

RadcliffesLeBrasseur



Corporate Newsletter

Autumn 2009

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A word of thanks

It is some time since our last Corporate Department Newsletter and, over the intervening period, as you are all aware, the UK commercial market has been hit by one of the worst recessions for the last 50 years.

As a result, many law firms have seen corporate deal-flow dry up virtually overnight, and several have unfortunately had to resort to multiple rounds of redundancies.

Whilst the recession has not been without its impact on our Corporate Department, we have not made any redundancies - indeed, we have been able to expand our team over this period.

Greg Wolton joined us as a partner last year through the firm's merger with West End practice Gersten & Nixon, which also strengthened our Property and Litigation teams. Stephen Blair arrived as a partner last month in our merger with Lithgow Pepper & Eldridge, also previously based in the West End.

In addition, just after the publication of our last newsletter Peter King finished his training with RLB

and qualified into the Corporate Department. Brief CVs for Greg, Stephen and Peter appear later in this newsletter. During the same period, Philip Peacock and Richard Price became part-time consultants, but they are still actively involved and we really value the stability and continuity that this provides, not to mention their deep commercial experience and strong client relationships.

We would like to thank our clients for their loyalty and we hope that this in some way reflects the quality of the services we provide - and the way we do business. We always seek to offer practical and user-friendly advice, not to mention taking a real interest in what our clients are trying to achieve. It is a cliché (and often an empty one at that) that "the client comes first" but we recognise that our clients are a fundamental component for our success, and we strive to reflect this in our dealings with clients. At the risk of blowing our own trumpets, we have included in this newsletter a selection of client comments which suggest that we are getting at least some things right, but we are always keen to improve our services, so if you have any ideas about what we should be doing differently, please call or email me – we're keen to hear your suggestions.

Please also get in touch if you have any queries or would like more information about any of the matters covered in this newsletter.

In the meantime, we wish you all the best in your business endeavours. These are trying times, but they won't last forever. After all, each week that goes by is another week towards the end of the recession.

Peter Coats
Head of Corporate Department

Companies Act 2006 – the final phase

The final provisions of the Companies Act 2006 came into force on 1 October. The key points are listed below:

- Memorandum and articles of association: for private companies limited by shares, formed after 1 October 2009, new model articles of association will apply by default unless varied or excluded; the memorandum of association will not require an objects clause and will not refer to the authorised share capital (the Company must submit a statement of capital and shareholdings on formation).
- Forms: new Companies House forms must be used and filing can now be carried out electronically by "Protected Online Filing" (PROOF).
- Accounts: companies will have one month less to file accounts at Companies House and will face increased penalties for late filing.
- Directors' addresses: a service address and residential address must be provided to Companies House for each director but only the service address will appear on the register.
- Company books: may now be held at a "Single Alternative Inspection Location" (SAIL), such as the offices of the company's solicitor.
- Changing a company name: simpler procedures are now available.
- Directors' authority to allot shares: a private company with only one class of shares can now pass an ordinary resolution granting the directors a general authority to allot shares. Directors no longer require express authority in the Articles.
- Redeemable shares: may be issued by a private company unless the Articles state otherwise.
- Purchase of own shares: companies no longer require authority in their Articles to purchase their own shares.
- Redenomination of share capital: the conversion of share capital from one currency to another has been simplified.
- Share premium accounts: there are new restrictions on using them to write off expenses.

If you would like a copy of our more detailed briefing on the above points, or for advice on any other aspect of the Companies Act 2006, please contact

Peter King at peter.king@rlb-law.com.

Succession planning for private companies

In any private company, the death or retirement of one of the principals can seriously disrupt the continuity of the business. To avoid this, regard must be had to succession planning.

When planning for succession, a number of issues need to be considered, including

- taxation
- transfer of shares to family members
- transfer of shares to non-family members, and
- ongoing day-to-day management post death or retirement.

