2020/21** for many defined benefit schemes as a result of the worsening of underfunding and/or insolvency risks. Proposed changes to how insolvency risk scores are calculated from **April 2020** are expected adversely to affect the schemes of larger employers from 2021/22. Affected employers may wish to consider options for reducing their levy.

ESG etc. factors and stewardship

New legislation requires greater disclosure by pension scheme trustees about their investment policies. This includes the account taken of ESG (environmental, social and governance) factors, including climate change, and information about stewardship policies and activities. The growing focus on these matters may have an impact on trustees' investment decisions.

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Money laundering

5th Money Laundering Directive – a reminder

The fifth Money Laundering Directive (MLD5) is due to take effect from **10 January 2020**. It will be implemented in the UK by way of changes to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

The main change for many firms subject to MLD5 will be stricter requirements when carrying out customer due diligence. This includes a requirement to obtain and verify additional information when carrying out customer due diligence on a body corporate and to understand the business, ownership and control structure of their customers. Firms will be required (where relevant) to collect proof of registration on any beneficial ownership register and, where part of a group, will have to have policies requiring customer, account and transaction information to be provided to them from their branches and subsidiaries. Firms will also be required, in certain cases, to refresh customer due diligence on existing customers and to apply enhanced due diligence to business relationships or transactions "involving" high risk third countries.

In addition, certain tax advisers and crypto-asset businesses will be subject to the anti-money laundering regime for the first time.

We discussed the changes in more detail in the following briefings: MLD 5: the MLD 4 upgrade and MLD 5: HMT consultation on UK transposition.

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Immigration

Immigration rules post-Brexit

The Government has announced some further details of what the immigration regime will look like post-Brexit. The Government is promising a new "Australian-style" points-based system from January 2021 where work visas will be based on migrants' skills and the contributions they can make to the UK.

Under the new regime, EU and non-EU nationals will be treated equally, with no preference given to EU nationals. For work visas, the new regime is expected to fall into three categories – an exceptional talent/contribution route (for investors, entrepreneurs, world-leading scientists etc), a route for skilled workers (to cover employer-sponsored visas), and a new sector-specific rules-based category (for temporary visas).

An independent report is also due to be published in **January 2020**, which will make recommendations to the Government on details such as the salary and skills thresholds for employer-sponsored skilled worker visas.

In the meantime, EU nationals (and their family members) in the UK as at the date of Brexit will be required to register under the Government's new EU Settlement Scheme in order to be able to continue living and working in the UK. The deadline for applying under the revised Withdrawal Agreement is **30 June 2021** – if the Withdrawal Agreement is not ratified, an earlier deadline of **31 December 2020** will apply. Either way, transitional arrangements will be in place for EU nationals arriving in the UK between the date of Brexit and 31 December 2020.

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Contracts

Electronic signatures

Whilst the prevalence of legal documents executed electronically has grown in recent years, the validity of electronic signatures has been called into doubt by some practitioners, particularly in respect of deeds. A new Law Commission report should help to convince the doubters.

The Law Commission's lengthy review excluded dispositions of registered titles under the Land Registration Act 2002 but otherwise included contracts for sale or other dispositions of an interest in land.

In summary, the report confirmed that electronic signatures are valid for executing documents, including deeds, provided that the person signing the document intended to authenticate it and any formalities relating to execution are satisfied. For deeds, the person signing (even electronically) must be in the physical presence of the witness who is attesting the signature.

On the horizon: future working groups may consider whether witnessing could be by video link, and also whether the criteria for signing deeds (electronically and by hand) should be reviewed.

In **Neocleous v Rees** [2019] EWHC 2462, the county court held that automated electronic signatures within a chain of emails between solicitors negotiating the settlement of a dispute involving the transfer of land were deemed to be valid signatures for the purposes of s2 of the Law of Property (Miscellaneous Provisions) Act 1989, so that the email chain constituted a contract for the sale of land.

Although this is a county court judgment and therefore not binding on other courts, it is a good reminder that parties and their advisers need carefully to consider whether to include disclaimer wording or expressly make email chains subject to contract to avoid inadvertently creating binding contracts.

ELECTRONIC SIGNATURES

Electronic signatures are valid for executing documents, including deeds, provided that the person signing the document intended to authenticate it and any formalities relating to execution are satisfied.

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Real estate

Overseas investors in UK property

As widely anticipated, as part of its suite of anti-money laundering reforms, the Government proposes to introduce a register of beneficial owners of overseas entities acquiring UK property interests. This register will complement the Persons of Significant Control regime introduced in 2016 and is expected to be launched in **2021.**

Once the Registration of Overseas Entities Bill comes into force, there will be a transition period of 18 months during which entities caught by the new regime must submit the required information in relation to relevant interests acquired on or after 1 January 1999.

