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Look after the pennies and the pounds will look after themselves

Unfortunately, the ongoing uncertainty in the Eurozone means that there is no immediate end to the economic gloom. However, in spite of the many difficulties faced by businesses, we know that many are still operating profitably without having to undergo wholesale reorganisation or restructuring. But there are always opportunities to save money, protect assets and generally determine the financial security of the business. This edition of NewsBrief focuses on ways to be canny with the cash.

Last chance saloon: High Noon for 'no win, no fee'.

The relatively risk free 'no win, no fee' regime for litigants is under real threat under the Legal Aid, Sentencing and Punishment of Offenders Bill.

The Bill, if passed, will implement many of the reforms proposed by Jackson LJ in the Final Report on his Review of Civil Litigation Costs, published in January 2010.

The current system of 'no win, no fee' (also known as Conditional Fee Agreements, or CFAs) is likely to change:

- "No win, no fee" success fees won't be recoverable from an opponent;
- 'After the event' insurance premiums will only be recoverable from an opponent in certain clinical negligence actions;
- Damages Based Agreements, also known as contingency fees, will be permissible where 'no win, no fee' agreements are currently permitted;
- Contingency fees will be subject to a % maximum.

In recent years CFAs, accompanied by 'after the event' insurance, have offered an attractive, virtually risk-free, environment for claimants. Advocates of the regime argue that it has widened access to justice and to reverse it would mean that claimants without significant funds would be unable to

pursue their claim, regardless of how strong it might be. CFAs have allowed claimants to pass significant costs on to a losing defendant if the case is won. On top of the basic costs, a success fee is also payable which is designed to compensate the claimant's solicitors for those cases lost (where the claimant's solicitor goes unpaid). Insurance is usually taken out to protect the claimant against the risk of paying legal costs if the case is lost, but if the defendant loses the case, they are liable for the premium as well as the basic costs and the success fee. It was the shifting of these significant, additional costs to the losing defendant that was considered by the costs review to be objectionable. However, the counter argument maintained that defendants did not settle good cases early enough thus leaving themselves exposed to inflated costs. The current indications are that the recommendation to revoke CFAs will be passed, although precisely what replaces them remains to be seen.

Now really is the last chance for potential claimants to sign up to a CFA before they are consigned to the pages of legal history.

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LSA Heralds New Era

You would expect me to take an active interest in the Legal Services Act which has finally been implemented. It has been heralded as the greatest challenge - or opportunity - (depending on which end of the eyeglass you view it from) for law firms for a generation. In a nutshell, the LSA is seen as a way of opening up competition within the legal services market, enabling greater access to justice for consumers and reducing the cost of 'going to law'.

But what will this change mean for businesses? Views vary - some see it as a way of ensuring a more robustly commercial operation, culminating in lower fees as efficiencies are implemented either through the streamlining of work or the amalgamation of smaller firms to achieve economies of scale. Others see it having very little impact on the way in which commercial law is delivered, believing that clients are unlikely to entrust their affairs to businesses that lack a track record in delivering legal services.

The answer is probably somewhere in the middle. There is no doubt that the traditional business model on which most law firms are based is overdue a shake up. It is unlikely that legal services for businesses lend themselves to the type of approach adopted by 'big brands' entering the consumer market. However, there is plenty of scope for greater use of technology and delivery via the internet particularly as younger people, whose lives are driven by electronic interaction, start moving into the work place. Commoditisation is the buzz word du jour and the number of software companies lining up to sell their services to law firms to help them achieve it provides ample proof of that particular pudding.

We're meeting this challenge head-on: our investment in new technology to help deliver a more streamlined service to our clients is ongoing; and we're constantly looking for ways of making our processes more efficient. We are embracing, rather than ignoring, the changing legal landscape.

Nick Abell, Senior Partner



There may be money in the small print - time to review your contracts.