The transfer of shares to **family members** can be

- on death, by Will or under the intestacy provisions, or
- during lifetime, by sale or, more likely, by way of gift. The gift may be absolute or on trust – a trust could be useful if the donor wishes to mitigate capital gains tax, retain control of the shares, as a trustee, during lifetime or to protect the shares from minor or inexperienced children.

Employing non-EU workers

If you are planning to recruit staff from countries outside the European Economic Area, you need to make sure that you comply with the requirements of the points-based immigration system, which was first introduced in November 2008.

Under this system, any employer wishing to recruit a non-EU citizen must first obtain a licence from the UK Border Agency to sponsor migrants and bring them into the United Kingdom and then issue a certificate of sponsorship to the eligible worker.

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The employer must also meet a number of other duties while they are sponsoring migrants. If you breach the requirements of the system, you could be prevented from sponsoring immigrant workers and could even face a fine of up to £10,000: in a recent well-publicised case, the Attorney-General Baroness Scotland was fined £5,000 for failing to keep documentation in relation to her housekeeper, a Tongan national who was working in the country illegally.

For advice on how to comply with your obligations under the system, please contact

Lisa Parsons at lisa.parsons@rlb-law.com.

What you say about us

Retaining a client is often (but by no means always) a sign that we are doing a decent job, but it is even better when clients are kind enough to compliment us on our performance.

Below are some positive comments we have received recently

"Superb service and manner... cutting edge... direct and willing to express a view..."

"...can-do attitude"

"on the ball."

"quality and professionalism.. I am very impressed"

"prompt response"

"the outcome has been excellent.."

"...very good organisationally"

"high standards"

"clarity on all matters"

"professionalism and resolve in getting the deal concluded, at times against the current."

"prompt and thorough advice"

"excellent representation and strong support .. It has been a pleasure working with you."

"You have many fans here."

"very good on fees"

Obviously, it can be just as important what a client *doesn't* say about us, especially if it is negative and we never get to hear it! The last thing we want is for disgruntled clients to "vote with their feet" so, as part of our membership of quality standards organisation Lexcel, we carry out an annual client feedback exercise. However, this only involves a fairly small selection of clients, so it doesn't tell the whole story. If you have any concerns about our services, please call or email Peter Coats and he will be happy to discuss them with you.

Meet the team



Greg Wolton

Greg Wolton joined the Corporate Department as a Partner in July 2008, when Soho law practice Gersten & Nixon amalgamated with RadcliffesLeBrasseur. Other colleagues joined our property, commercial litigation and property litigation departments.

In his early years as a lawyer, Greg specialised in property law, but he now focuses on commercial and corporate work and general business law issues. He continues to be involved in property matters, particularly where they form part of a larger corporate deal.

Greg has acted for clients in various sectors including property, fashion, publishing and management consultancy. He is also on the board of directors of Pragma, an international law network with members as far afield as Chile and China.

As an antidote to London life, he sails (mostly in the Solent), and camps (wherever he can find an empty field).



Stephen Blair

Stephen Blair joined the Corporate Department as a Partner in October 2009 as part of the merger between RadcliffesLeBrasseur and West End firm Lithgow Pepper & Eldridge.

Stephen was a Partner at LPE since 1993, having previously qualified there as a solicitor.

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Stephen undertakes a variety of commercial work, including M&A, joint ventures, debt arrangements, equity finance and commercial contracts. He takes a particular interest in the development of clients' businesses and has acted for several businesses from their formation, or early years; in many cases up to their eventual sale.

Stephen also acts for a private investment boutique specialising in the financial and operational restructuring and turnaround of distressed businesses.

As well as having extensive experience in property development, both the South East and North West, advising on joint ventures as well as traditional land acquisition, Stephen has also advised clients in many other sectors, including IT, telecommunications, manufacturing and services industries. Stephen also retains an interest in "not for profit" organisations, advising a number of charities on commercial matters.

Stephen lives in South West London, with his partner Gillian and their two children. With Gillian's support, Stephen tries to balance the demands of his young family and his professional commitments with his continuing desire to renew his season ticket at Middlesbrough Football Club. No doubt the imminent return of 'the Boro' to the Premier League will coincide with his son becoming old enough to (be forced to) accompany Dad to matches.