The new regime is now one step closer to implementation. Last summer, a Government report on the Bill confirmed that the Government:

- doesn't consider it necessary to introduce a pre-clearance mechanism to indicate whether overseas and legal entities are registrable;
- doesn't intend to lower the 25% ownership threshold for the definition of beneficial ownership, although it will keep this under review;
- considers that the power to exempt entities from registration will be used only very rarely and only where it is in the interests of national security, the economic wellbeing of the UK, or for the prevention or detection of serious crime; and
- will consider further how to ensure that the register is keep accurate, both at the point at which a disposition is made but also by incorporating a mechanism for mistakes or suspicious information to be flagged to Companies House. It will also consider adding civil penalties to the current criminal sanctions for breaches.

The retrospective nature of the proposed regime should prompt businesses to audit their existing property portfolios in anticipation of the new requirements.

Real estate

Infrastructure payments

In **September 2019**, new laws came into effect requiring councils to publish an annual report disclosing the size of the section 106 and Community Infrastructure Levy (CIL) payments they have received and how much they have spent. Local authorities often require these payments to be made by developers or property owners in connection with the grant of planning permission, and they are intended to be used for site-specific mitigation of the impact of development, for instance to improve roads, green spaces or drains serving the scheme, or to provide affordable housing.

Property Week's analysis of local authority financial data shows that between 2013 and 2018, at least £4bn was collected as section 106 payments, of which only £1.3bn was spent – leaving about 58% of the money collected unspent – and also received CIL payments totalling £967m, of which just £191m – or 20% – was spent. The analysis did not calculate how much money was taken by London boroughs under the mayoral CIL, which is passed on to London City Hall for large infrastructure projects.

VAT reverse charge on construction services delayed

The VAT reverse charge on construction services, which will switch the responsibility for accounting to HMRC for VAT on certain supplies from the supplier to the customer, will now come into effect on **1 October 2020**, not 1 October 2019 as originally planned.

The new rules will apply to supplies of "construction services" (using a definition very similar to the one that applies for the purposes of the Construction Industry Scheme) and to supplies of other services and goods which fall to be treated as part of a single supply of services that includes construction services. There are a number of exceptions, which mean that the reverse charge is most likely to apply to supplies made by Tier 2 and Tier 3 contractors (i.e., businesses supplying construction services to other construction businesses).

Leasehold reform

In June 2019, the Government published its response to its consultation on "Implementing reforms to the leasehold system in England", which was carried out for 6 weeks from October 2018.

Its conclusions include recommending:

- a ban on the grant of new long residential leases of houses, except where justifiable;
- the reduction of ground rents to zero in new residential long leases, save for exempted properties; and
- the introduction of rights for freeholders in relation to service charges for communal facilities analogous to those granted to tenants under the LTA 1985.

The Government intends to bring forward legislation to facilitate these changes as soon as Parliamentary time allows.

LEASEHOLD REFORM

Leases that are unjustified, include onerous terms or unfair conditions, or put corporate profit over consumer protection have no place in today's housing market.

Rt Hon James Brokenshire MP

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Events and training

Networking events

We continue to run a variety of networking events for in-house lawyers across a range of seniority levels. Many of our networking events have a discussion element, and we have recently covered **Corporate Governance** and **CSR and Diversity** in this forum. Planned future topics include **2020 Governance: Reporting and Engagement**, **Off-payroll Working** and **Contract Law** issues.

We add to our programme to reflect developments as they arise. Look out for news on these events throughout the year. If you would like to join our mailing list for future events, please register your interest here.

Training events

We also continue to offer training and guidance for in-house counsel at all levels on a wide range of core topics, such as **document execution, privilege, contract law, competition law compliance, data protection and mergers and national security**.

Whilst we often deliver training for clients on a bespoke basis, we also run sessions in a seminar or roundtable format, providing opportunities for you to share insights with your peers in other organisations. If you have specific training requests for your team, please register your interest here, or speak to your usual Travers Smith contact.

Skills training for in-house counsel

Finally, we have introduced a programme of skills training for in-house counsel, led by external trainers whom we know and trust. These sessions range from bespoke masterclasses for GCs on **influencing the board** to **presentation skills** training for in-house team members. If you are interested in taking part, please contact rachel.wevill@traverssmith.com from our Learning and Development team, or your usual contact at the firm.

In-house LinkedIn page

Our 'Insights for In-house' LinkedIn page is a useful source of information where we share legal briefings, newsletters and alerts relevant to in-house lawyers. Please see below for contact details. All of our legal briefings and newsletters, many of which are aimed at in-house counsel, continue to be available on our website.

For more information on our Insights for In-house offering, please contact insightsforin-house@traverssmith.com or your usual Travers Smith contact.

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