

Edition 6

# FOCUS

## on Manufacturing



Are you ready for the next Industrial Revolution?

ITF Dubai trade mission

Mental health in the workplace



INDUSTRY4.0

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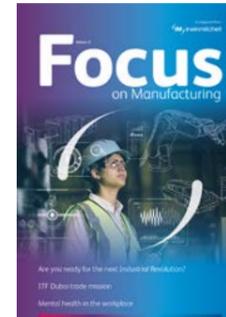


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# WELCOME...

to the latest edition of **Focus on Manufacturing**

If the theme of our last edition was the changing face of manufacturing, an appropriate theme for this edition might well be the future.

The future of manufacturing is not, however, all robots, AI and automation. Yes, it encompasses Industry 4.0 and advancements in technology and information systems, though our interpretation of the future of manufacturing is wider in scope. To us, it embraces technology but also workforce, skills, legislation and much more. In this edition of Focus on Manufacturing, whilst we consider the impact on the sector of Industry 4.0, we also look at issues affecting your employees as well as legislative and political developments which will be at the forefront of your strategy and decision-making.

One aspect of the future is uncertainty. Whether it comes from the political arena in the form of Brexit (which Alex Wild in our Insolvency team considers from the perspective of supply chain risk on page 26 and which John Davies in our Regulatory and Criminal Investigations team considers on the issue of food standards regulation on page 12), or on a micro-level in the form of commercial disputes (which are considered by Ciaran Dearden in our Litigation team on page 18), thinking ahead and seeing what challenges are in the offing can well equip manufacturers to deal with any eventuality.

On that note, I am especially proud in this edition to introduce you to our Industry 4.0 study, conducted in conjunction with the Centre for Economics and Business Research and YouGov, which looks at manufacturers' perceptions, take-up and planning for "the next industrial revolution". The full report is available on our website but we offer a snapshot of our findings on page 16.

Developments in the sector are not limited to drones, big data and robotics. Our Industry 4.0 study found that people will remain at the heart of what makes the sector so resilient and adaptive. In this edition we look at a number of issues facing employers and their employees, including pensions planning (which Martin Jenkins from our Pensions team considers on page 22) and mental health in the workplace (which is looked at by Alan Lewis from our Employment team on page 10). Encouragingly, both are facets of employee well-being which are being taken much more seriously.

On the issue of technological progress, Sarah Riding from our Commercial team looks at how manufacturers can use technological developments to improve productivity and streamline their supply chains in her practice overview of a demand-led supply chain and intelligent manufacturing on page 28, whilst James Paton-Philip from our Corporate team considers the rise of artificial intelligence and how it may force companies to embrace new ways of working on page 4.

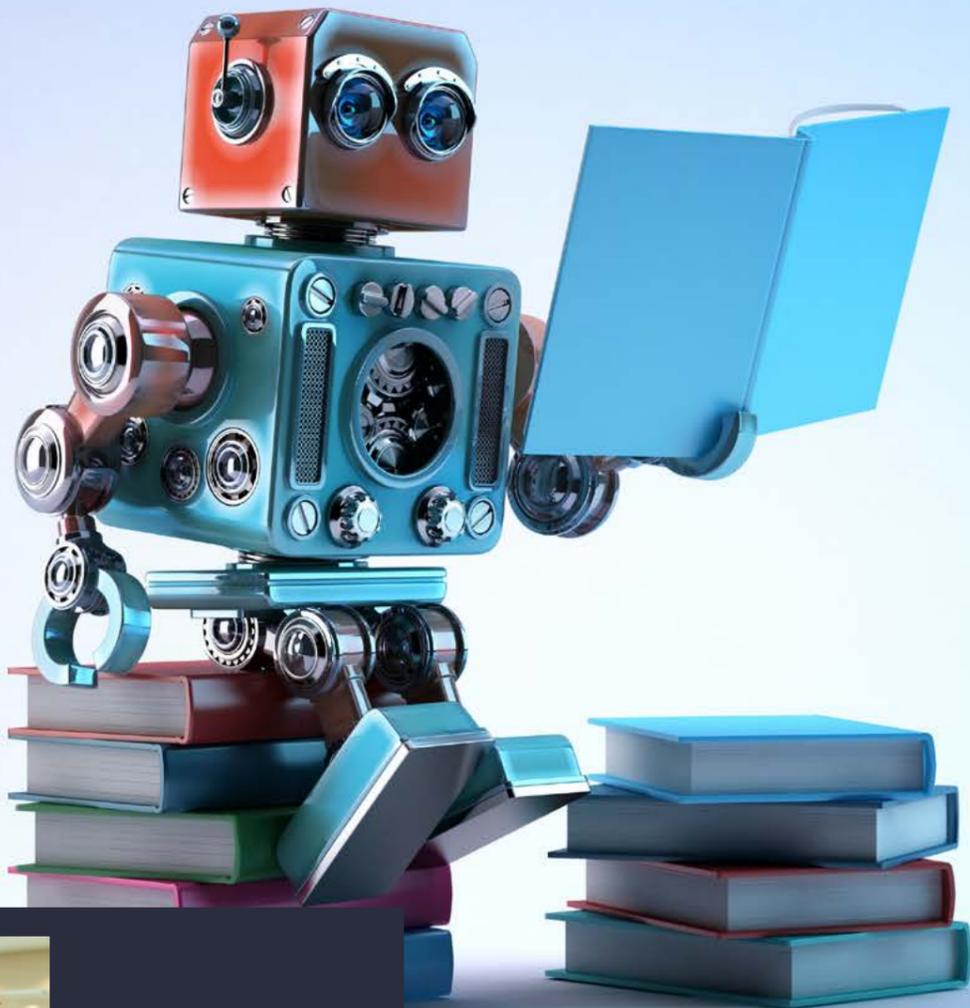
I hope you find our latest thoughts and comments on the sector insightful and helpful to your business. As ever, the authors of this edition would welcome a discussion with you about how we may be able to assist you in embracing the future.

