Corporate NEWSLETTER

Spring 2018

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EdwinCoe LLP

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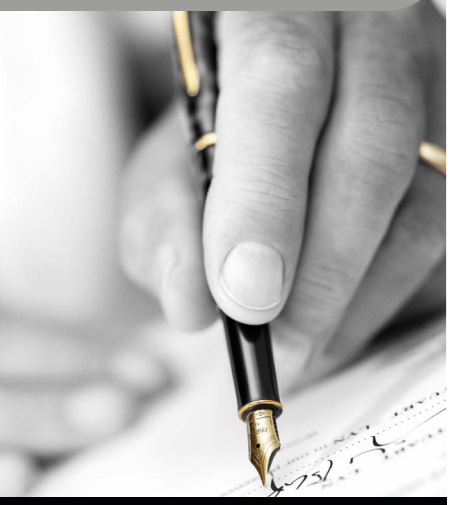

Content Page

INTELLECTUAL PROPERTY LAW

The General Data Protection Regulation – not just a European problem...

Nick Phillips, Partner

When the General Data Protection Regulation (GDPR) comes into force on 25 May 2018, it will bring with it numerous changes to the data protection landscape in the EU.

One particular feature of the GDPR is that it has a tremendously broad extra-territorial applicability and will therefore apply to many organisations based outside of the EU as well as those in the EU. The territorial scope of the Regulation is expanded by Article 3(2) which contains a two-limb test:

Editor's Note

Welcome to the Spring 2018 edition of our Corporate Newsletter which contains a variety of articles covering corporate & commercial, property, property litigation, intellectual property and employment law.

We announced in the Winter 2017/18 edition that we will be hosting the annual Client Seminar for Ally Law, the global independent legal network that we are a member of. The seminar entitled *"Global strategies for Law and Business"* will be held on Thursday, 31 May 2018 at 1.30pm to 5.30pm. Alastair Campbell, a British journalist, broadcaster, political aide and author, best known for his work as Tony Blair's spokesman, campaign director and Downing Street Press Secretary, when Blair was PM, will be our keynote speaker.

If you have any legal issues or concerns that you would like to discuss, please do not hesitate to contact me.

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EdwinCoe LLP

Article 3: Territorial Scope

1. ...
2. *This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:*
   - (a) *The offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or*
   - (b) *The monitoring of their behaviour as far as their behaviour takes place within the Union.*

The GDPR therefore applies to anyone, regardless of where they are based who offers goods and services to people in the EU or monitors the behaviour of people in the EU.

In relation to the first limb, whether or not a non-EU organisation is deemed to be offering goods or services to data subjects in the EU will depend on a number of factors. However, it is important to note that a fee does not have to be charged for the goods or services in question for the extended scope to apply.

Recital 23 of the GDPR provides some helpful clarification as to what will be considered when assessing whether or not goods or services are being offered to people in the EU. Specifically, it states that merely having a website that is accessible in the EU would be insufficient.

However, *"...factors such as the use of a language or currency generally used in one or more Member States with the possibility of ordering goods or services in that... language, or the mentioning of customers or users who are in the Union, may make it apparent that the controller envisages offering goods or services to data subjects in the Union."*

In relation to the second limb of the test, monitoring of behaviour, Recital 24 states that *"in order to determine whether a processing activity can be considered to monitor the behaviour of data subjects, it should be ascertained whether natural persons are tracked on the internet..."* it specifically refers to *"...profiling a natural person, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes".*

Businesses that are located outside the EU that fall within the scope of the Regulation will be obliged to appoint a representative established within the EU to act as a point of contact for the relevant supervisory authority, for example, the Information Commissioners Office in the UK, on behalf of the data controller or processor.

However, this is not the case in all circumstances. Where the processing is occasional, does not contain sensitive personal data and is unlikely to result in a risk to the rights and freedoms of the data subjects, a representative will not be required. Nevertheless, where a representative is necessary, they are to be established in the Member State in which the data subjects whose data is being processed are located.

The increased territorial scope of the Regulation probably comes as little surprise following the case of Google Spain SL, *Google Inc. v Agencia Espanola de Protecction de Datos and Mario Costeja Gonzalez*[1].

This case concerned an individual that was seeking the removal of links to an out-dated news article on the Google search engine. However, the main question in this case was whether the Data Protection Directive was applicable to Google Inc., the American parent company of Google Spain. The Court of Justice for the European Union (CJEU) found that, despite Google Inc.'s processing activities taking place outside of Europe, as Google Inc.'s predominant source of revenue is advertising and Google Spain sold advertising space within the country, there was an *"inextricable link"* between the two.

