



THE BROOKE CONSULTANCY LLP
BUSINESS ADVICE IN THE ROUND

How The Law Affects You

Welcome to our Spring Newsletter.

Lockdown is being lifted and none of us know what's coming next. A recession or a depression? A bounce-back? Opportunities for growth, innovation and positive change?

Whether or not we have actually entered [the Anthropocene Epoch](#) we do all have to be mindful of our impact on our planet and as we start our journey out of lockdown and into the 'new normal' many commentators believe that this is our opportunity to re-focus business on growth within the context of Environmental, Social and Governance (ESG).

ESG is about businesses having regard to:

- Environment: Climate change and the prevention of pollution.
- Social Benefit: including the wellbeing of employees and the community at large.
- Governance: Managing a company on a transparent basis with shareholder and employee involvement.

ESG is not inimical to growth and profitability, in fact Small to Medium Sized Enterprises and Social Enterprises should have regard to ESG as increasingly it is a criterion that socially responsible investors and customers are looking for.

In this Newsletter, we offer practical advice and procedures related to

- Mortgage Moratorium Extension
- COVID-19 – Force Majeure and Frustration,
- Tax and COVID-19
- Solvency
- Brexit
- EU Settlement Scheme.

We also provide a contact option for lawyers who are interested in exploring new

Mortgage Moratorium Extension

The government has updated its guidance on the mortgage moratorium. The essence is that the obligation on lenders to grant a 3-month mortgage holiday has been extended to 31 October 2020. The Guidance sets out how lenders should go about providing support to consumers facing payment difficulties due to circumstances arising out of COVID-19. You can make no or reduced payments for a specified period without being considered to be in default and where there is an existing mortgage holiday, you can discuss an extension for a further 3 months or even a longer period of months. For more detail please read, from a premier set of Chambers in Lincoln's Inn, [the opinion](#) of Richard Mawrey a distinguished QC but if you need input and advice contact Kerem at kerem@thebrookeconsultancy.com

COVID-19 - Force Majeure and Frustration

If you are faced with an issue under a contract, whether with a supplier, client or customer, we will look at that agreement initially on a no charge basis. Many contracts contain a Force Majeure clause under which a supervening event (such as, possibly, COVID-19) renders performance of the contract different from that contemplated at the time of contracting. Force Majeure relates to a supervening event that is beyond the control of the party and which prevents performance where there are no reasonable steps that could have been taken to avoid or mitigate the supervening event or its consequences.

The Common Law doctrine of Frustration may also be relevant. Frustration occurs when, without fault of either party, a contractual obligation has become incapable of being performed. There is case law that provides an example of disease rendering performance impossible and so the contract was frustrated. However, if there is a clause that makes full and complete provision for the effect of the supervening event, the contract will not have been frustrated. In the event of Frustration being found to have occurred, The Law Reform (Frustrated Contracts) Act 1943 allows recovery of money that has been paid. In our view, COVID-19 will lead to a wave of disputes as to which party bears the risk of non-performance under contracts. If you need strategic input and advice on this, contact Lynne at lynne@thebrookeconsultancy.com

Tax and COVID-19

We work with Wellers, a significant growing firm of accountants. Together we can, for example, help you qualify for a deduction from corporation tax based on R&D spending for relevant work carried out in the last 2-3 years.

There is a plethora of schemes available during the current difficult trading

resources and how to financially survive the outbreak. If you need strategic input and advice on this, contact Lynne at lynne@thebrookeconsultancy.com

Solvency

Some businesses and sole-traders will have solvency issues as we move out of lockdown. TBC are prepared to look at your issue of solvency initially on a no charge basis to provide you with an initial view and if necessary, introduce you to an Insolvency Practitioner who will provide advice as to whether you should continue trading or not. If the advice is to continue trading you will be protected from personal liability for wrongful trading. The Insolvency Practitioner may recommend other courses of action, for example, reconstruction or sale.

Note that there is a temporary suspension of the law making directors liable for wrongful trading. This ends in June and so far it has not been extended but Government has announced that it will amend insolvency law to give companies breathing space to keep trading while they explore options for rescue. This is a new form of moratorium from creditors equivalent to the US Chapter 11 process. Government is encouraging businesses to trade through the current economic environment. Directors still need to take advice as to the risks involved.

If you need strategic input and advice on this, contact Kerem at kerem@thebrookeconsultancy.com or Lynne at lynne@thebrookeconsultancy.com

Brexit

Whether we leave the EU with or without a trade deal, it makes sense for you to review the likely effects of Brexit on your business, to consider the possibility of tactical restructuring and get fully up to speed on the possible effects of import duties and tariffs from the EU or elsewhere.

We can provide advice as to how to restructure your business, for example by having a distribution company in an EU country like Ireland. We have clients in a number of countries around the world including China, Turkey, Dubai and Qatar and so are well placed to assist you with all of the international aspects of your business. Contact Lynne at lynne@thebrookeconsultancy.com to discuss further.

EU Settlement Scheme

If you are an EU citizen who has been resident in the UK for less than 5 years, you can apply for 5 years' Leave to Remain and obtain Pre-settled Status.

If you have been resident in the UK for 5 years or more, you can apply for Settled Status and obtain Indefinite Leave to Remain and then apply for citizenship later.

There is no fee for making the application under the EU Settlement Scheme.

You need to apply on or before 31 December 2020 and there is a final cut-off date of 30 June 2021.

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December 2020 and free movement extends until that date. You must have Leave to Remain before 30 June 2021. If you do nothing, you are likely to face removal from the UK. The Government's [Stay in the UK web pages](#) set out what you will need to make the application for pre-settled or settled status. The Scheme is open now and we are able to access help from The Immigration Advisory Service.

For further information contact Lynne at lynne@thebrookeconsultancy.com

TBC Growth

In these challenging and difficult times, TBC is adopting new strategies to create new opportunities. We are in a growth phase based on our proven model and method of remote working. If you know lawyers who have been furloughed or are discontented in their present roles, we can offer them a new career path. If they wish to start a conversation, they can contact Eva Caletkova at eva@thebrookeconsultancy.com

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