As a final note, we remain optimistic for the sector and believe that Industry 4.0 offers an opportunity for Britain to take its place at the vanguard of innovation, adaptation and attainment.



**Dorrien Peters**  
Head of Manufacturing

# AI and Robotics: Can we get ahead?



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Over the next decade, developments in artificial intelligence will move faster than the past 50 years combined – and the law will need to adapt just as quickly to keep up.

On 29 October 1969, the first ever internet message was sent from one computer to another at UCLA's university campus in California. Leonard Kleinrock and his team attempted to send the word 'LOGIN', but the receiving computer crashed after 'LO'.

Today, less than 50 years on, the likes of Volvo, Google and Mercedes are beginning to consumerise self-driving cars, UAVs are giving us eyes in the sky and reinventing how we get our consumer obsessions from A to B, and robotics are enabling unreal advances in medicine. The generation to come probably won't even bat an eyelid at the robot cleaning their house and cooking their dinner.

With AI and robotics advancing at such a pace, one may ask how it all ends and whether we can keep up – so how will it, and can we?

Some of us may even still be pondering as to the true meaning of AI. Google defines it as "the development of computer systems able to perform tasks ordinarily requiring human intelligence" – but why stop there? The original definition of 'computer' came from its ability to 'compute', or in other words 'perform' mathematical calculations. Yet a computer today is so much more than a fancy calculator. If computers have developed so exponentially, wouldn't it be naïve to think that AI will stop at the point that it is now? What about, for example, a robot whose intelligence is so indistinguishable from that of a human that it can pass the Turing test?

The speed at which these developments are progressing has meant that gaps are becoming more and more evident in our systems and legislation. After all, they were designed for humans and not for mechanical superhumans, weren't they?

The jurisdictional rat race has already begun and countries have started to adjust their rules and regulations in an attempt to become pioneers in the way that AI and robotics should be factored in to our everyday lives. For instance, whilst it is still illegal to have a driverless car on the road in Europe (except in very limited circumstances), other countries seem to be developing faster. Even though Uber's driverless vehicles have now been removed from the streets of San Francisco, they were there for a week, and Uber are committed to redeploying them in the near future – something that would be out of the question in Europe at present.

As the most widely available forms of AI, driverless cars and drones are the main topics of conversation at the moment. But shouldn't we recognise that we are already chasing our tails and instead try to legislate for robotics and AI that is yet to be developed? The reality is that AI and robotics can be developed twice (if not thrice) as quickly as new laws and systems to provide for them. It is inevitable, therefore, that there will be criticism about our lack of an ability to keep up. Unfortunately, due to the unpredictability of the future of AI, we will always be a few steps behind. After all, it is estimated that developments in the next 10 years will be more dramatic than those in the last 50 years combined. Elon Musk is already planning interplanetary colonisation in case AI takes a dark turn and the robots become our overlords. Perhaps we should all start saving some pennies to invest in a plot of land (or oxidised iron dust, as the case may be) on the surface of Mars...?

It is possible that in the next few years we will be talking about domestic and occupational robots in the same way as we currently speak about driverless cars and drones. Amazon's Alexa and Google's Assistant have already become additional family members in a number of households, but how long will it be until we have human-sized versions of these that can walk, talk, work and play?

If AI and robotics advance as quickly as we expect them to, a number of professions will have to adapt just as quickly, including the legal profession. We will have to ensure that we are well-equipped to assist our clients with a whole new array of questions. Will we ever reach the point where a robot has separate legal personality? What will be the tax consequences of owning or 'employing' a robot? If a robot I own creates a new design, do I have the right to apply for the IP rights, does the manufacturer, or do we both?

All of these questions remain to be answered, but choosing to ignore them now will almost inevitably result in being left behind. If we can go from being able only to send two letters of the alphabet between computers, to developing machines that can think and behave better than the best of us and in less than 50 years, there is no telling what the next 50 years might hold.

# Industry 4.0 and Property

Previous industrial revolutions changed the landscape of the UK – the impact of the next one is likely to be just as great.

