YOUR LOGO GOES HERE

Business Client UPDATE

We'll put this newsletter in your firm's colours

Autumn 2014

NEWS BRIEF - legal news that affects you and your business

New Bill to 'help firms to start up and scale up'

A new Bill to help small businesses is being introduced by the government.

The Small Business, Enterprise and Employment Bill contains several measures designed to make it easier for small firms to thrive. They include:

- strengthening the rules on director disqualifications and measures to help creditors recoup losses resulting from director misconduct
- assisting expansion overseas by increasing support from UK Export Finance, making it easier to expand in the international marketplace
- introducing a Pubs Code and Adjudicator to govern the relationship between pub-owning companies and their tied tenants
- cutting red tape by ensuring regulations affecting business are reviewed frequently and remain effective and fair
- improving payment practices so more invoices are paid on time. Also the introduction of 'cheque imaging' means cheques will be cleared by banks faster.

Skills and Enterprise Minister Matthew Hancock, pictured below, said: "Small businesses are the driving force of our economy and this bill is part of the government's commitment to back enterprise and help firms to start up and scale up."

The Bill was put before parliament in June. We shall keep clients informed of developments.

Meanwhile, the administrative burden on small businesses involved in takeovers could be eased by the latest changes to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

TUPE regulations are designed to protect the interests of employees if their company is sold to new owners.

The regulations were amended on 31 July to allow firms employing fewer than 10 people to deal directly with affected employees if there isn't a recognised trade union, and where the firm has not asked employees to elect a representative.

It is the latest in a number of changes to the TUPE regulations. An amendment earlier in the year meant that a change in work location following a takeover could be seen as a genuine 'place of work' redundancy, rather than automatically be treated as unfair dismissal.

New employers are now able to change the terms one year after the transfer, providing they are no less favourable overall to the employee.

On 1 May an amendment came into force that increased the timescale for a transferor to provide 'Employee Liability Information' to a transferee from 14 days to 28 days.

Please contact us if you would like more information about the legal aspects of starting and growing a business.

Director 'unfairly excluded' after an attempted affair

A court has ruled that a director who tried to start an affair with his business partner's wife was unfairly excluded from the management of a company in which he held shares.

The case involved two men who had been close friends and operated their business as a quasi-partnership.

Things turned sour when the director started sending suggestive texts and making phone calls to his partner's wife.

When the partner found out, he called an extraordinary general meeting and appointed his nephew as a director. He then removed the 'offending' director from his position at the company.

The dismissed director claimed that he had been excluded from management without any offer to acquire his shares at a fair value.

He also said that it had been unfair to issue the nephew with shares as it diluted his stake in the company, which he had helped to set up and run.

The court ruled that the director had been unfairly excluded from the company. It also ruled that the true motivation of the allotment of shares to the nephew had been to dilute the interest of the dismissed director to below 50% and therefore remove his ability to block resolutions.

The court ordered that the partner should acquire his former colleague's shares on the basis that he owned 50% of the company.

The former director wouldn't be compensated for his loss of salary because a working relationship would not have been possible after he had betrayed his business partner.

Please contact us if you would like more information about issues relating to company law.

Letting agents: publish fee details or face a fine

Letting agents will have to publish full details of the fees they charge or face a fine under new regulations being introduced by the government.

Ministers say the move will help to ensure a fairer deal for both landlords and tenants.

Under the current regulations, agents have to list their compulsory charges to the tenant. However, if agents then impose hidden charges, the sanction against them is little more than being named and shamed on the Advertising Standards Authority website.

The government doesn't think this is a sufficient deterrent and will now require all letting agents to publish a full tariff of their fees on their websites, and in a prominent position in their offices. Failure to do so could result in a fine.

It's hoped the move will provide greater protection for landlords and tenants without imposing excessive regulation which could force up rents. Housing Minister Kris Hopkins said: "The vast majority of letting agents provide a good service to tenants and landlords. But we are determined to tackle the minority of rogue agents who offer a poor service. Ensuring full transparency and banning hidden fees is the best approach, giving consumers the information they want and supporting good letting agents.

"Short-term gimmicks like trying to ban any fee to tenants means higher rents by the back door. Excessive state regulation and waging war on the private rented sector would also destroy investment in new housing."

The measure will be introduced as an amendment to the Consumer Rights Bill. We shall keep clients informed of developments.

