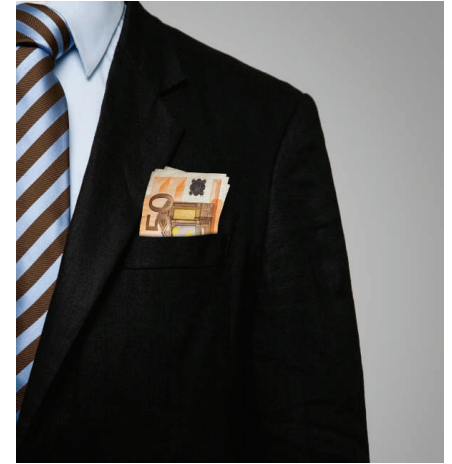


Issue 1 2010

## Bribery Bill

The Bribery Bill is a major piece of new legislation that is currently in the final stages of its passage through Parliament. The current law on bribery is commonly considered to be unsatisfactory. This is illustrated by the fact that the UK has so far failed successfully to prosecute any bribery case against a company. For some years the Law Commission has been working on proposals for reforming the existing law. The Bill creates two general offences of

bribing and being bribed together with a specific offence of bribing a foreign public official. Significantly for companies (and partnerships), the Bill also introduces a new, corporate-only offence of failing to prevent bribery. The practical implications of the Bill, when passed, for all commercial and public sector organisations is that they should specifically prohibit bribery in any form within the organisation. For more details contact [peter.billyard@clmlaw.co.uk](mailto:peter.billyard@clmlaw.co.uk).



## Company names

Until 1<sup>st</sup> October 2009 two company names would only be construed as “the same as” each other and rejected by Companies House in very limited circumstances. For example “H and S Limited”, was the same as “Hands Ltd”, but “H and S (UK) Ltd” was different.

However, the Company and Business Names (Miscellaneous Provisions) Regulations 2009 has introduced a longer list of words and symbols that cannot be used to differentiate two company names. The list include the use of “UK”, so the third example above, would now be “the

same as” the two other examples. Other words that are included in the list are: “services”, “international”, “holdings”, “imports”, “co.uk”. None of these words, amongst others, can now be used to differentiate between two companies, unless specific conditions are met.

## Corporate Manslaughter

The trial of the first prosecution under the Corporate Manslaughter Act will take place from 23 February 2010 in Bristol Crown Court and has been listed to run for six weeks.

The prosecution relates to the death of a 26 year old employee of Cotswold Geotechnical Holdings who was killed when the trench he was working in, collecting soil samples, collapsed. Company director Peter Eaton has been charged with gross negligence, manslaughter, and for a breach of Section 37 of the 1974 Health and Safety at Work Act. The case is expected to give considerable guidance as to the use and interpretation of the Corporate Manslaughter and Corporate Homicide Act 2007 which became law on 6 April 2008.

## Seminar Success



Tom Walker

Tom Walker of Charles Lucas & Marshall and Nick Bettes of Icon Business Solutions put on a joint breakfast seminar entitled “Maximising Value, Minimising risk” at the historic Shaw House in Newbury in early December. The event was very well attended and planning is underway for a further seminar in September 2010. Icon Business Solutions advise businesses on achieving growth by improving business structures and resource usage.

For more information on the services IBS can offer, contact

**Nick Bettes** on

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## Good housekeeping - for companies

The Companies Act 2006 (the Act) is the principal piece of legislation which affects how companies run themselves. The Act was, as its date suggests, first introduced in November 2006. But its complexity and sheer size meant that it had to be phased in over a three-year period which ended last October.

One of the Act's key aims was to simplify the administrative and procedural life of private companies and clearly distinguish between those measures which only affect either smaller (mostly) private companies or larger (mostly) public companies. It also sought to provide companies with a more 'permissive' framework in which to operate, should they wish to. Consequently, a considerable number of beneficial changes available under the Act require positive action to be taken on the part of the company – and also knowledge that such options exist.