Some contracts are profitable, and some are not - and hindsight is a perfect science. If you knew what you know now, you may have thought twice before entering into those unprofitable contracts.

However, do not assume that all is lost even after you have signed the contract. We have recently helped a number of clients to get key contracts back on track, saving large sums of money on unprofitable contracts. You may already have done some of these things but it is certainly worth:

- Identifying the profitable contracts from those that are not;
- Prioritising the high value, unprofitable contracts or those large contracts where the profit margin is lower than you expect;
- Reviewing those contracts to see whether you can:
 - o Further improve your performance;
 - o Help the other party improve its performance if it's impacting on your profitability; and
 - o See whether you can re-negotiate.
- Obtaining a legal review of key contracts to establish:
 - o Whether you can terminate the contract early;
 - o If you can terminate early, how much will it cost and what are the legal arguments you can use to reduce the costs; and
 - o What legal arguments can help in any re-negotiation.

In terms of the money you could potentially save, the cost of reviewing key contracts is minimal. Please contact Justin Byrne, a Consultant with over 20 years' experience of advising on contract issues, to discuss any of these options.

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Wright Idea: protecting your assets

Over the years we have stressed the importance of identifying any intellectual property rights you may have and also how to protect them, not least because you may well be sitting on some very valuable assets.

Because identifying IPRs may not always be straightforward, we are offering clients an IP audit for a fixed fee (refundable against any new instruction received within six months of the audit). The audit will involve an impartial, detailed review of your business, carried out at your premises. So, if you have a business that:

- sells its services or goods under a brand, logo or name;
- creates or uses written materials, images, software or websites;
- develops or manufactures products or materials; or
- uses or develops innovative products or processes ...

then get in touch and hopefully we'll discover some hidden gems!

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Insurance disputes on the rise

We are seeing a surprising number of insurance claims coming our way as insurers decline cover outright or reject specific claims. This affects businesses and private individuals alike and we have recently advised on a number of household and jewellery claims as well as other insurance-related issues.

Insurers quibbling over claims may in itself be nothing new, but the volume of these issues seems to have increased recently and is perhaps a sign of the times. BP's Deepwater Horizon oil spill is thought to have been largely self-insured but, even taking that disaster out of the mix, 2010 was still the seventh most expensive year for global insurers since 1970, mainly due to natural disasters such as earthquakes. In the UK alone the very cold snap before last Christmas gave rise to large numbers of household and motor claims, and the Japanese earthquake and tsunami will have made an impact on UK insurance groups, since they bear a share of these losses through the London reinsurance market. As insurers' profits are squeezed this may increase pressure to question claims.

When insurance is placed, the insured must provide insurers with all material information; this duty of good faith resurrects when a claim is made. This area of English law is heavily biased towards insurers, but that does not allow them to ride roughshod over the insured's rights and withdraw without justification from the insurance bargain they agreed. Nor are insurers entitled to ignore the 'Insurance: Conduct of Business Sourcebook' published by the Financial Services Authority which attempts to redress the balance of fairness between insurance companies and consumers when it comes to insurance coverage and claims.

It is not always necessary to go to court to resolve disputes. The Financial Ombudsman has jurisdiction and that service is free, although our experience suggests that this route may not resolve the claim any quicker than court proceedings. Alternatives such as mediation are always available too.

If you are in any doubt about how best to respond to queries from loss adjusters or insurance companies then please do not hesitate to get in touch. A well-worded letter setting out why the policy is valid, and how the losses fall within the policy, might result in insurers swiftly changing their mind about paying a claim.

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Ring fence your pension

Pensions - and estate planning generally - are easily overlooked when making a will. People's pensions will normally be their largest fund and careful planning via a will can help to protect it from unnecessary inheritance tax liabilities.

Pension Death Benefits

Most defined contribution and personal pensions pay a lump sum if you die before drawing or crystallising your pension. Most pensions allow you to choose who should receive the lump sum. However, the most tax-efficient way to make the payment is to a specially-created trust (often known as a "Death Benefit Trust" or "Spousal By-Pass Trust") from which your partner (and/or anyone else you choose) can benefit.