As a result, it was determined that Google Inc. was a data controller in relation to their search results and regardless of where the data is processed, if it relates to EU citizens, it will fall within the scope of the EU data protection regime.

The Google case was a case under the previous law. However the finding made by the CJEU will also extend post GDPR. It therefore follows that even where a non-European entity does not fall within one of the two limbs of Article 3 it may still be brought within the GDPR regime where its business can be said to be inextricably linked with an entity in the EU.

"The GDPR therefore applies to anyone, regardless of where they are based who offers goods and services to people in the EU or monitors the behaviour of people in the EU."

1 Case 131/12, [2014] ECR I-000, nyr.

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"It is always necessary to review the safeguards in place where data is transferred between the EU and other non EU or 'third countries'."

Of course regardless of whether the GDPR applies to a non EU entity, whether by virtue of Article 3 or because of an inextricable link as in Google, it is always necessary to review the safeguards in place where data is transferred between the EU and other non EU or *"third countries"*. If for example data is to be transferred to a US organisation that is not a member of the US Privacy Shield regime, this could mean carrying out a costly audit of the current provisions and subsequently imposing safeguards where necessary. It is also likely that data privacy will become an increasingly common area for consumer concern and, consequently, customers will expect a high level of protection around data privacy as the norm.

Ally Law

EdwinCoe LLP

Global strategies for Law and Business Seminar

Edwin Coe is delighted to be hosting a program in London on Thursday, 31 May entitled "Global Strategies for Law and Business". We are involved as part of our firm's membership in Ally Law, a global network of prominent business law firms.

This by-invitation-only forum is aimed at senior executives and in-house counsel. The keynote speaker is Alastair Campbell, a British journalist, broadcaster, political aide and author, best known for his work as Tony Blair's spokesman, campaign director and Downing Street Press Secretary, when Blair was PM.

Other topics to be covered include:

- Anatomy of a Data Breach and Practical Steps for Prevention
- Managing Millennials in the Global Workplace
- Global Opportunities with Cryptocurrency, Blockchain and Initial Coin Offerings
- The Role of Outside Counsel in Risk Management.

We would like to invite you to attend this complimentary forum as our guest.

The program is set for Thursday, 31 May from 1:30pm to 5:30pm at The Law Society, Chancery Lane, London and will be followed by a drinks reception.

Thursday, 31 May 2018

Time
1.15pm
Arrival with refreshments
1.30pm
Seminar starts
5.30pm
Drinks, canapés and networking

Venue
The Law Society
Chancery Lane
Lincoln's Inn
London
WC2A 3TH

Keynote Speaker
Alastair Campbell

To register your interest to attend please contact events@edwincoe.com.

For further information please visit www.edwincoe.com/global-strategies-for-law-and-business-seminar/

PROPERTY LITIGATION LAW

Issues for commercial tenants where the landlord has become insolvent

Joanna Osborne, Head of Property Litigation

This article deals with the issues that may arise for commercial tenants (the Tenant) if their landlord becomes insolvent (the Insolvent Landlord), in particular where the Insolvent Landlord is an intermediate landlord, such as a headtenant, and where the Tenant is a subtenant.

By way of background, the main types of insolvency proceedings are:

- **Bankruptcy:** the process under which an individual is declared bankrupt by the court
- **Individual Voluntary Arrangement (IVA):** the process by which an individual comes to an agreement with its creditors to repay its debts
- **Administration:** the process by which an administrator is appointed to 'rescue' the company as a going concern
- **Compulsory Liquidation:** the winding up of a company as a result of a court order
- **Creditors Voluntary Liquidation:** the process by which the shareholders of a company agree to wind up the company without the need for a court order
- **Company Voluntary Arrangement (CVA):** the process by which a company comes to an agreement with its creditors to repay its debts.

This article focusses on the implications of corporate insolvency on commercial leases.

Administration

Administration of the Landlord or headtenant/ intermediate landlord will have less of an impact on a tenant than liquidation, as the property will be managed as a going concern and the lease will usually continue. If an intermediate landlord goes into administration, that landlord will be treated as using the property for the purposes of the landlord's business and the liabilities of that company will be treated as expenses of the administration. However, an administration very often leads to a liquidation, so it is worth the Tenant seeking early discussions with the superior landlord for a new lease and for an agreement for surrender of the lease with the company in administration.

