

Dickinson Manser

S o l i c i t o r s

(incorporating Hawkins Greenwood)

mergers & acquisitions



Buying or selling a business is a key decision for many companies. It is important that the legal side is properly handled.

The first decision is often whether to sell assets of the business or the whole company, i.e. its shares. This has a major impact on the kind of transaction or documentation required. In either case however, a prudent buyer will want assurances or warranties about the business and most sellers will want to limit or restrict their risks.

Sometimes those transactions breach competition law. The Office of Fair Trading recently accepted undertakings from a company, iSOFT Group Plc, to divest the LIMS business of Torex Plc. As the assurances were given, the merger was not referred to the Competition

Commission. The OFT considered that it may be the case that the merger may be expected to result in a substantial lessening of competition in the supply of Laboratory Information Management Systems (LIMS) to NHS hospitals. LIMS are computer systems used to manage laboratory processes in hospitals. This is just one example of how the competition rules can be applied to a merger or acquisition. Before proceeding to buy a business, due diligence should be undertaken. We can assist by providing standard due diligence checklists to be sent to the seller for completion, asking questions about profits, employees, properties and all the other matters about which a prospective buyer will want to know.

It is rarely wise to rely on warranties in the contract only. However the contract is crucial too and usually requires heavy legal input. If you are considering selling or acquiring a business, contact us and we would be happy to assist.

the new Europe

On 1st May, the EU expanded to 25 countries and lots of important legal changes came into force. If your local business buys or sells in Europe you could be affected. You can buy and sell goods freely around the EU and the introduction of ten new EU member states gives British businesses many more opportunities to buy and sell freely. If you import goods from abroad you could, for example, now buy goods in Poland and resell them in the UK without trade mark and other restrictions which previously existed. A DTI report in May showed that the UK's share of the benefits of accession could increase GDP by £1.75bn a year; enlargement will

bring potential growth in both export and investment opportunities for UK firms; and trade with the 10 expansion countries is growing faster than the UK's trade with the world as a whole.

Also competition laws have changed with effect from 1st May. A new regulation on what restrictions can be placed in patent, knowhow and computer software copyright licensing agreements came into force at the same time as a new regulation regulating large mergers in the EU. Finally there is a new 'get out' for some beneficial anti-competitive agreements. Instead of having to send them to the European Commission for clearance, if the agreement is beneficial to consumers it may be automatically exempt.

The new rules mean that it will be easier to trade abroad and move your business or workers around the EU. However it is important to know what contractual terms are being used when you trade abroad. It is also important to make sure it is clear whether English or a foreign law or jurisdiction applies.

Now is a good time to take some legal advice on how these changes affect you and your European agreements and contractual arrangements. Many of our clients operate on the basis of letters or no written terms and conditions at all which is rarely wise. We can ensure you have the best contractual conditions to protect your position.

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LawGroupUK

Budget 2004



Lots of businesses and individuals need to consider tax planning when sorting out their affairs. Have you made a will? How can you reduce inheritance tax? Is your business structured in such a way as to make best use of

all tax allowances and reliefs. This year's budget has led to some changes.

The Budget brought about some important changes which will affect our clients. Inheritance tax on death remains at 40% but the nil rate band rose from £255,000 to £263,000 on 6th April 2004. One change which attracted publicity concerns where assets are given away but still enjoyed. For example parents give their children a house but they carry on living in it.

The change means from 6th April 2005 (there is a year's grace) there will be an income tax charge similar to the benefit in kind that an employee might have on assets provided by an employer. There are some exemptions and relieving measures from this but it is wise to take legal advice on existing and proposed arrangements of this kind.

The exemption for Capital Gains Tax has risen to £8,200 from £7,900. This means you can, for example, sell shares and make a profit each year of £8,200 (or for a couple £8,200 each) before any CGT is payable. Anyone with large sums to invest may want advice from us on venture capital trusts. The budget means that they obtain better income tax relief but worse CGT relief. Anyone with a small family business should consider taking some legal advice. From 6th April 2004 closely controlled companies which are owned in the joint names of husband and wife will find the income split according to the ownership of the shares, not otherwise.

commercial property

Many local businesses take on the huge commitment of a business lease for a shop or office premises without fully understanding the implications of this.

