

corporate & commercial

Do you know who really owns your company shares?

If not, you may soon have to find out...

The British Government issued a range of proposals in the summer to enhance the transparency of UK company ownership and increase trust in UK business*. One of the key proposals is the introduction of new rules requiring companies to obtain and hold information on who owns and controls them. This came about because the UK committed to introduce such rules at the G8 Summit in June.

Will this just cause more red tape for companies, or will it affect only a small minority?

The reason behind the proposal is that English company law distinguishes between the legal title to the shares of a company, which is owned by the person or company whose name is entered in the register of members of the company, and the "beneficial ownership" of the shares. Beneficial ownership relates to the underlying rights to the shares such as the right to receive payments of dividends, or to decide how the votes attaching to the shares are cast in company meetings.

The owner of the legal title will often be the same person as the beneficial owner. Indeed, in the great majority of small and medium sized enterprises, the directors and the legal and beneficial owners of the shares will often be the same people, so new rules requiring companies to obtain information on who owns them will be irrelevant.

There are a number of matters to be resolved before the proposals can be implemented. For example, it is intended that information will have to be supplied to Companies House, but it is not clear how often this will have to be done, or whether the information will then be made available to the public. It is also not clear whether Companies House will have any duty to check the information supplied. There is a risk that, if not properly thought through, the proposals might make UK company law more cumbersome, which

might put off overseas investors thinking of incorporating their businesses here.

The same Government paper also makes a number of suggestions as to how the system for tackling the small minority of company directors that don't follow the rules might be strengthened. Ideas are put forward regarding the duties of directors, and changing some of the rules applying to the disqualification of directors.

At Birkett Long, we will be monitoring the progress of these proposals and will be ready to advise you on them when they become law. If you are interested in knowing more, or would like to make your views known on the proposals, please contact David Wisbey.

**Department for Business Innovation and Skills - Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business.*



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Forthcoming events

- **Green breakfasts**
Essential advice sessions will be presented by top speakers, who will examine the challenges and opportunities for business leaders.
- **Long term care - November**
A seminar on the cost of care.

For more details or to register your free place, email seminars@birkettlong.co.uk or visit www.birkettlong.co.uk/events



For Business

NEWS AND ADVICE FROM BIRKETT LONG

Can you afford to sue?



It is often said that the only winners in litigation are the lawyers! A new funding approach may help.

It is true that resolving disputes can cost a lot in legal fees but to resolve a dispute or obtain justice incurring these costs is sometimes inevitable. But what happens to the search for justice when people can't afford these costs? Is there an alternative?

For many years it has been possible to enter into what are known as conditional fee or no-win no-fee agreements. The advantage of these is that if you were unsuccessful you didn't have to pay and if you were successful your solicitor's costs, plus a success fee, would be recovered from the other party.

However on 1 April this year things changed. Conditional fee agreements are still available but the success fee must now be paid from your own damages if you win the case.

Alternatively, you could elect to use a damages based agreement, where you pay your lawyer a percentage of what is recovered. However there are quite a few problems with this funding.

A further alternative is third party funding, where a third party funds your litigation, in return for which they receive part of what you are awarded. The percentage varies according to the type of third party funding used.

If your claim is unsuccessful the third party funder will, usually with the use of insurance, pay the other party's costs and won't seek to recover those costs from you. If your claim succeeds, the costs of the third party funder will be paid back to them. They will also be entitled to a fee for providing funding. You will have to give up part of what has been awarded to you but it could allow you to make a claim when otherwise you may not have been able to do so.

If you have been considering taking legal action but have always worried about the costs of your claim, this may be an option. Third party funding is available to businesses as well as to individuals.



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Is your local under threat of closure?

The Localism Act 2011 could help save your local pub! It transfers power from central government to a local authority level and involves individuals, communities and local councils.

This Act gives the right to bid for and purchase local land that has community value. What is meant by 'community value'? A building or other land within the local authority's area may be designated as having community value if, in that authority's opinion, the main use furthers the social wellbeing or social interests of the local community and it is realistic to think that such a use will continue to do so. Land or buildings that fell into these categories in the recent past but no longer do so, can still be regarded as having community value so long as it is realistic to think that within the following five years the major use would further the social wellbeing or interests of the local community. Land excluded from community value would be residences and most land connected with them.

Each local authority must now keep a list of land in its area that it regards as having local community value. The community can nominate land for inclusion on this list. Nominations can be made by a voluntary or community group, such as an unincorporated body with at least twenty-one individual members, a charity,

or a parish council. Property that could be nominated may be buildings of local historic value or public houses. When the local authority receives a community nomination it must notify the owner of the land and decide whether or not to list that land within eight weeks. If it decides to list, the owner has a right of appeal.

Land listed as community value only remains so for five years, during which time there are restrictions on its disposal. However, there are exceptions to those restrictions. For example, the land could be gifted, or - where a business is carried on from the land - both the land and business are disposed of to the same person, so long as the business remains as a going concern.

Otherwise, a person who wants to dispose of listed land must notify the local authority in writing of his intention. The authority must notify the nominator and publicise the information which it has received. The owner may only dispose to a community group within six weeks of the notification. However, if the group makes no request to be treated as a bidder for the land, the owner is free to dispose as he pleases once the six week period has elapsed.

If a community group makes a written request to be treated as a bidder it must do so within the six-week period. The owner

may only complete a sale to the community group within six months, timed from the date he notified the local authority that he intended to dispose of the land but he is not compelled to do so. If the disposal is not completed within that six month period, the owner is free to dispose as he pleases and the local authority must not place any further hindrance on the owner's ability to dispose for a further twelve months.

It is already apparent that some local authorities and communities are approaching the new set up enthusiastically. It remains to be seen whether localism will be capable of putting a brake on the rate at which public houses serving their local communities are closing for business.



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Bare essentials

A quick guide to franchising

Franchising is the practice of a successful business expanding by allowing others to use its business model and brand, in return for the payment of a fee.

For the franchisor, it permits a quicker means of growth than organic growth, which requires investment in its own stores or equipment, together with the associated liabilities. In a franchise model, the franchisee acquires the premises and equipment needed to operate the franchise. In return the franchisee gets a much quicker route to market; with the opportunity to use the franchisor's tried and tested methods and the benefit of the goodwill already existing or developing in the franchisor's

brand. The franchisor's success depends on the success of the franchisees; the franchisee is thought to have a greater incentive than a direct employee because he or she has a direct stake in the business.

In the UK there are no franchise-specific laws. There is some self-regulation through the British Franchise Association (BFA) and the UK Franchise Organisation, but not all franchises become members. Franchises are governed by contract law and franchise agreements are often detailed, in particular to protect the franchisor's brand. For help with preparation of review of franchise agreements contact Tracey Dickens on 01206 217326 or email tracey.dickens@birkettlong.co.uk

Meet the team

Amanda Smallcombe

Amanda is Head of the Contested Trust and Probate team at Birkett Long. She joined the firm in October 2000 as a member of the litigation team and was made a partner on 1 June 2011.

An associate of the Association of Contentious Probate and Trusts Specialists, Amanda has completed the academic stage of the ACTAPS diploma. Adrian Livesley - the firm's managing partner - and Amanda are two of only a handful of lawyers in the region who are members of this association.

As a specialist in contested probate and will disputes, Amanda was asked to appear on the BBC TV's Inside Out programme earlier this year.

“ I have thoroughly enjoyed our cases over the years. You are the most conscientious and caring solicitor, and your clients have all been extremely fortunate to have your guidance and advice. ”
A business partner recommendation



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