Use of a Death Benefit Trust can achieve significant tax and estate planning advantages including:

- Saving Inheritance Tax on your surviving partner's death;
- Avoiding any payment being assessed for care home fees for your surviving partner;
- Avoiding any lump sum payment being seized by creditors if your surviving partner becomes insolvent;
- Preventing any payment passing to your surviving partner's subsequent partner if he or she remarries;
- Protecting the lump sum and providing a flexible structure for the benefit of minor children;
- Offering protection for vulnerable beneficiaries or those who are not financially mature; and
- Flexibility to take into account future tax changes or changes in your family's circumstances.

Death in Service Benefits

Death Benefit Trusts are not only for pension death benefit lump sum payments – they can also be used to receive a Death in Service Benefit from your employer.

For more information on how you can protect your pension and other assets, please contact John Rouse.

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Financial assistance – gone but not forgotten....

Broadly speaking, “financial assistance” is any help given by a company to assist a third party to acquire shares in itself or in its holding company or companies.

Before October 2008, private companies could not offer financial assistance for the purpose of acquisition or for the discharge of a liability, unless a pre-approval process (known as the whitewash procedure) had been followed. Although this requirement has now been lifted, corporate transactions have to consider, and approve if necessary, the giving of financial assistance by private companies. The rules relating to unlawful reductions of share capital also continue to be relevant.

Current position

The directors of a private company must follow certain procedures when considering authorising a transaction involving financial assistance. As a minimum, the Buyer will be

keen to ensure that the directors of the target company (and/or members of the target group) have considered the following:

- Does the target company (and/or members of the target group) have the power to give financial assistance?
- Are the directors of the target company (and/or members of the target group) complying with their duties under the Companies Act 2006 in sanctioning the giving of financial assistance?
- Does the target company (and/or members of the target group) have any insolvency issues?

Unlawful reduction of share capital

The common law principle that a company must retain its capital still remains, notwithstanding the removal of the prohibition on the giving of financial assistance. Therefore, it is still unlawful for a company to return assets to shareholders

other than through permitted methods such as: dividends, reductions of share capital approved by the solvency statement procedure and court approved reductions.

If by virtue of the financial assistance there is an effect on the net assets of the target company (and/or members of the target group), then this must be met out of distributable reserves. In considering whether the giving of financial assistance reduces the company's net assets the directors should take clear minutes of any decisions reached and, where necessary, record the matter by way of a provision in the company's accounts.

Please note that this article relates to private companies only.

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Co-habitation: more clarity in property?

More than half of couples in the 16 – 44 age group are now co-habiting rather than being married and many of them will jointly own their property – but rarely with a formal agreement that clearly sets out how the property should be divided in the event of the relationship breaking down.



The Supreme Court has recently handed down their decision in *Jones v Kernott [2011]*, a case that concerned the allocation of shares in a jointly owned property after the relationship ended. The decision sets out clear principles that should be applied when determining the shares that co-habitees hold in their home in the absence of a legal agreement. The Supreme Court has made it clear that, without legislation to clarify this notoriously difficult area, the courts will continue to decide difficult cases, often on sparse and conflicting evidence. This decision gives even more impetus to the message to co-habiting couples – get your house in order and make a declaration of trust or co-habitation agreement so that it is quite clear who owns what.

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Welcome to...Eleanor Deady



Eleanor Deady, formerly of Cobbetts' Birmingham office, has recently joined our commercial property team as a partner. Eleanor brings a host of leadership qualities and experience to the role and was attracted to Wright Hassall by the opportunity to work as part of a close knit, cross-disciplinary team.

Experienced in managing and handling all real estate matters, Eleanor's particular expertise rests in the project management, legal structuring, funding and contractual delivery of regeneration and development schemes, acting for both private and public sectors.