Property law is often viewed as the dusty old ‘history and geography’ part of legal practice – old documents, archaic terms and concepts, and colouring in plans. So why are property lawyers even interested in something as hi-tech and novel as Industry 4.0? Well, because an appreciation of what has happened in the past may give some guidance as to the future, and there is no doubt at all that each industrial revolution has impacted on the land, the landscape and the laws applicable to it.

Period	Consequences for property lawyers
<b>Industry 1.0</b> The Industrial Revolution Mechanisation, water power and steam power	<ul style="list-style-type: none"> <li>• Period factories (land sales and construction)</li> <li>• Model towns (e.g. Saltaire, Bournville, Port Sunlight)</li> <li>• The flight to the towns (and slums!) following the work (unemployed journeyman weavers spring to mind) and the mechanisation of agriculture leading to rural abandonment</li> <li>• Water rights</li> <li>• Mineral rights</li> <li>• Mining (and subsidence)</li> <li>• Canals and railways with statutory compulsory purchase by private act of parliament</li> <li>• Liability for pollution</li> <li>• Mortgages for working capital</li> <li>• Boom (and bust!)</li> </ul>
<b>Industry 2.0</b> The Second Industrial Revolution Mass production, assembly lines, electrical power	<ul style="list-style-type: none"> <li>• Suburbanisation (more development and restrictive covenants)</li> <li>• Planning legislation</li> <li>• Nationalisation and denationalisation of power, with vesting and transfers</li> <li>• Clustering of industries</li> <li>• Environmental legislation</li> <li>• Road commuting</li> <li>• New towns</li> </ul>
<b>Industry 3.0</b> The Digital Revolution Computers and automation – human-designed, but less human physical input	<ul style="list-style-type: none"> <li>• New factory styles</li> <li>• Housing for employees required at higher levels, increasing housing pressure in areas and abandonment of old style manual worker housing in others</li> </ul>

Continued overleaf >>>



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So what about Industry 4.0? Defined as “cyber-physical systems”, it will involve the Internet of Things, increased automation, production autonomy, the “Gemini site” (a digital representation of a site for digital-based testing of innovation outside of the physical realm) and a whole lot more that we don’t even know about yet. But we can, thinking of the history and geography trends above, have a go at some predictions. Here are five areas of possibility:

1. Production sites do not need to be near people, as they will be fully automated (even their construction will involve fewer people). They can be near their supply lines, whether raw materials or components, and away from the risks of being next to humans. Existing industrial sites near centres of population will change use. Land values will be impacted, both for the sites for new production areas and those changing use. Planning and zoning will change.
2. Shared working space for the knowledge economy people will still need to be near them. New forms of tenure will evolve, and new contracts for occupying space.
3. Buildings will depreciate faster as their shelf life shortens. Old rules about buildings accruing to the land may have to change. Valuations and funding depend on the old rules, and our funding instruments do too. As the rules change, so will the documents – or maybe the changes in the documents will change the rules.
4. 3D printing will bring small scale industrial production back into city centres. Handcrafted production will become high value, with small scale workshops and work/living units at a premium.
5. Infrastructure changes – Autonomous delivery vehicles will not need six lane highways. Private roads to out of town sites will be fully occupied with the logistics of supply. Power and information supply will be subject to massive backup and security, requiring novel ways of protection.

We all know that the jetcars and personal planes from the pictures of Dan Dare will probably never come to pass, but lots of other ideas in old science fiction have made their way into our lives today – HAL meets Alexa, anybody? So knowing the changes that three previous industrial revolutions have wrought, we can confidently expect things to be very different.

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# Mental health in the workplace



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## Mental health issues account for over 15 million sick days per year – what can businesses do to support employees?

It is a shocking statistic that over 10 million adults within the UK will experience a mental health issue this year; roughly equating to 1 in 4 adults. Recent calls have been made, particularly in the wake of the general election, to improve the awareness and handling of mental health in the workplace. This comes after a recent UK Workplace Wellbeing study which named mental health in the workplace as the second biggest challenge to face employers in the next five years. The reality is that in some cases, there is a requirement for employers to assist their employees with mental health conditions, if the legal definition of disability is met under the Equality Act 2010. Thus, it is important that employers are aware of their legal responsibility to their employees, not less their moral duties in order to foster a productively efficient and supportive community within the workplace.

### How can mental health issues affect an organisation?

Mental health related issues, such as stress, depression and anxiety, account for almost 16 million days off sick per year (ONS, 2017). As such, they cost UK employers an estimated £26 billion per year, equating to an average of £1,035 per employee per year. Not only is this a significant direct cost to the business, but regular absences can also indirectly affect productivity and staff morale. Therefore, it is important that employers are able to deal with this effectively and efficiently, in a supportive manner which amounts to the least disruption within the organisation.