Peter King

Peter King is an assistant solicitor in the Corporate Department. He joined the firm in 2005 and qualified in 2007.

Peter assists with the formation, purchase, sale, reorganisation and management of companies and partnerships (including LLPs). He also drafts commercial contracts and partnership agreements for a range of professional clients. Peter has recently been active in developing the firm's involvement in Sports Law, especially in the commercial, litigious and regulatory arenas.

Peter is fluent in Japanese and also speaks French and Spanish. He lives in West London and his hobbies include film and sport of all descriptions (especially football). Over the years, Peter has taken to participating in more extreme physical pursuits, such as climbing Mount Fuji, jumping out of a perfectly good airplane, and cage-diving with sharks - all of which help put into context the pressures of being a Corporate lawyer!

Pragma: our international network

RLB is a member of PRAGMA, an international network of law firms. Originally established in Europe in early 2001, it now has members in 23 countries throughout the world.

The members are commercial law firms and our involvement gives us a first point of contact in the countries where PRAGMA is represented.

In April this year, the meeting of the General Assembly of PRAGMA took place in Santiago in Chile and the Annual Congress took place recently in Beaune, France. Representatives of RLB attended both events.

If you have a matter with an international angle, whether it be a business start up in China, intellectual property rights in South America or tax issues in Switzerland, let us know, as we will be able to obtain guidance from PRAGMA law firms.

Our recent deals

Since our last newsletter, the Corporate Department has handled a number of significant deals, including the following

Mergers and acquisitions

\$150m purchase of stake in offshore telecoms company

RadcliffesLeBrasseur represented an offshore trust company in the two-stage acquisition of 30% of an international telecommunications company for a sum in excess of USD \$150m.

The firm advised on all aspects of the transaction including due diligence, shareholder arrangements, international financing and a subsequent international \$multi-million placing.

Our team included Richard Price, Sumaira Choudary and Peter Coats and the work involved liaising with numerous other advisers, including Linklaters, Herbert Smith and Withers and other professional firms in the UK, the Isle of Man, the Netherlands Antilles and in Africa.

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£60m+ purchase of football club

Earlier this year, Peter Coats and Peter King advised on the potential purchase of a high-profile UK football club. In the event, the transaction did not proceed, but the instruction is an example of our increasing involvement in Sports Law.

Our previous experience includes the sale of a significant stake in a premiership football club, the launch of an international tennis competition, a fundraising by a sports company, the purchase of a sports goods distributor and construction contracts for sports stadia.

£28m sale of hotel company

RLB advised on the sale of a company which owns a boutique hotel in London, for a total price of up to £28 million.

The transaction was completed within a tight timescale and involved deferred consideration, loan notes and agreements relating to intellectual property, management and hotel design.

The RLB team was led by Richard Price, with assistance from Peter Coats and Peter King, and from Antony Brougham on the property aspects. Clifford Chance LLP acted for the buyer.

£18m+ sale of internet company

We recently completed the sale of an internet-based company to a French buyer for a price of up to £18 million.

The deal included obtaining a waiver of the Takeover Code, an exercise of employee share options, and deferred consideration supported by escrow arrangements and a bank guarantee.

Our team was led by Peter Coats, with assistance from Peter King and Robert O'Donovan.

£17m refinancing/sale of care homes group

Peter Coats and Greg Wolton have for some time been involved in the refinancing/sale of various businesses in a care homes group for a total price of up to £17m. The project has involved lengthy discussions with funders and potential purchasers, culminating in the negotiation of contracts for the sale of various care homes within the group to two separate purchasers. The resulting transactions have involved the full range of corporate, commercial, employment and property matters. Sharon Healy and Peter King have assisted in Corporate and Antony Brougham, Sheetal Badiani and James Atkins have handled the property aspects.

\$multi-million purchase of marketing group

Peter Coats has advised a major US client on the UK aspects of a \$multi-million purchase of a European marketing group.