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"If an intermediate landlord goes into administration, that landlord will be treated as using the property for the purposes of the landlord's business and the liabilities of that company will be treated as expenses of the administration."

Liquidation

Risk of forfeiture

An Insolvent Landlord generally will not be able to forfeit a lease. However, most leases give a landlord the right to forfeit on the insolvency of a tenant, so where the Insolvent Landlord is an intermediate landlord, the superior landlord may be able to rely on a right to peaceably re-enter the property if the intermediate Insolvent Landlord fails to pay its rent. If the superior landlord does not have the right to peaceably re-enter the property, then it will be required to request permission from the Court or the liquidator before it can forfeit the lease.

If a superior landlord forfeits the lease with an Insolvent Landlord, the Tenant's lease will end automatically. A Tenant will be able to apply to the Court for relief from forfeiture but the Tenant would have to apply for relief in respect of the Insolvent Landlord's lease, not its own lease and the terms of the Insolvent Landlord's lease could be more onerous for the Tenant. In particular this could be an issue for a Tenant of part of premises who may be required to take on a lease of the whole premises. Also a subtenant's right to relief of what is in effect its landlord's lease, is not as strong as a tenant's right to apply for relief of its own lease.

"A Tenant will be required to pay the rent due under its lease to the liquidator as normal. If the Tenant fails to do so, it would be in breach of its lease."

Disclaimer

A lease is usually a valuable asset in a liquidation which a liquidator would be looking to dispose of as part of the liquidator's task of realising assets. Nevertheless, where an Insolvent Landlord goes into liquidation there may be some cases where the liabilities under that landlord's own lease may give the liquidator the right to disclaim that lease as *'onerous property'*. This will terminate the Insolvent Landlord's rights and obligations towards both the superior landlord and the Tenant.

Unlike forfeiture, a disclaimer of a headlease does not automatically end the Tenant's interest in the property in the same way that forfeiture does, although the sublease itself is in effect determined. The Tenant will retain the right to occupy the premises if it complies with the obligations of the headlease and starts paying rent to the superior landlord. The right to remain in occupation is an assignable right.

The Tenant has the right to ask the liquidator of the Insolvent Landlord whether the lease will be disclaimed and a response is required within 28 days. This can be a welcome comfort for a Tenant that is concerned about eviction. The Tenant can also make an application to the Court to have the disclaimed headlease vested in the Tenant or to be excluded from all interest in the property.

If the Insolvent Landlord is also the freeholder of the property then the freehold will belong to the Insolvent Landlord's estate.

If the freehold is disclaimed it passes by *escheat* to the Crown and the Tenant will then owe the obligations under the lease or headlease to the Crown until the expiry of the term. As with other cases of disclaimer, the Crown will not similarly assume the Insolvent Landlord's duties towards the Tenant.

A Tenant of part of the property may also apply for a vesting order, but it will mean that the Tenant assumes the Insolvent Landlord's responsibilities for the whole of the property which may be an unattractive prospect.

Rent

A Tenant will be required to pay the rent due under its lease to the liquidator as normal. If the Tenant fails to do so, it would be in breach of its lease.

A superior landlord may serve a Section 6 notice under the Law of Distress Act 1908, known as a *'rent diversion notice'*, which will entitle the superior landlord to receive rent directly from the Tenant rather than the Insolvent Landlord.

Rent Deposit

The right to the money in the rent deposit depends on the structure of the rent deposit arrangement. If the rent deposit is held in a

separate account, or rent deposit scheme, then it is most likely to be the Tenant's property and will not form part of the Insolvent Landlord's estate for the purposes of the liquidation.

Where the rent deposit is not held in a separate account, the Tenant will need to show that the money is held on Trust for it by the Insolvent Landlord. If the deposit is held as stakeholder it will usually be held on trust for both parties and although the money will not be mingled with the Insolvent Landlord's funds, it may be shared between them unless there has been some breach of the contract by one of the parties.

On a surrender of the headlease the Tenant will have a direct relationship with the superior landlord on the terms of the sublease and the superior landlord will step into the Insolvent Landlord's shoes. It would be prudent for a tenant to ask the superior landlord to require an express clause in the deed of surrender which deals with the repayment of the rent deposit monies, so that a new rent deposit arrangement can be established.