### Mental health first aid training

Mental health first aid (MHFA) is the mental health equivalent to a physical first aid course, and has been received by over 2 million people around the world since its introduction in Australia in 2001. It comprises an internationally recognised two-day training course which aims to educate people on recognising symptoms of

mental health and responding to them with adequate support. Furthermore, providers of the course also offer shorter basic mental health awareness sessions lasting a few hours. The training equips employees with the knowledge and resources to keep both themselves and their colleagues healthy, whilst encouraging a positive and long-term cultural change within the business to become more open surrounding mental health, and thus stop preventable issues from emerging.

The Mental Health First Aid website also offers free downloadable resources for mental health in the workplace, ranging from documents on triggers and signs of mental health to an organisation approach model. The ACAS website also offers a free eLearning module on 'mental health awareness for employers'.

### Practical steps

Organisations should be encouraged to review their current first aid policy and procedures, particularly in the absence of any individual mental health provisions, to ensure that they are meeting the expectations and obligations of their employees. A recent report by Business in the Community recommended mental health first aid training for managers in all organisations to ensure they feel capable and assured to respond as the first point of support.

### What next?

In January 2017, Prime Minister Theresa May commissioned a review into mental health support in the workplace. Until this is released and its reaction is received, we will not know if mental health first aid will become a legal obligation for some employers. However, it appears that measures should be put in place by employers to protect themselves from disability discrimination claims and to retain an inclusive, supportive and efficient workforce.

# A new approach to Food regulation

## As the UK's trading relationship with Europe changes following the Brexit vote, how will food standards be affected?

On 19 July 2017 the Food Standards Agency (FSA) published its paper on how it is proposing to regulate the food sector in the future, following 18 months of discussions and consultation. 'Regulating Our Future – Why Food Regulation Needs to Change and How We are Going to do it' sets out the blueprint that is intended to see the landscape for food regulation "fully reformed" in 2020. In announcing this publication, FSA chair Heather Hancock has expressed how regulation needs to keep up with the pace of change in the global food economy and is calling for a more modern, flexible and responsive system.

Press reports earlier this year fuelled concerns that following Brexit the UK would have to forge greater trade links with countries which have relatively loose rules on food safety standards. Reports spread concerns that trade deals, with for example the US, would see the UK market flooded with chlorine-washed, hormone-treated and drug-laced meat or milk with twice the EU permitted count of white blood cells. The Parma-based European Food Safety Authority (EFSA) has restricted US imports into Europe where these practices or conflicting standards have been a concern, despite the US arguing that these restrictions were unscientific in their basis. Conflicting US standards have also reportedly extended to Scottish whisky production, with the US pushing for fewer rules on alcohol production. In trying to placate those expressing concerns about what Brexit will mean for food standards and also the associated economic effects for UK food producers, the Government has indicated its commitment to ensuring that there is a level playing field but to our standards.

Notwithstanding this background of controversy and concern, it seems that Brexit was not the key driver behind this desire for change, but it has added further impetus insofar as implementation is concerned. Addressing the risks in the current approach is seen to be "essential", and this needs to be a proactive approach rather than waiting for a crisis to develop.

The FSA is to strengthen its remit over all of the bodies involved in the inspection of food businesses, and is looking to police and enforce "stringent and robust standards" which will help businesses fulfil their responsibility to produce safe and correctly described food. At the same time, the regulator wants to improve its relationships with the industry and bring more clarity and commerciality into its decision-making process.

The key areas of reform are:

- An enhanced system of registration for all food businesses, with more information provided about those businesses so that proportionate and risk-based controls can be applied to them. New technology and data will help form part of this transformation. This will also require more effective 'segmentation' of the businesses to enable this process. A "hostile environment" will be created for those businesses which do not proactively register.
- Reducing the administrative burden for the compliant businesses. Those with a good history of compliance will face a lower burden of regulation on the basis that the information shared with the FSA will include past performance. It is intended that this approach will free up local resources to target the businesses presenting the greatest risk to public health.
- The tried and trusted 'Food Hygiene Rating Scheme' will remain and display of ratings will be mandatory throughout the UK.
- Bringing effective enforcement action against those who fail to fulfil their obligations.

It may be the case that until the FSA is up to speed with its desired goals, the UK will still look to fall under the remit of the European Union's food safety regime at least in part after the 2019 deadline for Britain's departure. Reports suggest that there are fears that we do not currently have the expertise or the infrastructure in place to enable our severance from the European regulatory structure.

Perhaps this forms part of a wider issue, as according to House of Commons research, the UK could eventually import up to 19,000 European rules. Similarly, the CBI has estimated that the UK may have to set up 34 new regulatory agencies in order to replace the European equivalents in a number of areas.

One certain consequence of Brexit will be the amount of legislative change required within a relatively short space of time with the emergence of new UK-based regulators in a number of different sectors. Food producers will not be the only ones affected by the need for regulatory change with utilities, road haulage, aviation carriage and broadcasting predicted to be key areas for change.



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# ITF Dubai trade mission

## Strength in numbers

### We recently sponsored a trade mission by the International Trade Forum to Dubai, location for the World Expo 2020

Exporting is important for manufacturing businesses, but it isn't always easy. Finding your way around a new export market can be challenging, and particularly so if local laws, language and culture are significantly different to your own.