£8m demerger of engineering businesses

RLB has advised a multinational engineering group on the £8 million sale of three engineering businesses by its UK subsidiary, as part of a \$multi-million demerger of the two main divisions of the group. The RLB team was led by Peter Coats, with help from Peter King in Corporate, Robert O'Donovan on the employment aspects and Sheetal Badiani on the property side.

£5m purchase of care homes group

The firm handled the £5m purchase of a care homes group based in Manchester, followed by a hive up of the properties and assets to the holding company. The RLB team was led by Peter Coats and included Peter King in Corporate and Sheetal Badiani and James Atkins in Property.

£1.65m sale of safety systems company

Sumaira Choudary and Philip Maddock recently advised on the sale of a safety systems company for £1.65 million, involving a deferred payment secured by a charge over the target's assets.

Merger of two public schools

RLB recently handled the merger of two public schools, including property, funding and commercial arrangements. The RLB team was led by Richard Price and Peter Coats and included Charity law advice from Guy Greenhous and Property advice from Antony Brougham.

De-merger of two public schools

RLB also advised two other public schools on a de-merger, including the separation of trusts, and re-scheduling of financial arrangements. Peter Coats led the RLB team, with assistance from Guy Greenhous and Antony Brougham.

Sale of financial security company

The firm handled the sale of a financial security company to an overseas buyer, involving the negotiation of an earn-out and the subsequent winding up of the seller pursuant to a scheme for the tax-efficient distribution of the sale proceeds. Peter Coats led the RLB team and Allen & Overy acted for the buyer.

Continued...

Purchase of military supply business

Sumaira Choudary and Peter Coats handled the purchase of a business specialising in the wholesale and retail sale of military garments and equipment.

Purchase of business centres

The firm has recently completed the purchase of three business centres for a long-standing client.

Philip Maddock led the RLB team, with assistance from Sumaira Choudary and Peter King in Corporate, and from members of our Commercial Property and Employment teams.

Investments in property companies

Philip Maddock and Sumaira Choudary recently advised on the acquisition of a 50% shareholding in a property holding company and a property development company, in each case with associated shareholder arrangements.

Take over of doctors' practices

Philip Maddock has advised a client on taking over a number of GP practices, involving complex partnership issues.

Purchase and sale of dental practices

Peter Coats has recently handled various purchases and sales of dental practices.

Sale of bookseller business

Peter King recently handled the sale of a bookseller business, with help from Peter Coats and from James Atkins on the property aspects.

Purchases of insolvent businesses

Not surprisingly, the last 12 months has seen a significant increase in the number of acquisitions we have handled involving distressed businesses, sold by either liquidators or administrators.

Peter Coats and Greg Wolton have been involved in several transactions of this type, in sectors including recruitment, IT and hotels.

Stephen Blair, who joined the firm in October 2009, has acted for several years for clients who specialise in the purchase and turnaround of distressed businesses. If you would like advice on this area, please contact him at stephen.blair@rlb-law.com.

Banking and finance

General banking advice

The Corporate Department has recently handled various banking matters, including advising on the grant of new facilities, the taking of security and charges over book debts and other assets.

Our banking clients include UK clearing banks and the UK subsidiaries of offshore banks.

We have also advised various non-banking clients borrowing under new bank facilities and/or entering into banking security documentation, both in the context of M&A transactions and also to provide general working capital.

The RadcliffesLeBrasseur banking team includes Peter Coats, Philip Maddock and Stephen Blair on the Corporate side and Antony Brougham, Mark Baker and Karen Mayne on the property security aspects.

Commercial advice for investment bank

Peter Coats has advised an investment bank on a number of matters, including terms and conditions, file opening procedures and compliance with the Financial Services and Markets Act 2000.

AIM float by property management company

A few months ago, we advised a property management company on a fundraising and application for admission to listing on the Alternative Investment Market.

The RLB team was led by Philip Maddock, with assistance from Sumaira Choudary on the Corporate side, and various fee earners in other departments of the firm, including Commercial Property.

