



For Business

MOVING YOUR BUSINESS

Head of the commercial department, Peter Allen, comments on this newsletter's theme of moving your business:

"With the recession well and truly over and the economy growing strongly it is time to plan positively for the future. In our last two issues we dealt with buying and selling your business and cash flow. Well you may have decided not to sell, or you may have bought your new business and have your cash flow under control. The next stage could be to grow and for that you may need to invest in new property. After employees, property is usually the second largest expense for a business, and so it is important you make the right decisions about what you do. In this edition we look at several aspects of moving your business. I hope they are of interest and helpful to you."

Moving: an opportunity to protect or utilise key assets?

When you relocate your business you might also consider taking the opportunity to ring-fence key assets in order to protect them from your trading activities.

You can do this easily in relation to any new freehold property by setting up a subsidiary property holding company, which will purchase the property. You may have to provide cross-guarantees from your trading company for any lender liabilities associated with the property, but against others this asset will be protected from claims against the trading company. It would be appropriate to put a lease in place between the property company and the trading company, not least to ensure that if the trading company is ever sold, the trading company's rights of occupation are properly governed by normal commercial tenancy arrangements so that it cannot claim any greater rights.

You could go one step further and move all key assets out of the trading company to a subsidiary company. Inter-company transfers in certain circumstances are permitted without any adverse tax consequences arising from the transfer, and relief from stamp duty would be available (subject to relevant laws and regulations). If the assets are subject to encumbrances, such as legal charges (debentures, mortgages) or lease hire or purchase

arrangements, such transfers would require consent of the chargee and novation of any contracts; note such consent may come with some security requirements to continue to protect the chargee. There might also be some added administration to deal with registration of the transfer of registered vehicles, but you have to notify of the change of address anyway.

Use a SIPP to own commercial property

For smaller owner managed businesses, the shareholders might consider buying commercial freehold property through a SIPP (Self-Invested Personal Pension) to benefit from various tax reliefs. It is even possible for the company to part own the property with the owners, and over time for the SIPP to buy out more of the property. Certain arrangements need to be put in place, such as a lease between the SIPP and the business, and the business will have to maintain rental payments to the SIPP, which will be an expense of the business for tax purposes, but tax free in the SIPP.



Tracey Dickens
01206 217326
tracey.dickens@birkettlong.co.uk

Think early - think property

You may be moving your business, or just moving your business premises into a pension scheme and granting a lease back to the operating company, but the earlier you think about what you need for the business to operate properly from those premises, the better.

Moving in

The title to the property needs to be checked and the planning position understood. We would recommend that full searches are undertaken to provide information on highways, planning, contamination, water and drainage, chancel repair liabilities and other potential concerns. We are, however, always happy to discuss what these searches might reveal and the potential risks to the business, then tailor our service accordingly. In an ideal world, full due diligence should be carried out, including asking enquiries of the seller or landlord.

For example, there may be restrictions on the title which prohibit certain uses, or allow neighbours access - is security important to you? Alternatively, there might be defects in the title which mean that there are no rights to, for example, run the sewer along the route it currently uses. There could be planning conditions which restrict hours of access or operations. All of these potential issues can be resolved given time - and it may be that insurance is the most sensible

solution, but if so, should the seller/landlord be paying for that?

Statutory compliance will also be a concern to have checked out. Where is the fire risk assessment, is there an Energy Performance Certificate with a good rating, is there an asbestos report and maintenance programme for any building built before 2000 and is compliance with the Disability Discrimination/Equality Act relevant? As the new owner or tenant, compliance will be down to you and so ensuring compliance before you move in, when you are in a stronger position to get the seller/landlord to pay, is vital.

If you are thinking of making alterations to the building - even just putting up signage - will that require planning consent or building regulation approval?

If you are taking a lease of the building, that will be a more complex process than buying the freehold because you will either have to negotiate a new lease or review and take an assignment of an existing lease, which will usually need to be with the consent of the landlord, who may be able to require you to provide a guarantor or a rent deposit. How flexible do provisions dealing with matters like carrying out alterations, putting up signs, changing the use or disposing of the property, need to



Bare essentials

Getting the move right - staff considerations

An employer looking to expand its business will often need to move in order to accommodate that growth. That is good news for the company but can be seen by some employees as bad news, depending on how it affects them.

In my experience one of the trickiest parts of moving a business is dealing with the impact on employees. There may be complex legal issues around the enforceability of contractual relocation clauses or the move might in itself constitute a redundancy thus triggering statutory protection. This can trigger a legal requirement for consultation with affected staff but even in the absence of

that I would advise employers to consult with their staff over a move. That consultation needs to be sensitive to the fact that moves affect different employees in different ways.

In order to successfully deliver a move and take a motivated workforce with it, an employer should accept that individual employees will have individual needs and considerations which will affect how they react to a move.