On a disclaimer, it is arguable that a liquidator asserting a right to disclaim cannot retain a right to the rent deposit.

For more information on rent deposits please see: Commercial rent deposits: what happens on insolvency of landlord or tenant article – Edwin Coe Newsletter – Summer Edition 2017 (page 10).

Repairs

If the Insolvent Landlord is in default of its repairing obligations then the Tenant cannot usually withhold rent as most leases do not permit deduction or set off, so this would put the Tenant in breach of its lease. In extreme cases a Tenant may be able to repudiate the lease, if the breach interferes with its enjoyment of the premises to the extent that the failure to repair amounts to derogation from grant.

Unfortunately the sums collected from the Tenant through the service charge are not held on trust for the Tenant, unless specifically stated, and will form part of the Insolvent Landlord's estate in the liquidation. A liquidator may ring-fence the fund for the purposes of affecting the repairs but it is unlikely that there will be sufficient funds in the reserve to fulfil the Insolvent Landlord's obligations.

If the Tenant wants to recover its service charge payments, or carries out repairs and seeks to recover the cost from the Insolvent Landlord, it will be an unsecured creditor. Unsecured creditors are last in the list of creditors to be paid out in a liquidation and are not guaranteed repayment in full.

> "A Tenant will be required to pay the rent due under its lease to the liquidator as normal. If the Tenant fails to do so, it would be in breach of its lease."

Company Voluntary Arrangement (CVA)

A CVA is where a company enters into a contract with its creditors in order to avoid liquidation. The company proposing the CVA often has the potential to be a viable ongoing business. The directors usually circulate a proposal to creditors and shareholders for approval, which will involve the creditors agreeing to accept reduced payment terms. The proposal has to be approved by 75% of the creditors and 50% of the shareholders. Once approved, the CVA binds all people entitled to vote, save for secured creditors. CVAs do not require court intervention and are becoming much more widely used. Very often CVAs are heavily dependent on reducing rental payments on expensive leases.

A subtenant is unlikely to have much of a share in the vote and therefore early discussions should be entered into with the superior landlord to establish a direct leasehold arrangement.

Conclusion

Any insolvent process creates greater uncertainty and leads to wasted costs and management time.

Tenants are advised to seek professional advice as soon as possible to avoid the undesirable consequences of landlord insolvency outlined above.

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CORPORATE & COMMERCIAL LAW

Brexit clauses

William Parker, Associate

On 29 March 2019 at 11pm, the United Kingdom will officially withdraw from the European Union. Whilst the full and true effect of leaving the EU is still very much a hotly debated topic, companies have already begun planning ahead to try and limit the adverse effects Brexit may have on their businesses and the inclusion of a Brexit clause is becoming a more commonplace to achieve just this. For example, Ryanair, the low cost airline, has recently announced that it will include a clause in its UK customer contracts that will render tickets invalid if the UK government is unable to resolve the issues surrounding aviation regulations post Brexit.

"A Brexit clause is a provision in a contract that triggers some change in the parties' rights and obligations as a result of a defined Brexit-related event occurring."

A Brexit clause is a provision in a contract that triggers some change in the parties' rights and obligations as a result of a defined Brexit-related event occurring. Two types of Brexit clause are generally considered:

- **Specific event, specified consequence**
  Here, if a specific event occurs (such as currency exchange fluctuations), a specified consequence follows (such as the price of a product being adjusted accordingly).
- **Trigger, renegotiation, termination**
  Here, if a defined trigger occurs (for example the imposition of tariffs or a change in regulatory requirements) then the affected party is able to request a renegotiation of the contract. If the renegotiation cannot be agreed then the affected party can terminate the contract.

Whilst the inclusion of a specific Brexit clause into a contract is a relatively recent trend, the underlying reasoning behind its inclusion is nothing new. Many contracts include standard clauses addressing potential impacts of future change, such as force majeure and Material Adverse Change (MAC) clauses, and Brexit clauses are just a variation on this familiar theme. So much so that it is possible that the consequences of Brexit could trigger an existing force majeure or MAC clause. For example, if a UK entity is no longer able to carry out certain services in the EU following Brexit, this could constitute a material adverse change or even a force majeure. It might even be possible to argue that such a scenario could trigger the common law doctrine of frustration as performance of the contract may be rendered impossible.