Frequently they go into business with a partner without having a written partnership agreement in place or they form a company without any written agreement over how they will share profits and most importantly what

happens if one person wants to leave. We handle lots of commercial leases for small and large clients and can advise on the pitfalls and risks of taking on that kind of a legal commitment.

Also there will be details in the documents which require some alteration or negotiation to protect your position as the business tenant. Businesses which simply sign on the dotted line the lease which is presented to them can be unpleasantly surprised when they realise what they are committed to.

We are familiar with all the formalities for commercial leases under the Land Registration Act 2002. All leases of over seven years now have to be registered from 13 October 2003 and there is now a Code of Practice for Commercial Leases in operation. So ensuring you obtain legal advice from solicitors who are completely up to date in this area is crucial. Our commercial department can advise on setting up any partnership or shareholders agreement and if directors are employed by the company there should be employment or service contracts in place as well.

partnership law

Many local businesses form informal partnerships without any written agreement. Although the very ancient Partnership Act 1890 does provide some protection it is much better to have matters set out in writing.

Solicitors can draw up partnership agreements which are worth doing even if a partner imagines they could never fall out with their 'friend' or spouse with whom they run the business. Sadly things do go wrong and having an agreement makes things easier.

In November 2003, following extensive consultation, the Law Commissions published a joint report on proposals to reform partnership law. The aims of the reforms are:

- To preserve partnership as a flexible, informal and private business vehicle;
- to encourage continuity of business by facilitating continuity of partnership; and
- to preserve mutual trust and good faith as critical components of the relationship between partners.

Specific reforms are recommended on the continuity of the business following changes of partners and the major innovation of conferring 'legal personality' on partnerships, partly as a means to that end. Reforms are also suggested on the solvent dissolution and the winding up of dissolved partnerships.

Other reforms include: the clarification of what partnership agreements govern and what mechanism for agreement/ amendment they may contain; the provision of default provisions which would apply unless the partners agreed otherwise (designed with small partnerships in mind); reform of the rules on litigation and enforcement of claims against a partnership; and reforms in respect of limited partnerships.

The Government is not re-consulting on the proposals themselves but is by July seeking information on the possible benefits and costs of the proposals.

However if you operate a partnership without an agreement in writing it is wise to have an agreement drawn up whether these proposals become law or not.

industrial diseases



On 21st May new regulations came into force obliging businesses to carry out asbestos assessments of their properties.

Has anyone in your family worked with asbestos over the years? Many people worldwide have been seriously injured because of working with asbestos and have sought compensation. Have you considered whether you might have a claim?

No financial compensation can properly compensate for the

damage caused by asbestosis but those who worked with asbestos may find financial compensation at least can help make their life more comfortable. If employers were aware of the hazards but did nothing to protect employees they may be liable.

Cases continue to emerge. On 16th March warship builder VT, formerly known as Vosper Thornycroft, admitted it faces £15m of asbestosis claims. VT said the collapse into administration of its liability insurer Chester Street Insurance three years ago had left it with about 900 unsettled claims from former Southampton ship fitters.

If you think you have lost out through asbestos at work or indeed any other industrial disease get in touch with us. We may be able to act for you on a conditional fee (no win/no fee) basis.

internet domain abuse

Local businesses are being warned by the Office of Fair Trading (OFT) about the sales tactics of some internet domain name registration agents.

The OFT has received a number of complaints from businesses that have been cold called by domain name registration agents attempting to pressurise them into buying domain names.

If you have been, be careful. Typically, the agents inform the business that a third party is interested in - if not on the brink of - registering close variants of their name. A very short timescale is then offered for the business to pay to register these domain names with

the agent before the third party is able to. When challenged by the OFT, the registration agents have not been able to substantiate the existence of the alleged third parties.

If businesses have doubts about the reliability of a domain name offer, the OFT recommends that they contact their internet service provider (ISP), their usual domain name registration agent, or their local trading standards service, who can advise on a course of action. If they think they may have been misled, businesses should complain to their local trading standards service in the first instance.

Also we can advise on your rights to sue for passing off or trade mark infringement arising from someone using your business name without your permission.

accessibility of web sites to the blind

The web sites of 90% of the FTSE 100 companies are failing to meet minimum accessibility standards, effectively barring millions of disabled people, and potentially breaking the country's Disability Discrimination Act, says a new report.