Please contact us if you would like advice on commercial property law or landlord and tenant issues.

200,000 homes to be built on brownfield sites by 2020

Up to 200,000 new homes could be built on brownfield sites by 2020 following new measures being introduced by the government.

Ministers plan to provide funds of £400m for 20 zones of brownfield land in London, and £200m for 10 zones outside the capital.

Councils will be asked to help speed up the house building process by putting local development orders in place which can provide sites with outline planning permission.

Chancellor George Osborne said: "This urban planning revolution will mean that in effect development on these sites will be pre-approved - local authorities will be able to specify the type of housing."

Planners will still need to take into account the needs of the local communities. They will also need to adhere to the same general criteria in order to get planning permission for a project.

Ministers hope that by 2020, planning applications for up to 90% of suitable brownfield land will have been approved.

Communities Secretary Eric Pickles, pictured left, said: "We're determined to make the very best use of derelict land and former industrial sites to provide the homes this country desperately needs in a way that protects our valued countryside. By ensuring commitments to housing development are in place early and having dedicated housing zones, building becomes quicker and easier for homebuilders, businesses and councils."

Please contact us if you would like legal advice about planning and development issues.

Developer breached duties and must repay £500,000

A property developer who breached his legal duties by failing to spend an investor's money correctly has been ordered to make a full repayment.

The case involved a property developer and an investor who agreed to set up a golf course in France. The investor provided £500,000 to get the project started in July, 2007. The money was transferred into a currency trader account in the developer's name.

The developer used the money to make various payments which he said related to the golf course. However, in December 2007, he emptied the account paying a large sum to his own personal account and a smaller amount to a business associate.

The investor took legal action to recover his money because little or no progress had been made with the golf course. The developer argued that he had a complete defence because the £500,000 had been invested in the golf development as intended.

The court held in favour of the investor. The judge said the developer had tried to blur and confuse the issues during his evidence. He was unable to explain how the agreed purpose of the investment in the golf course had been fulfilled.

The judge said the law is clear that if money is lent for a specific purpose, the borrower is subject to fiduciary duties to use it for the agreed purpose and no other. If the purpose failed, the money was held on resulting trust for the lender. The developer was therefore liable to repay £500,000 plus interest.

Please contact us if you would like more information about the issues raised in this article.

Success fee not dependent on proving success

A public company has been ordered to pay a consultant a commission fee, despite there being no evidence that he contributed to the success of a special business project.

In January 2013, one of the company's shareholders had publicly criticised the board and ordered a meeting with the intention of ousting the chairman.

The company hired a consultant to oversee the discussions.

His brief was to end the shareholder's campaign and resolve the situation by reducing his shares to less than 5%.

If this was achieved then the consultant would be paid a success fee.

The meeting took place in March 2013, and the shareholder's campaign was ended. However, he kept all his shares so no fee was payable at that point.

The consultant stopped working for the company in May 2013.

At the end of 2013, the company was subject to a takeover bid and the shareholder sold all of his shares. At this point, the consultant claimed he was entitled to his success fee. The company refused to pay him, stating that the success had been achieved several months after he had gone.

The High Court ruled in favour of the consultant. It pointed out that it was extremely difficult to measure how much the consultant had contributed to the successful outcome for the company.

To set a precedent that consultants need to prove their right to a success fee would run the risk of future valid claims failing because of a lack of proof.

Please contact us for more information about the issues raised in this article or any aspect of contract law.

Flexible working rules now extend to all employees

All employees can now request flexible working hours and the right to work from home.

Previously, the right had only been available to carers and people who look after children. As of 30 June, employees of any size business have the same right. It means 20 million more workers can now benefit.

The Department for Business, Innovation and Skills announced that there will only be eight reasons for an employer not to grant the request:

- burden of additional costs
- detrimental effect on ability to meet customer demand
- inability to reorganise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality
- detrimental impact on performance
- insufficiency of work during the periods the employee proposes to work
- planned structural changes.

Employers are obliged to consider requests thoroughly and will not be allowed to have blanket policies preventing flexible working. The change is expected to boost productivity by improving employee motivation and reducing staff absence.

Deputy Prime Minister Nick Clegg said: "Modern businesses know that flexible working boosts productivity and staff morale, and helps them keep their top talent so that they can grow.

"It's about time we brought working practices bang up to date with the needs, and choices, of our modern families.