Approaching in a group can be a great way of making that initial step into a new export market. In May the International Trade Forum, sponsored by Irwin Mitchell, made an export trade mission to Dubai.

The multi-sector mission's main aim was to seek opportunities associated with the World Expo 2020, which Dubai is staging.

The five-day mission commenced with a visit to the offices of the British Centres for Business, who in addition to telling delegates about the opportunity in the area also advised them what it's like to do business in Dubai on a day-to-day basis. Delegates learned how Free Trade Zones work, and the local rules and pitfalls of opening a business within Dubai itself, whilst making vital contacts to facilitate the first steps of doing business in the country.

The delegates also had a factory tour of the Polypipe Technical Centre, which is located in a Free Trade Zone. The Doncaster-based business established themselves in the UAE some years ago, and have grown to a £30 million turnover company in Dubai. They have developed local expertise and services around water management, in particular flash flooding.

"The visit gave us an excellent insight into how business is conducted in the Middle East," said William Beckett, chair of the International Trade Forum and mission leader.

The delegates spent the rest of the trade mission networking and visiting potential clients, agents or distributors, with a degree of success.

William Beckett said: "Several companies took orders there and then, and all made excellent contacts. The hospitality and interest in supporting the companies on our mission was exemplary, and reinforced the benefit of approaching the region as a group under the auspices of the International Trade Forum.

"Of equal importance was the networking and support from fellow travellers, which for many was a steep learning curve in entering such an exciting market,"

Also on the mission was Sheffield's Master Cutler Richard Edwards, who hailed the trade mission a success: "We had every expectation that our visit would give Sheffield City Region companies excellent opportunities to open up trade links and expand their markets, and so it proved to be."

Find out more about the International Trade Forum at [www.intradedeforum.co.uk](http://www.intradedeforum.co.uk).



**Investment in Industry 4.0 technologies remains limited.** Only **14%** of manufacturers have invested in big data and/or cloud solutions while **12%** invested in 3D printing technologies.



**The survey results find that 3D printing and big data are among the terms with which manufacturers are most familiar.** Google Trends data confirm that interest is especially high for these search terms compared to other Industry 4.0 concepts.



**Employment on aggregate is not expected to change over the next four years,** but it is anticipated that there will be fewer lower skilled jobs and more opportunities in IT and managerial roles.



**Industry 4.0 is believed to result in productivity gains.** **Over one third** of companies believe that Industry 4.0 technologies will have a positive impact on overall productivity. **Only 2%** of manufacturers expect a negative impact on productivity.

# Are you ready for the next **Industrial Revolution?**

Technologies such as 3D printing, virtual reality and robotics are transforming UK businesses – and there are huge benefits for those who prepare well.

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# Breach of contract

## Limiting liability



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## Careful drafting of contracts can offer contracting parties a degree of certainty in the event of a breach of contract

In certain commercial agreements, exclusion and limitation of liability clauses can work to manage a party's risk under the contract. Bear in mind, though, that the way they are worded, the reasonableness of the clause and the context of the contract must all be carefully considered at the time of negotiating to ensure they introduce certainty – and not ambiguity – into the contract.

Most commonly, these clauses seek to place a cap on the amount a party to a contract can recover under that contract. This can be a fixed sum or one which is calculated by reference to a formula as set out in the contract. It can specify whether the cap applies in respect of a single claim under the contract, all claims under the contract and whether for a defined period only. Alternatively, clauses may place a time limit on when a party can bring an action under a contract, limit the available remedies or exclude certain types of loss (such as indirect or consequential losses).

Well-drafted, such a clause can be relied upon to limit or exclude a contracting party's liability for damages under the contract. Badly-drafted, it can in itself become the subject of a lengthy dispute. As such, thought should be given at the time of negotiating and drafting the contract as to whether or not such a provision complies with the relevant statutory and common law framework.

### Being aware

Knowing the parties to, and subject of, your contract, is vital.

It matters firstly whether the contract is with a business or a consumer. As is to be expected, the law offers greater protection to consumers than it does to businesses and the restrictions on limitation of liability clauses in consumer contracts – which include the additional requirements for fairness and adherence with the Consumer Rights Act 2015 – warrant a discussion of their own.

The subject of the contract also matters – the legal framework discussed below, for instance, does not apply to contracts of insurance, international supply contracts, employment contracts or contracts relating to IP or land or certain corporate documents including shareholders' agreements. But where businesses are contracting with businesses for the supply of goods and services (other than the foregoing) and in this jurisdiction, the Unfair Contract Terms Act 1977 (UCTA) applies.

### Being reasonable

In certain instances, liability can never be limited or excluded – including in cases of fraud or fraudulent misrepresentation and in relation to implied terms as to title and death or personal injury arising from negligence. In all other cases, the clause will be subject to the test of reasonableness as set out in UCTA.