Does your web site comply with the law in this area? Most of the 'blind' can see but are partially sighted and thus large type and other measures can help them use the internet. The findings are from a survey by digital design company Nomensa. Disabled access is about making web sites usable by those with disabilities such as sensory or mobility problems. A visually impaired internet user can use a screen reader to translate the contents of web pages for speech synthesisers or Braille displays; but the user will struggle to understand web pages if, for example, images are displayed on the page without a text alternative.

There is consensus that the best practice is to comply at least with a minimum accessibility level defined by the World Wide Web Consortium, or W3C. It is widely believed that this minimum standard known as Level One or Level A, is the standard required to fulfil a legal obligation in the UK's Disability Discrimination Act of 1995.

The Act states that it is unlawful for 'a provider of services' to discriminate against a disabled person in failing to comply with its provisions.

The survey, conducted in the last quarter of 2003, found that 79% of sites surveyed did not provide alternative text for all images and 56% did not use appropriate alternative text. Seventy-seven percent of sites did not allow the font size to be rescaled, which is important for visually impaired users. A massive 99% of sites did not use valid HTML code to construct their sites, with the result that many of their web pages are displayed incorrectly in some way - a problem exacerbated when screen readers are employed by disabled users.

Conformance with the W3C standard was achieved by only 11% of sites, proving, said the report, that "Many of the FTSE 100 have a long way to go in providing a public-facing web site that supports a diverse range of people with some form of disability."

patent law to be updated

The Patents Bill - to update, modernise and improve patents law, was published in January. The Bill includes measures which would help those trying to resolve disputes over patent rights, and provisions to ensure compliance with international commitments that help UK businesses.

The Patents Bill will:

- enable the Patent Office to provide an independent non-binding opinion on patent validity or infringement to settle disputes over patent rights without parties having to resort to expensive litigation;
- bring UK patent law into line with the revised European Patent Convention to reduce bureaucracy and make it simpler for UK businesses to operate across Europe;
- modernise UK patent law to be more responsive to customers needs by for example, allowing the Patent Office to make amendments to application forms without amending regulations; and
- modify existing protection for alleged infringers to encourage out-of-court settlement of disputes whilst still deterring patent owners from making unreasonable allegations of infringement.

If you have inventions you might like to patent, contact us for further information particularly if you want to discuss your ideas with an investor. In such cases a confidentiality agreement is essential.

marital difficulties?



Most local families are not subject to the same publicity David Beckham attracts when allegations are made about marital infidelity, but there is sadly no shortage of similar situations in local homes.

When a husband or wife suspects infidelity it can be wise to seek legal advice so at least they know where they stand if they decide to part from their spouse. Even if their decision is to work on the marriage it is wise to know what their legal rights are. We are also in

touch with counselling and mediation services and can point our clients in the right direction for those kinds of services.

When a decision is made to separate or part, we can advise on divorce procedure, issues such as finance and residence of children. Many couples are able to settle such matters by agreement but often such agreements can be aided by knowing what the legal position is in advance.

misleading advertisements

Do you ensure your advertisements are lawful? Sometimes it is worth having lawyers check that there is nothing in your brochure, leaflets or even on your web site which breaches any legal rules in this area.

Recently the Office of Fair Trading launched a landmark court action against Belgian company D Duchesne SA trading as TV Direct Distribution and Just 4 You.

Court proceedings have been issued to stop the mail order company sending what the OFT considers to be misleading mailings to UK consumers. This is the first time the OFT has used its new cross border powers to take court action in another European Member State.



D Duchesne SA trading as TV Direct Distribution and Just 4 You has been sending unsolicited mailings to UK residents offering household goods by direct mail.

The OFT believes that the mailings are misleading since they appear to notify UK consumers of a large prize win, typically

£10,000, the OFT says. To receive the prize the consumer is requested to make a purchase from an accompanying catalogue.

However, respondents are in fact only entered into a prize draw - they may not have won anything.

A hearing on the case is likely in September but it does illustrate the importance particularly where prizes and competitions are concerned of taking legal advice. The rules can be complicated.

Other areas to watch are that you do not use another company's trade mark or name in an illegal way on your advertisement although some comparative advertising is allowed, nor that you make untrue claims about the goods or services concerned.