WALL JAMES CHAPPELL SOLICITORS

BusinessUpdate.

Spring 2013

Inside this issue:	Page
Firm News	1
Articles	
CIOs	1
Rise in small claims limit	2
Re-gearing	3
Lease disputes	3

Firm News

Wall James Chappell *will be holding its annual corporate golf day at Blackwell Golf Club on Friday 5 July 2013.*

Last year the event raised £1,000 in aid of Mary Stevens Hospice. Forty five players took part including participants from Barclays, Nat West, Allied Irish, CK accountants, Nicklins, Butcher Woods, Wilkes Tranter and Origin financial.

The firm is proud to support the Hospice through this annual fundraising event and we look forward to welcoming more corporate teams this year to raise even more money for such a worthwhile cause.

Should you wish to enter a team please contact Philip Chapman (p.chapman@wjclaw.co.uk).

The firm also holds seminars throughout the year. In the past, topics have included business succession planning and the new pension regulations. 2013 will see a number of seminars on charity law, the first of which was held in association with the "Wolverhampton Transforming Local Infrastructure" project.

Our sponsorship of the Charity Trustee Investors Association will also involve a number of symposiums in Birmingham city centre in association with various investment banks providing regular market and legal updates to attendees.

As the main sponsor of Dudley Kingswinford Rugby Club, we are also proud to hold various events at the club, including sponsorship of local matches with Stourbridge and Bromsgrove.

Corporate transactions for small to medium sized businesses continue to grow and we are confident that the market will continue to improve throughout 2013.

Wall James Chappell corporate seminar at Stourton Park

Corporate golf day at Blackwell Golf Club

What is a Charitable Incorporated Organisation (CIO)?

Charitable incorporated organisations (CIOs) are a new corporate structure designed specifically and exclusively for charities. The Charity Commission (Commission) began registering CIOs for new charitable activity (as opposed to converting an existing charity into a CIO) from 3 January 2013.

The CIO is an alternative to other common legal structures for charities, such as charitable companies (usually companies limited by guarantee), charitable trusts, and charitable unincorporated associations.

CIOs will be registered with and regulated by the Commission but, unlike charitable companies, will not also be required to register with, or be regulated by, the Registrar of Companies.

Like all corporate structures, CIOs have a separate legal personality allowing them to contract and hold property in their own name and, like limited companies, their charity trustees and members benefit from limited personal liability.

The key characteristics of a CIO are:

Single regulation and registration. CIOs are regulated by charity law and not by company law. They only need to register with the Commission, and not with Companies House.

...continued over page

...continued

Registered charity status. All CIOs are registered charities and an exempt charity cannot be a CIO. At the same time as an organisation is accepted by the Commission for registration as a CIO, its details are entered in the register of charities.

Separate legal personality and limited liability. Like any corporate vehicle, CIOs have a separate legal personality and can contract and hold property in their own name. The liability of its charity trustees and members is limited.

Membership. CIOs must have one or more members. A CIO's members are either liable to contribute up to a specified amount to the assets of the CIO if it is wound up or not liable to make any contribution at all. A charity trustee can (but is not required to) be a member and the members and the charity trustees can be the same people.

Less onerous reporting and accounting requirements. CIOs do not need to prepare a directors' report under the Companies Act 2006, just an annual report. The accounting regime. Charities need only submit one annual return

It is generally thought that the new CIO structure will appeal to medium-sized unincorporated charities which employ staff and/or enter into contracts.

Contact Philip Chapman
(p.chapman@wjclaw.co.uk)

Philip specialises in mergers and acquisitions and contractual advice with a particular interest in the charity sector. Philip is also a ***Notary Public****.*

Small claims limit set to rise

For all cases issued after 1 April 2013, the small claims limit is to increase from £5,000 to £10,000. The Government's intention is to eventually increase the small claims limit to £15,000. Many court users will welcome the extension of the small claims limit as the small claims court is often used by businesses and consumers acting for themselves.

The key difference in the small claims court is that generally you cannot recover legal fees from the other party even if you win. Legal representation is usually therefore not cost effective. It also means that "no win no fee" agreements are not available in small claims cases because there is no mechanism for the solicitor to recover costs against the loser.

Whilst a Judge has a general discretion to award costs where the other side has acted unreasonably, this is the exception and not the rule and anybody issuing a claim in the small claims court should do so on the basis that they are unlikely to recover any legal fees save for the court fee even if they are successful.

Before you issue in the small claims court, it is worth considering whether you have legal expenses insurance perhaps on your household insurance policy which may cover your costs therefore.

£10,000 is a substantial sum of money and claims under this limit can be quite complex. We can offer a fixed fee service for important steps like the first letter, drafting the Claim Form and setting out your case clearly. We can also offer a "hand-holding" pay as you go service offering you advice about the process when you think you need it e.g. when the Defence comes in or advising you what to do at the final hearing to maximise your chances of winning.