Martin Hopkins
01268 244145
martin.hopkins@birkettlong.co.uk

be? Are you happy with the provisions governing insurance of the building - usually done by the landlord at the tenant's expense - and what exactly can the landlord provide by way of services and recover through a service charge? A lot of information should be provided and reported on to you. What is the state of repair of the building? Should the seller/landlord be carrying out works of repair before you buy or, if a lease, should your tenant covenant to keep the property in repair be limited by reference to a schedule of condition so that you only have to keep it as it is now? If you're moving to newly built premises then what warranties are being provided to you by those who designed and built it?

Finally, don't overlook the disbursements that will have to be paid to the government after completion, such as stamp duty land tax and Land Registry fees to register yourself as the new owner/tenant.

Moving out

This should be more straightforward than moving in, but there may be covenants on the title or in the lease for which you should insist the new owner indemnifies you against future

breaches. You will have to provide an EPC and asbestos survey to the buyer, and if you are moving out of leasehold premises, the buyer will want to ensure that you take full responsibility for any dilapidations that have occurred before they buy - otherwise they will pass to them. (Please see the back page article on delapidations.)

Again, if you are selling your lease or subletting, then you will almost certainly need landlord's consent - and you will have to pay the landlord's costs associated with giving that.

Understanding what your business needs and what your priorities are, will enable your legal team to provide the service that you deserve.



David Rayner
01245 453826
david.rayner@birkettlong.co.uk



Meet the team

Kevin Sullivan

In addition to handling substantial contract and company disputes, Kevin acts for insolvency practitioners in the pursuit of contentious recovery actions and advises companies and directors, as well as debtors and their spouses/partners, in relation to a wide variety of corporate and personal insolvency-related issues. He also has a particular interest in the defence of proceedings brought under the Company Directors Disqualification Act 1986.

Kevin joined Birkett Long as an associate solicitor in August 2009 and became a partner on 1 June

2011. Kevin qualified as a solicitor at a commercial practice in Ipswich, where he gained considerable experience acting for assorted businesses and individuals involved in a broad range of commercial disputes before specialising in contentious insolvency.

“Excellent solicitor, with a highly analytical mind. He provides unique solutions to issues and advises on these with clarity and confidence.”

Chambers UK 2013 (Legal Directory)



Kevin Sullivan
01206 217376
kevin.sullivan@birkettlong.co.uk



litigation advice

Dilapidations - tips for tenants when moving premises

The natural tendency when a business moves is to focus on the new premises. However, when a lease comes to an end a tenant will usually face a claim from their landlord for the cost of repairs and redecoration necessary to put the property into the condition that the tenant was required to leave it in under the terms of their lease.

This is known as a dilapidations claim. Such claims can be substantial but we set out below some tips for tenants to minimise their liability.

- When taking a lease of new premises, consider obtaining a Schedule of Condition and ensure that your repairing obligations are limited to leaving the property in no worse a condition than at the start of the lease. If this was not done for your current premises, consider doing it for your new premises, particularly if they are not in the best condition at the outset.
- Act early. If you have a good relationship with your landlord and you address the issue early enough, you may be able to agree on a schedule of works to be carried out before the end of the lease. Alternatively, you may wish to consult a surveyor yourself at an early stage to advise upon the works required, so that you can get those works done before the end of your lease, rather than being left trying to negotiate a settlement figure with your landlord following the service of a Schedule of Dilapidations at a later date.
- On receipt of a Schedule of Dilapidations, consider getting an estimate from your

own contractor for the cost of carrying out the works required. This can be a powerful negotiating tool.

- Make enquiries as to your landlord's intentions for the property. You are likely to have defences to a dilapidations claim if the landlord, or an incoming tenant, is intending to carry out works to the premises themselves in any event.
- Seek professional advice on receipt of a Schedule of Dilapidations. Landlord's claims are invariably put at their most optimistic and significant savings can often be negotiated.

Acknowledging and addressing the issue of dilapidations well in advance of the end of your lease and taking a proactive approach is ultimately likely to result in a much better outcome and a reduced liability.

If you would like further advice or assistance in relation to dilapidations please contact Keith Songhurst.



Keith Songhurst
01245 453821
keith.songhurst@birkettlong.co.uk

Forthcoming events

- **Discovering Business exhibition**
Come and see us at our stand in Colchester on 7 October or Thurrock on 6 November.

For more details on any events, email seminars@birkettlong.co.uk or visit www.birkettlong.co.uk/events

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EX
T 01268 244144

ESSEX HOUSE, 42 CROUCH STREET
COLCHESTER CO3 3HH
T 01206 217300

NUMBER ONE, LEGG STREET
CHELMSFORD CM1 1JS
T 01245 453800

E BUSINESSNEWS@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK

Birkett Long LLP is authorised and regulated by the Solicitors Regulation Authority (Number: 488404)
Birkett Long LLP is authorised and regulated by the Financial Conduct Authority (Number: 481245)

Whilst every care and attention has been taken to ensure the accuracy of this publication, the information is intended for general guidance only. Reference should be made to the appropriate adviser on any specific matters.

© Birkett Long LLP 2014 We hope you find this newsletter of interest, but if you would prefer not to receive it or wish to receive a copy via email, please contact the Business Development and Marketing Team on 01206 217334.

Reference: NEWS/FORBUSINESS17/2014