### So what have been some of the main changes for private limited companies?

- A director is now able to register a service address rather than his residential address with Companies House. A director's address is 'protected information' under the Act and can only be disclosed by the company and Companies House in certain limited circumstances.



- It is no longer necessary to have a company secretary. However, if a company decides not to have one, it will still need to designate a director to carry out the duties previously carried out by the secretary. Note that a sole director can also be appointed as a secretary.
- Existing companies with only one class of shares can now give directors the power to issue shares without the need for further shareholder approval. This can be done by passing an ordinary resolution.
- It is no longer a statutory requirement to hold an Annual General Meeting.
- The deadline for filing a company's accounts with Companies House has been reduced by a month to nine months after its year end. Also, a

company is no longer required to lay accounts at a general meeting.

- Resolutions can now be circulated by email or on a website. Ordinary and special resolutions by shareholders can also be passed as written resolutions by the same majority of all the shareholders as would be required to pass the resolution at a (physical) general meeting. Previously, written resolutions required unanimity.
- At least one director of a company must be what is termed a 'natural person'. Existing companies with single corporate directors have been given a grace period until 1 October 2010 to comply with this requirement.
- A single director is now able to execute a deed on behalf of the company provided that his signature is witnessed. This is in addition to the previous methods available, namely the use of a company seal, the signature of two directors or a director and the company secretary.

For further information contact Peter Billyard on 01635 521212 or

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### Mailing List

To receive future newsletters by post or email, please forward your details to: [marketing@clmlaw.co.uk](mailto:marketing@clmlaw.co.uk) with 'Corporate Services Newsletter' in the title. To stop receiving this newsletter please contact [marketing@clmlaw.co.uk](mailto:marketing@clmlaw.co.uk)

### Social Media Savvy?

twitter



You can now follow Charles Lucas & Marshall Solicitors on **Twitter** for the latest news and information from the teams - [@clmlawbits](https://twitter.com/clmlawbits). We also have articles, updates and news available on our Website and Facebook page.

## THE “COMMERCIAL” REALITIES OF LIFE -

### How to avoid contractual disputes arising and the potential for litigation

**W**hether you are an Individual, or engaged in business, either as a sole trader, Partnership or Limited Company, the last thing you want, having entered into an agreement or contract with another party, is to end up having a contractual dispute which arises because the initial contractual terms are either unclear, vague or open to different interpretations.

Experience has dictated that becoming involved in a contractual dispute, can become very costly, in a number of different ways:-

- the potential direct “legal costs” incurred.
- the potential individual costs of “lost management time”
- the “anxiety and stress” suffered.

#### Think ahead

It is inevitably the case, and human nature, that parties, when entering into an initial agreement, enter into such agreements in good faith, believing that nothing will go wrong and therefore give little, if any, thought of how they may be protected if relationships turn sour.

No matter how rosy things may seem at the initial point in time when entering into a contract, you should realise from day one, that all such contracts have the potential to lead to disputes, and you should be prepared to cater for such an eventuality, no matter how small the risk may at first appear.

#### Reduce any agreement to writing

Apart from contracts for the sale of land, the transfer of shares or assignment of intellectual property rights, which must be evidenced in writing to be legally binding, a contract or agreement can be verbal, in writing, or a combination of both.

Some people do not realise that a verbal contract is as valid and as enforceable as

a written contract.

However, if a contract is purely verbal, and a dispute subsequently arises as to whether a contract has been formed in the first place, and if so, as to its terms, then, in the absence of any independent witnesses to verify one way or the other, it is simply one person’s word against the other, and this is a recipe for potential disaster.

The golden rule is to ensure that, in the first place, any contract or agreement is reduced into writing. This will avoid any subsequent dispute that may arise between the parties over whether any contract had been entered into at all.

Whether a formal contractual document needs to be entered into will depend upon the wishes of the parties and the nature of the contract entered into.