If this is something in which you are interested, please contact Jane Beale who is the Partner in charge of the Litigation Department or her team, Simon Beddow and Tanya Hill-Thompson.

Contact Jane Beale
(j.beale@wjclaw.co.uk)

Jane specialises in litigation with a particular interest in contentious trusts and probate matters.

Time to re-gear!

In the current economic climate lease re-gearing and extensions are becoming increasingly popular for both landlords and tenants. It provides an opportunity for a tenant to agree a reduction in rent with the landlord in exchange for agreeing to extend the lease term.

The changes can be documented in a number of ways. Firstly by a variation of the existing lease to deal with the reduction in rent and any other changes together with the entering into at the same time of a reversionary lease (substantially on the same terms as the existing lease) which will take effect at the end of original the term.

Secondly by a surrender of the existing lease and the grant of a new lease. Or thirdly, by a Deed of Variation dealing with all matters including the extension of the term which in law is treated as a surrender and re-grant so in practice is no different to option 2.

Advice needs to be taken on structuring the deal; one of the main considerations is minimising Stamp Duty (SDLT) liability. Under options 2 and 3 SDLT is calculated on the whole of the term although credit is given by way of overlap relief for SDLT already paid. However, if the existing lease was granted prior to the introduction of SDLT in 2003 then no relief is available which could result in significant SDLT liability.

In order to minimise SDLT many re-gearings are structured by way of the first option. Guidance provided by HMRC confirms that although the effective date for SDLT purposes is the date of the lease it is the start date which could be say in 5 years' time which is used for calculating the net present value on which SDLT is calculated.

If you require any more advice on re-gearing or on commercial property generally please contact Ruth Latham.

Contact Ruth Latham
(r.latham@wjclaw.co.uk)

Ruth handles a range of commercial property work for developers, industrial retail and other sectors.

Arbitration—resolving disputes under a lease

Leases commonly provide for references to an arbitrator in the absence of agreement between the parties. For example, if the figure for rent is to be reviewed during the lease, and the Landlord and Tenant cannot agree on the new figure, or if at the end of the lease period there is disagreement over how much work is required to put the property into "good and tenantable repair and condition".

The lease will often state that such disputes are to be resolved under the terms of the Arbitration Act 1996. The lease should say who is responsible for appointing the arbitrator and at which stage the matter can be referred to the arbitrator.

Arbitration is more like court-based litigation than mediation or expert determination. A mediator tries to assist parties to resolve their dispute between themselves, and a jointly-appointed expert will use his or her particular knowledge and experience to come up with a figure which the parties have previously agreed in the lease will be binding on them if an expert has to be appointed. However, an arbitrator makes an "award" which is binding between the parties as a matter of statute, after dealing with the matter as a privately-appointed judge.

When a lease which makes reference to the Arbitration Act is signed by the parties, they are consenting in advance to this procedure in the event of future dispute, as a means of resolving the potential dispute even before it has arisen. Effectively, the public court system with a judge appointed by the Government is replaced by an arbitrator appointed separately, who acts in the same way a judge would.Indeed, if arbitration proceedings are under way, then any court action concerning the dispute cannot proceed and must generally be stayed by the court pending the outcome of the arbitration.

...continued over page

...continued

This means that an arbitrator must act in a fair and impartial manner. The Act sets out the procedure for how the matter is to be dealt with. Although there are some mandatory points which have to be followed, there are others where the parties can agree on the procedure to be followed.

It is mandatory, for example, for the arbitrator to have the power to compel witnesses to attend the tribunal, and for a court to be able to grant permission to enforce the award as if it were a court judgment. However, the parties are free to agree such matters as how many arbitrators there should be, and what should happen if the arbitrator dies, becomes incapable or resigns before making the award.

Arbitration can be quicker to resolve than using the public courts, particularly during this period of government cut-backs, and can actually be used by parties in respect of any dispute whatsoever, if they so choose. Nevertheless, the arbitrator's costs are payable in full by the parties, whereas there is a limit on court fees which have to be paid, which generally provide for only a contribution towards the cost of running the public court system.

Contact John Cockling
j.cockling@wjclaw.co.uk

John provides legal advice to clients regarding both their commercial property and commercial needs.

Contact us:
Tel: (01384) 371 622
15-23 Hagley Road, Stourbridge, West Midlands, DY8 1QW

Corporate and Charities
Philip Chapman
p.chapman@wjclaw.co.uk

Commercial Property
Ruth Latham
r.latham@wjclaw.co.uk

Commercial and Property
John Cockling
j.cockling@wjclaw.co.uk

Employment/Litigation
Simon Beddow
s.beddow@wjclaw.co.uk

Litigation
Jane Beale
j.beale@wjclaw.co.uk
Roger Bishop
r.bishop@wjclaw.co.uk
Tanya Hill-Thompson
t.hill-thompson@wjclaw.co.uk

Town Planning
John Cockling
j.cockling@wjclaw.co.uk