At its heart, the reasonableness test requires that a term must be fair and reasonable having regard to the circumstances in which the contract was entered into. Some of the circumstances which should be borne in mind when entering into a contract are set out in UCTA itself, which are:

- The strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which your requirements could have been met
- Whether you received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other persons, but without having to accept a similar term
- Whether you knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties)
- Where the term excludes or restricts any relevant liability if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable
- If the contract limits liability to a specified sum of money, what resources are available to the customer for the purpose of meeting the liability should it arise, and the availability of insurance

Continued overleaf >>>

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Should a dispute arise, it is for the party seeking to rely upon the clause to prove that it is reasonable; any doubt or ambiguity will be resolved against the party seeking to rely upon it. If the clause fails the reasonableness test, it becomes ineffective in its entirety. To mitigate this risk, limitation clauses should be drafted as separate clauses to ensure any unreasonable term affects only itself, and does not infect related, but reasonable, provisions in the contract.

### Being proactive

The wealth of reported cases in this area suggests that precisely what constitutes reasonable is unlikely to be settled; the position of the parties, the circumstances surrounding the transaction, and the precise wording of the clause in question, will invariably differ in each situation. It is clear, however, that the court views exclusion clauses less favourably than limitation clauses; it is also settled law that parties should give greater prominence to any unusual or onerous clauses (such as exclusion or limitation clauses). But the question of whether or not a clause is reasonable is one which falls on how the clause is drafted; with that in mind, it pays to bear it in mind at the point of negotiation rather than at the point of dispute.

# Our employers guide for Pension planning



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## Managing pension policy successfully represents a big challenge for many employers, but particularly those in the manufacturing sector

The Pension Protection Fund (“PPF”), now in its eleventh year, reports that the costs of securing pensions far exceeds this with a funding deficit for UK private sector employers of £220 billion. Traditionally the manufacturing sector has been one of the largest industry groups exposed to such liabilities. Even those manufacturers who do not operate salary-related pension schemes for staff have still to manage pension policy dictated by detailed and complicated regulation and an ever-increasing tax burden.

### This is our guide to the key do’s and don’ts of employer pension policy.

#### DO

Review pension policy regularly. Many employers are using a range of devices to reduce their exposure to defined benefit funding deficits. For many, the full buy out to remove all defined benefit pension liabilities from the business balance sheet is a tempting prospect. However, the cost of securing a buy out can be uneconomic in many cases. Employers have looked to other approaches to seek to reduce pension liabilities including negotiating pension salary caps with staff. Other collateral agreements are also being widely pursued designed to reduce the burden of increasing pension costs. A run of recent court cases has demonstrated the limits of such agreements but also made clear that, if approached with care, such arrangements can prove an effective tool for better managing ongoing pension liabilities.

#### DON’T

Ignore the tax position. Even those employers who are not exposed to defined benefit pensions are now grappling with an increasing tax burden on staff pensions. This represents a generational shift in government pension policy. Since the 1920s tax relief has been available almost universally to promote occupational pension saving. In recent years, however, this position has changed and tax charges can now apply on even quite modest levels of pension saving. Whilst this is a tax burden to be borne by employees (and directors), nevertheless many employers in practice feel compelled to engage with this issue. Operating a pension plan which results in unexpected tax bills for staff and directors is not a good way to motivate the workforce. In the past, allowing access to an employer-sponsored pension plan was almost universally a positive benefit for staff. Now employers need to consider carefully whether the pension plan is the right approach for all.

#### DO

Be aware of pension tax protections. The Life Time Allowance represents the total cash value of pension rights which can be maintained tax-free. The Annual Allowance also limits the build up of pension benefits. Members of pension plans have in the past been able to register and protect higher levels of pension saving. In return the individual will usually have to opt out of any further ongoing pension provision. For staff and directors in this position, it is important to get the right advice to ensure that the protection registered in the past is properly maintained. Putting the member in a tax registered pension plan (perhaps via life insurance arrangements or an auto enrolment arrangement) will usually invalidate the tax protection. As stated, whilst the burden of this falls on the individual, nevertheless all employers will want to avoid a catastrophic loss of tax protection on the part of what in most cases will be very senior staff.

#### DON’T

Forget that non-tax registered pension plans can still represent an efficient way of providing benefits, particularly life insurance, without endangering any tax protections. When tax rules changed (in April 2006) HMRC indicated that a new type of life insurance plan would be permitted (known to them as an ‘excepted life policy’). This would operate outside of the tax registered pension regime. Initially the idea of an unregistered plan attracted little interest but the increasing restrictions on tax relief and the number of staff now affected by this has meant a proliferation of new unregistered pension arrangements of one type or another.

# UK Powerhouse

## A nation divided



### North and Midlands trail behind faster growing Southern economies

Milton Keynes has overtaken Cambridge in the league table of fastest growing city economies in the UK, according to our new UK Powerhouse report.

Our quarterly study with the Centre for Economics and Business Research (Cebr) provides an estimate of GVA (gross value added) growth and job creation within 45 of the UK's largest cities, 12 months ahead of the Government's official figures.