"This is a crucial milestone in how we can help people balance their family life with work and caring responsibilities. And from next year, Shared Parental Leave will allow mums and dads to be able to choose how they care for their new-born in those first precious months."

Please contact us for more information about the issues raised in this article or any aspect of employment law.

Perils of setting up a business with no written agreement

When setting up a business venture involving two or more people it is essential to have a written agreement so that everyone understands their responsibilities and entitlements.

Failure to do so can lead to confusion and the need for legal action, as illustrated in a recent case before the High Court.

It involved three people who set up a nightclub together.

Two of the men were business associates who had collaborated on other projects. They bought a nightclub and brought in a manager, who helped to set up the venture from the outset. The manager controlled the day-to-day running of the club. He said he did so on the understanding that he was entitled to 33% "sweat equity" arising from his work contribution.

The two owners of the club denied they had ever made such an offer.

A meeting took place to try to resolve the issue and the owners offered the manager 5% equity based on his non-financial contribution. He refused the offer and insisted on 33%.

The court found in favour of the club owners. It held that as there was no written agreement, it had to rely on the evidence put forward by the two sides in the case.

On balance, this suggested that the nightclub owners had seen the manager as a co-venturer but not a partner or shareholder. The issue of the manager being offered equity had been discussed but no agreement had been reached.

The manager's claim to a share in the equity therefore had to fail.

Please contact us if you would like more information about company law issues.

SMEs wait an average of 71 days for payment

Figures released by the Asset Based Finance Association (ABFA) have revealed that small businesses are forced to wait longer than large businesses to receive payment.

Businesses with turnovers of less than £1m wait an average of 71 days for payment. That is 23 days more than businesses with turnovers of £500m and above, who wait an average of 48 days.

Many SMEs struggled during the recession as large companies took advantage of their strength by lengthening the amount of time they took to complete payments. The government responded by urging big businesses to sign up to the Prompt Payment Code, in which firms volunteer to pay in accordance with the contract and not attempt to change payment terms retrospectively.

However, SMEs still have to wait a week longer for payment than they did before the recession began. In 2006 they waited an average of 64 days.

Jeff Longhurst, the chief executive of ABFA, said: "These figures highlight the relationship between some big businesses and their smaller suppliers has become even more unbalanced since the credit crunch – and efforts to address this have not had a great deal of impact. It's alarming to see how much longer SMEs are waiting to receive payment

compared to just a few years ago and it's putting some SMEs in financial difficulties.

"It's more important than ever that these businesses are aware of the options they have to get around the roadblock of late payment, and free up the funds they need more quickly."

Firms affected by late payments should seek legal advice as soon as possible. Solicitors can use several measures from formal letters to court action to ensure early settlement of outstanding invoices.

Please contact us for more information about the issues raised in this article or any aspect of debt collection.

High value commercial litigation cases jump by 16%

There's been a substantial rise in the number of high value litigation cases between companies in the Commercial Court.

There were 1,353 cases in 2013, a rise of 16% compared with the previous year.

It's thought the increase is due to a build-up of cases arising out of the recession which are only now coming to court.

The reason for the delay could be that the disputes were complex and

so it took a great deal of time for both parties to present their case.

It's also likely that some cases involved businesses doing everything possible to avoid litigation but still being unable to reach a compromise. In such cases, going to court may be the only remaining option following years of negotiation and mediation.

The economic downturn has also made companies more willing to take legal action to protect their interests as they see their revenues squeezed. This is particularly true in disputes involving issues such as professional negligence and property break clauses.

As profit margins become ever tighter, firms are less able to absorb losses and more likely to enforce their legal rights to keep those losses to a minimum.

Please contact us for more information about the issues raised in this article or for help with a commercial dispute.

For more information about our services, please visit: **www.yourfirm.co.uk**

Your Firm's Name
SOLICITORS

The botttom portion of this page can be customised to your firm's requirements, eg photos, legal services, contact details, quotes etc at no extra cost.

List your services here.
For example:

- Residential Property
- Personal Injury
- Road Traffic Claims
- Wills, Inheritance & Trusts
- Employment
- Family & Mediation
- Disputes

Meet the partners


Partner's Name


Partner's Name


Partner's Name


Partner's Name

F. 012 345 6780
Your address here, One Town, County AB12 3CD

0123 456 789

E. mail@yourfirm.co.uk
www.yourfirm.co.uk