Formal contractual documentation is more likely in the more substantial cases. However, simply entering into an exchange of correspondence, agreeing to the contract, will suffice, or indeed, a single sheet of paper, reflecting the agreement, which is signed by the parties.

This way, the potential for disputing the very existence of a contract or agreement can be avoided.

#### Make sure the contractual terms agreed are recorded in writing and signed

Entering into a contract is one thing, but many contracts entered into do not accurately or clearly set out or reflect the terms agreed.

Whilst there may be no dispute that a contract has been entered into, a dispute very often arises over the actual terms of the contract.

Common areas of disputes involve the date that the contract was made, the

correct identity of the parties to the contract, the duration of the contract, pricings, terms of payment etc.

Accurately recording in writing the specific terms agreed will again assist in avoiding any subsequent dispute arising as to the precise terms of a contract.

Although it seems an obvious point, it is important to make sure that the contract or agreement is signed by the parties concerned. Too often, parties, whilst going to great lengths to agree a contract document, forget to sign the document. In the absence of such signature, in the event of a subsequent dispute, there is no evidence that one party agreed to enter into a contract or its terms.

#### The main key to resolving contractual disputes

In any contractual dispute, the starting point must be to look at how the contract or agreement was formulated or made, and then to look at the terms of what was agreed.

No matter how acrimonious such disputes can become, very often, experience has shown that the key to resolving any contractual dispute lies in the consideration of what was agreed at day one.

If there is a written contract, containing agreed terms of the contract, signed by the relevant parties, then this will avoid the potential for any subsequent dispute as to the existence of a contract or its terms.

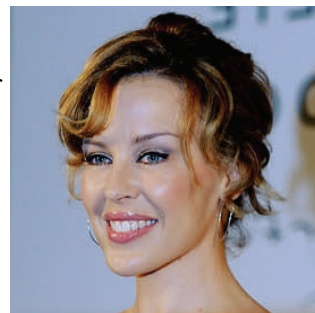
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## Client News

### Studyvox Limited

New clients Sara and Kevin Martin turned to Tom Walker of the firm's Corporate Services Team for advice on the funding terms and shareholders agreement for their company Studyvox Limited. A business angel has acquired 33% of the company in return for his investment in a deal that is reminiscent of the Dragon's Den television program. The company has set up a student social networking site to rival Facebook, with the added benefit that members will be entered into a draw to win a £10,000 bursary, funded by a charitable foundation. The patron of the foundation is Kylie Minogue who will be the star guest at the Oxford charity launch early in 2010.



### Thoroughbred Publishing Limited



Peter Billyard recently advised on two separate inter-company reorganisations. In one, International Thoroughbred, a monthly racing and bloodstock magazine, was purchased by Berkshire-based Thoroughbred Publishing Limited from International Thoroughbred Limited.

In the other, Ideas Industry (Reading) Limited, a Theale-based marketing and web-design company, acquired 100% of the issued share capital of its London-based sister company Ideas Industry Limited for an undisclosed sum.

### Dietrich Limited

Tom Walker has advised on a new investment and shareholder agreement for a luxury lingerie business. Established by Frederika Cook in 2008, 'Dietrich' designs and manufactures women's lingerie; blending contemporary fashion together with old Hollywood glamour. The financing will enable the company to expand its manufacturing base into Europe and develop its marketing and promotional strategy thus ensuring that it can meet the supply requirements of high-end department stores as well as boutiques. An equity stake in Dietrich was sold for an undisclosed amount to a private investor.



### When did you last check the health of your BUSINESS? **FREE** Health check worth £250!

Make sure your business's legal documents are up-to-date, effective and enforceable. The Health Check covers the following areas and helps to ensure that your business is in great shape for the future: Customer and supplier contracts, Shareholders' / Partnership / LLP Agreements, Preparing your business for sale, Companies Act 2006 compliance and opportunities, Website contracts and policies. For more details on how we can help your business, contact Tom Walker on **01635 521212** or **tom.walker@clmlaw.co.uk**

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