Celebrating its 50<sup>th</sup> anniversary this year, the report reveals that Milton Keynes' economy grew by 2.6% in the year to the end of Q2 2017, on the back of its booming technology sector and its track record for encouraging start-ups. It also tops the league table for job creation after employment levels grew by 1.4% over the last 12 months.

The slowest growing area in the study is Middlesbrough which saw output growth of 1.1%, with annual employment levels rising by just 0.3%.

The report reveals that not one of the top 10 cities in the league table are based in the North of England or the Midlands.

The weak performance of the production sector was reflected in lower growth rates for cities which rely more on these industries. In Birmingham, a centre of British automotive manufacturing, annual GVA growth slowed from 2.1% in the first quarter to 1.6% in Q2 as car sales have dropped markedly. Manchester fell by seven places, from 9<sup>th</sup> to 16<sup>th</sup> in the league table for GVA growth.

Highlighting the growing and vital role technology plays in the wider UK economy, the report finds that in fast-growing Milton Keynes, technology-related GVA increased by 24% between 2012 and 2015.

It is further predicted that the UK-wide number of jobs in the technology sector will increase by 24% in the next 10 years. However, the report raises concerns that the true potential might not be realised.

To ensure all cities benefit from the available opportunities in the tech sector, the report recommends a holistic approach and makes a number of recommendations. These include:

- Tackling the shortage of highly-skilled employees by encouraging more women to enter the industry
- Investing and opening more 'code academies' to increase the number of people with the necessary skills in programming languages
- Establishing a plan that allows the existing data flows between the UK and the rest of Europe to continue before the UK officially leaves the EU
- Expanding the Start Up Loans scheme for new business ideas by providing financing deals which offer higher amounts on lower interest rates
- Changing the current UK entrepreneur tax relief scheme as it encourages small firms to sell out early and inhibits the number of businesses reaching unicorn size
- Funding knowledge sharing and skill building platforms, including events for new businesses to network and discuss ideas with successful technology entrepreneurs

Download our latest report at [irwinmitchell.com/ukpowerhouse](http://irwinmitchell.com/ukpowerhouse)

# Brexit

## A risky business?



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## As the UK prepares to leave the EU, how can manufacturers protect themselves against supply chain risk?

Recent statistics published by the Office for National Statistics and analysed by KPMG suggest that uncertainty surrounding Brexit has led to an increase in early signs of distress, particularly in the construction and manufacturing sectors.

With the risk of key suppliers or customers becoming insolvent, parties should consider carefully the potential risk of void transactions pursuant to Section 127 of the Insolvency Act 1986. This section provides that any payments or dispositions of a company's property made between the date of presentation of a winding up petition and a winding up order are void unless they are validated by the Court.

In the case of Express Electrical, an electrical wholesaler and manufacturer, a winding up petition was presented against it on 23 May 2013. The company had fallen behind on the payment of invoices and the company refused to provide any further goods until payments were brought up to date. The company paid the wholesaler £30,000 on 29 May 2013, leading the wholesaler to lift the credit hold and supply further goods of £13,000. The company was later wound up in July 2013. The wholesaler applied for a validation order on the basis that the payment of £30,000 was made in good faith, in the ordinary course of business and whilst they were unaware of the petition.

This was unsuccessful, however, as the Court found that:

- It was irrelevant whether the disposition was made in good faith and in the ordinary course of business
- Save in exceptional circumstances, a validation order should only be made where it can be proved that the payment benefitted creditors

All cases where payments merely reduce arrears or pay invoices previously outstanding (and where no new goods or services are provided) are unlikely to pass this test.

Examples provided by the Court where a payment might benefit creditors included where payments enabled the company to fulfil its obligations under a profitable contract, where the payment otherwise swelled the assets of the company, or where the payment allowed the company to carry on trading when the sale of the business as a going concern was achievable.

If a customer or supplier enters an insolvency process it is imperative to understand the type of process that they are subject to (company voluntary arrangement, liquidation or administration for example) as each process will require a different approach.

Ultimately, however, insolvency law in the UK provides various remedies for liquidators and administrators of insolvent companies to set aside or overturn transactions for the benefit of creditors generally. Whilst there are arguments to be made in respect of each, the best defence is undoubtedly a structure of strong credit control procedures and investing in the identification of insolvency risks to avoid the position altogether.

There are a number of warning signs of supply chain risk, and it is key that you are familiar with these:

- Is your supplier holding notably less stock, so that deliveries are short or late?
- Are there signs that your supplier is subject to creditor pressure such that their creditors are repossessing goods and/or issuing winding up petitions?
- Have you received a request to amend your terms and conditions (i.e. that title to goods does not pass until payment is received by your supplier's supplier in full or payment terms are extended with your customers)?
- Reduction in quality standards?
- Official announcements to your supplier's or customer's shareholders or the stock market such as profit warnings
- Large scale redundancies or the sudden removal of key personnel

How to protect your company:

- Due diligence at the outset of a trading relationship can provide a benchmark against which you can measure any deterioration
- Assessment of key customers and suppliers should be carried out regularly
- Place limitations (where possible) on the amount each supplier provides
- Keep direct contact with suppliers, customers and others in their sector so that you are informed of changes and/or deteriorations
- Within your contracts, ensure that you have effective retention of title and all monies clauses (i.e. title to the goods does not pass until all invoices have been paid) and include sufficient powers to assist in retrieving such goods
- Require customers to ensure that goods that have not been paid for are distinguishable and stored separately and mark your goods where possible for identification purposes to assist with your claim
- Within your contracts, ensure that you have the right to terminate the arrangement on the occurrence of specified insolvency events

# Intelligent manufacturing and the supply chain



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## The future of manufacturing is here – and companies can turn technological innovation into commercial advantage

Smart manufacturing combining technology, data, analytics and dynamically connected factories is being driven by the need to increase productivity. Harley-Davidson has embraced the smart factory and has reported reduced operating costs of \$200 million at one plant alone, and a reduction in production time from 21 days to 6 hours.

We have seen a trend over recent years of supply chains being brought closer geographically to reduce lead times, but the advent of Industry 4.0 means that every link in the supply chain will need to be connected. Central to smart manufacturing will be transparency and co-operation.

So what will this mean for the supply chain? It is anticipated that we will see an era of intelligent manufacturing where the entire production chain will be connected. Data will need to be captured and analysed from a number of sources and the supply chain will have to work together to achieve this and respond to demand.

## The advent of Industry 4.0 means that every link in the supply chain will need to be connected

Continuous demand sensing will require a supply chain that is able to respond in real time. Forecasting will become more accurate and there will be the removal of uncertainty over demand. Data flowing back from ultimate end users through the supply chain allows the opportunity to accurately monitor use of products, understand lifespans, provide an insight into improvements, flag when products require replacing and when servicing is needed. So for manufacturers this will create a snapshot of changes in demands and allow real time practices to be implemented to manage its value chain. This will in turn change the way suppliers are engaged as we may see, for example, more flexible contracts to reflect the new understanding of when peaks and troughs in demand will occur.

The connected and demand-led supply chain should also drive efficiency within it. Manufacturers and suppliers can plan around demand in terms of capacity, employees, capital expenditure and raw materials needed. Just in time supply structures will become more typical. This will place a new driver throughout a supply chain for suppliers to be flexible and adaptive, with a need to become responsive to the parties higher up in the chain. Suppliers may be expected to deliver in shorter timeframes and at reduced costs as forecasts will be so much more accurate.

Continued overleaf >>>

The supply chain will have much changed dynamics culturally and in methods of operating. Organisations will need to embrace new technologies, and this will very much be driven by those at the top of the chain. For suppliers unwilling to embrace new ways of working and technology, they may find themselves pushed out by new players with a more innovative outlook.

This new way of operating will to a high level depend on information streams and collaboration. There will be a huge cultural shift in the way in which a supply chain works together. Data sharing will be the norm, and there will be more collaborative investment or resource sharing throughout a supply chain. If manufacturers can predict a lull in demand and understand the timeframe for this they could look at innovative ways of operating, such as leasing out equipment or factory space until the next peak in demand. This may also drive manufacturers to look to other sectors or product lines to keep the factory at capacity.

This new connected environment will create legal challenges for supply chain contracts. There will be a much more open environment with the sharing of confidential data and information. Successful data management will be imperative and contracts will need to address this, together with protecting information. This new transparency may also trigger more access to end user personal data throughout the supply chain to monitor product usage. The new data protection regime, GDPR, will require consideration in this context within contracts.

### Successful data management will be imperative and contracts will need to address this

We also anticipate different contracting models. If demand can be accurately forecasted then more flexible agile contracts will be needed to suit the environment. More collaborative arrangements are likely to share resources. Integration of systems will be required across the supply chain, and the risks associated with ensuring successful integration will need to be addressed. This will dictate a more co-operative approach and possibly more longer term arrangements – once integrations are in place across a supply chain it will of course be prudent to actively manage issues rather than trigger termination.

Contracts will need to reflect just in time delivery or ‘lean manufacturing’ with a drive to reduce costs and more effectively optimise assets. A manufacturer will need to structure its contracts with its supply-chain to support just in time delivery. Contracts will need to provide appropriate remedies – for example, if a supplier in the chain fails to deliver on time. With a focus on just in time supply the knock-on impacts for a business could be huge. There may be a greater degree of risk sharing within contracts, as well as the need for robust governance and intervention rights.

Despite the challenges there is little doubt that penetration of smart manufacturing concepts in supply chains will continue to grow. Organisations needing to increase productivity are looking at new technologies and ways to realign manufacturing value chains and supply chains to embrace the new way of thinking. One of the major challenges the UK manufacturing sector faces is competing on cost, but with the onset of smart manufacturing there is a real opportunity to refocus and drive cost efficiencies and value throughout the supply chain.

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# GDPR

Don't Be Slow Out Of The Blocks

There is less than one year to go until the new General Data Protection Regulation comes into force on **25 May 2018**.



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