However, there being a sufficiently serious Brexit-related consequence to meet the threshold of an existing MAC or force majeure clause, that was not in the reasonable contemplation of the parties when the contract was formed, will only be the case in very specific circumstances. Therefore, a standalone Brexit clause may be advisable, even if just a precaution.

When assessing whether a Brexit clause should be included, the following issues should be considered:

- **What could happen as a result of Brexit**
  A company should consider how Brexit may affect their performance and cost, both directly and indirectly (for example somewhere within their supply chain). This may include consequences from changes to tariffs on goods, freedom to provide services, freedom of movement of workers, licences and consents, changes in law, currency exchange rates and other financial factors such as a dip in consumer spending or a rise in the cost of borrowing.

- **If there is an existing contract, what it currently says**
  Who would bear the additional responsibilities and costs as the contract is currently drafted? Could a force majeure, MAC or similar clause, or even frustration, be relied upon should any of the changes mentioned above have an adverse effect on a party to the contract?

- **Specific events and specified consequences**
  Are there any specific events for which the parties feel confident about providing specified consequences? By their nature, specific event and specified consequence clauses will have to be bespoke and there is a risk that not all events and consequences will be provided for.

- **Trigger, renegotiation, termination**
  Is it in a party's interest to have a clause allowing for renegotiation and, if that fails, termination, on the occurrence of certain triggers? The risks of using this type of clause is that the party not affected by the Brexit trigger faces the choice of accepting less favourable terms or an early termination of the contract. The party that is affected may find the trigger too narrow to capture what has actually happened. In addition, the affected party has no certainty that it will be able to successfully renegotiate the contract.

- **Causation**
  Must the party invoking the clause show that Brexit has caused the problem? This in itself brings about a number of issues, as proving that a particular adverse impact on a party (such as an increase in costs) has been caused by Brexit may be difficult. A party seeking to limit the situations in which the clause could be invoked might want to provide that the clause may only be invoked if an adverse impact is directly or solely caused by Brexit.

> "Given that the actual and true effect of Brexit on any business arrangement is far from certain, Brexit clauses are far from being ironclad protection from the possible adverse effects that may come with leaving the EU."

Given that the actual and true effect of Brexit on any business arrangement is far from certain, Brexit clauses are far from being ironclad protection from the possible adverse effects that may come with leaving the EU.

However, as Brexit could affect almost every aspect of doing business, a Brexit clause limiting a party's exposure to the potential consequences of Brexit may be something that companies ought to consider as March 2019 approaches.

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EMPLOYMENT LAW

Changes to Taxation of Payments on Termination of Employment

Rachel Harrap, Consultant

"Employees who have spent periods working abroad and were non-tax resident for part of the period but are not entitled to a full reduction are instead entitled to a proportionate reduction. "

There are new tax treatment provisions, which take effect from 6 April 2018 and, some which have been delayed to April 2019.

The position to 5 April 2018

UK Employees

The current regime is that payments made compensating employees for their loss of office are tax free up to £30,000 and are entirely exempt from both employer and employee's national insurance contributions (NICs). This exemption only applies where the payment is not taxed under another heading, for example, income deriving from employment or in consideration of entering into restrictive covenants.

Where the employment contract specifies a payment in lieu of notice (PILON) this is treated as income deriving from the employment contract, whether or not such payments are discretionary or are paid automatically or by custom and practice. Because they are not considered a compensation payment for loss of employment, these payments are subject to both income tax and NICs. This treatment is the same for other contractual payments made on the termination of employment, such as accrued bonuses and outstanding holiday payments.

So it is by way of contrast that non-contractual payments and payments which the employee has no expectation to receive are considered compensatory and therefore come within the tax free exemption up to the cap of £30,000.

Statutory redundancy pay is automatically free of tax and NICs, but counts towards the £30,000 limit.

Foreign Service Relief

Employees who have spent periods working abroad and were non-UK tax resident for part of the period covered by the termination payment are entitled to a reduction known as *"Foreign Service Relief"* in respect of the amount taxable in the UK. The entire payment will be free from UK tax and NICs where the overseas period meets one of the following conditions:

- It is at least 75% of the total service;
- It covers the entire last 10 years; or
- For service over 20 years, it represents at least 50% of the service (including 10 of the final 20 years).

Employees who have spent periods working abroad and were non-tax resident for part of the period but are not entitled to a full reduction are instead entitled to a proportionate reduction. This reduction is effective after taking into account the £30,000 exemption.