In the event, due to the downturn in the market, at a late stage the float did not proceed, but we are continuing to act for the company in various acquisitions.

€14m bond issue by manufacturing company

Earlier this year, Peter Coats advised a manufacturing company on a €14m bond issue, with associated shareholder arrangements. Linklaters LLP advised the investor.

Continued...

Fundraising by metal trading company

RLB is currently advising on a fundraising by a company involved in the international trading of scrap metal.

Advice to hedge fund LLP

Peter Coats has advised a hedge fund LLP on members' rights and duties and on agreements with introducers.

LLP arrangements for property investment fund

Peter Coats has advised two individuals on their negotiated exits from a property investment LLP and he is currently advising one of them on setting up a new LLP.

Commercial

Restructuring of media group

Greg Wolton and Sumaira Choudary handled the restructuring of a high profile international company to separate the ownership of a wholly-owned foreign subsidiary. The transaction was a solvent reconstruction pursuant to Section 110 of the Insolvency Act 1986. RLB also advised on other aspects including pre-demerger reorganisation, capital reduction, and cancellation of unallotted shares. Pricewaterhouse Cooper advised on the tax issues.

Reorganisation of financial services business

Richard Price and Peter King advised on the reorganisation of a financial services company.

Property joint ventures

Peter Coats advised on two property development joint ventures, including negotiating shareholders agreements and articles. The firm also advised on the related construction aspects.

Medical joint ventures

Philip Maddock has recently advised on a joint venture between an IT group and a consortium of GP practices.

Peter Coats has negotiated a major joint venture between two companies which run GP practices. He has also advised on joint ventures for the management of other GP practices, and for the joint submission of tenders for healthcare contracts.

Commercial agreements in the medical sector

The Corporate Department, and in particular Philip Maddock, have continued to advise on various contracts in the primary care and mental health fields, including agreements for walk-in centres, out-of-hours services, GP-led health centres, healthcare provision in prisons and the outsourcing of medical services between a major NHS hospital and a private hospital in London. Philip also advised on one of the first contracts in the UK for Alternative Provider Medical Services (APMS).

Our clients include NHS trusts, NHS and private hospitals, GPs, Management companies and other NHS and private health providers.

This work is often complex and is quite "cutting-edge" in technical terms and represents a major growth area for the Corporate Department.

Transfer of architects' practices to LLPs

Peter Coats has advised on numerous transactions involving the transfer of the businesses of professional partnerships to limited liability partnerships.

Doctors' partnerships

Peter Coats, Philip Maddock, Sumaira Choudary and Peter King have all advised several doctors' practices on their partnership arrangements. The last few years have seen a significant increase in this type of work.

Trade mark advice

The firm has recently advised several organisations on the registration of UK and Community Trade Mark applications, including successfully negotiating with two international opponents to withdraw their oppositions.

We are seeing a marked increase in instructions in this area. If you would like to know more about how we can help you, please contact Sumaira Choudary at sumaira.choudary@rlb-law.com.

IP Innovations Hub

Philip Peacock has continued to advise the London wide NHS intellectual property innovations hub whose members comprise the principal NHS hospital trusts and other NHS bodies. The company advises on and coordinates the exploitation of intellectual property developed by its members and is funded by the Department of Health, BIS (formerly the DTI) and London Development Authority.

Continued...

Fashion sponsorship agreement

Sumaira Choudary recently advised an established fashion designer on a sponsorship agreement with a PR company representing an internationally known company manufacturing personal care products.

Sports merchandising contracts

Peter King has advised on two merchandising contracts involving two of Europe's most famous football clubs, in Spain and Italy.

Commercial advice for warehousing company

Peter King and Peter Coats have advised a company which specialises in the cold storage and warehousing of fresh food products on several commercial matters, including a stevedoring contract and the clients' terms and conditions of business.

For more information about any of the items in this newsletter, or about the services provided by our Property, Employment, Litigation, Tax & Private Client, Healthcare and other teams, please contact

Peter Coats

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