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Tax treatment with effect from 6 April 2018

UK Employees

From 6 April 2018 the income tax position is changing. The most important change relates to the treatment of PILONS.

Under the new regime a PILON on whatever basis it is paid will be treated as income deriving from the employment contract and will be subject to income tax and NICs (both employer and employee).

In the event that no separate PILON is paid as part of a total settlement, an amount equal to the PILON that would have been paid, either by reference to the employment contract or implied statutory rights, will be carved out of the payment and treated as earnings liable to income tax and NICs.

This will be calculated by multiplying the employee's basic annual salary (excluding bonuses, commissions, benefits etc) by a fraction found by dividing the number of months' notice the employee is entitled to by 12. For example, an employee with a basic salary of £60,000 and 6 months' notice will have a deemed PILON of £30,000 (£60,000 x 6 / 12).

Any balance of the total settlement over and above the PILON and which does not separately fall to be taxed as income deriving from employment, can take advantage of the £30,000 exemption with any further balance over £30,000 being subject to income tax only. The intention had been to introduce an employer's NIC charge on the amounts over £30,000 exemption, but this has been delayed until April 2019.

Foreign Service Relief

Foreign Service Relief is to be removed where the employee is tax resident in the UK in the year the employment is terminated. For employees who are non-resident in the UK in the year of termination, the existing rules as outlined above remain in place.

Changes from April 2019

The UK government had intended to bring in a further change to employer NICs to bring it in line with the income tax position charged on compensation payments over £30,000. The provision is delayed until 6 April 2019 when any payments over the PILON and £30,000 exemption will be charged to income tax and employer's NICs but retaining the exemption on employee's NICs.

PROPERTY LAW

The new Electronic Communications Code

Susan Johnson, Senior Associate

The new Electronic Communications Code applies to all telecommunications agreements completed after 28 December 2017, and applies in a modified form to telecommunications agreements already existing on that date. The new Code replaces the pre-existing Telecommunications Code which has been in place since 1984.

"Whilst the new Code generally applies to agreements entered into before the 28 December 2017, these agreements must now be read in conjunction with a complex set of transitional provisions..."

Background

The previous Code was enacted 33 years ago. Since then technology has changed beyond recognition, with the emergence of mobile phones, tablets and other smart devices. The previous Code was deemed not fit for purpose, the Law Commission was asked to review it, and, following a consultation process in 2012 and 2013, the Law Commission recommended a wholesale replacement of the Code. The new Code was set out in Schedule 1 to the Digital Economy Act 2017, which was given Royal Assent on 27 April 2017.

Key Changes

Set out below are key changes from the previous Code and key points to note.

- **Assignment**
  Operators may assign their rights without the landowner's consent, but a landowner may require the outgoing operator to guarantee the incoming operator's obligations. This change only applies to new agreements entered into after the new Code came into force.
- **Sharing and upgrading**
  Subject to very limited conditions, telecoms operators now have the right to share a mast with another operator, and also the right to upgrade apparatus without the landowner's consent. This change also only applies to new agreements entered into after the new Code came into force.
- **Statutory continuation rights**
  The overlap between Code rights and the Landlord and Tenant Act 1954 has been removed. Under the new Code, any tenancy which has Code rights as its primary purpose will be automatically excluded from the security of tenure provisions of the 1954 Act. The new Code instead provides its own continuation regime akin to the 1954 Act, albeit with much longer notice periods and different grounds for termination.
- **No Contracting Out**
  Any terms in agreements that are contrary to the provisions of the new Code are not enforceable.

- **Rent**
  Due to the new valuation basis, rents for leases under the new Code may well be depressed. If the rent is imposed by the court, it will be based on the open market value as defined by the new Code, which will be from the perspective of the landowner only. The value of the land to the operator, which could be quite substantial if it is a strategically important site, is disregarded.

- **"Lift and shift"**
  Unlike the previous Code, the new Code does not provide expressly for landowners to be able to relocate apparatus.

- **Existing agreements**
  Whilst the new Code generally applies to agreements entered into before 28 December 2017, these agreements must now be read in conjunction with a complex set of transitional provisions, for example, the new Code regarding the assignment of Code rights, upgrading apparatus and sharing of operators, will not apply to subsisting Code agreements.

Finally…

The new Code clearly strengthens the power of the operators, and should significantly reduce their rent roll. This has led to the new Code coming under criticism in some quarters, with landowners being likely to lose out so that the public can benefit from having improved networks that today's modern society demands.

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