She recently secured signed documentation on a mixed use regeneration scheme in the south with a value of over £50 million and believes that the present imbalance between supply and demand will force activity in the Midlands over the next few years.

Eleanor also led the legal team acting in the acquisition, forward funding, pre-let and investment disposal of the delivery of the new Travelodge which is now under construction at Birmingham International Airport.

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Leamington inventor upholds region's reputation for innovation

Warwick and Leamington MP, Chris White, has chosen Dr Hany Agaiby's invention to represent his constituency at a national exhibition called 'Made by Britain' which was launched by Vince Cable last month. Dr. Agaiby's product is a portable gas analyser that can be adapted to pick up and measure any of 500 gases.



Initially this project will see MPs' nominations form an online, interactive map before the possible launch of a physical exhibition next year to coincide with the London 2012 Olympic Games.

Dr Agaiby is delighted to have been recognised in such a way having worked independently to get this unique product off the ground since taking voluntary redundancy in November 2009.

"My local MP was looking for businesses to represent the constituency. I was thrilled not only to be selected but also that my product will be held up next to iconic names such as Bentley, Land Rover and Dyson."

Dr Agaiby's gas analyser differs from other products in that it can be adapted to measure any 12 of 500 gases, whether this be for health and safety, environmental, or medical purposes, amongst others.

Christine Jackson, an associate solicitor in our Commercial team worked closely with Dr Agaiby and feels he deserves the success coming his way.

Recruiting foreign talent – it's easier than you think!

Despite the national headlines highlighting strict curbs on the recruitment of foreign workers, just at the moment it is far easier than you think to hire skilled overseas workers to fill specialist vacancies – providing you follow the correct procedures. One such sector that has highlighted the shortage of skilled workers is high precision engineering, which could now consider employing workers from overseas to support their business needs.

Obtaining a UK Border Agency (UKBA) sponsor licence (necessary for employing overseas workers) is not as complicated as it may seem. Once a sponsor licence is obtained, then employers have the option of hiring migrant workers under Tier 2 of the Points Based System by assigning a Certificate of Sponsorship. This is the replacement process for the former work permit scheme.

The first option is for the hiring company to sponsor potential overseas employees to relocate to the UK under Tier 2 (General) which permits skilled overseas workers to obtain a working visa.

Although there is a monthly cap of 1,500 certificates available for overseas workers, in practice this route has been grossly undersubscribed since its introduction in April this year so there are over 7,500 certificates currently available for use by employers. Allocation of these certificates (known as "restricted" certificates because there is an overall limit on their number), is based on a points system which is dependent on salary, skill level of the job and type of occupation. The job must first be advertised to the resident labour force but in the absence of a suitable candidate an application for a restricted certificate can be made.

The second option is hiring an overseas national working for a different company in the UK. Again, the job must be advertised

to the resident labour force but if no suitable candidate is found the employer should be able to assign a different type of certificate known as an "unrestricted" certificate. These types of certificate are more easily obtained by sponsor licence holders as they are not subject to the monthly limit.

International firms may also transfer skilled/established staff from their linked offices overseas to the UK, without having to 'test' the resident labour market, if they have the appropriate sponsor licence.

Lastly, employers may be able to recruit overseas students who have obtained a degree or post-graduate qualification in the UK in the last 12 months. These graduates can switch into the Tier 1 Post Study Work category, allowing them to work in any capacity in the UK for 2 years. After working for the same employer for 6 months, they can switch to be sponsored by the employer under Tier 2 on an unrestricted certificate, without having to advertise the job.

On a different note, if you are an employer who already has a sponsor licence, our business immigration team can help you ensure that you have the correct Human Resources systems in place as required by the UKBA. We have noticed that UKBA are undertaking an increasing number of compliance visits, so employers need to be prepared as an unsatisfactory audit can result in the sponsor losing their licence or having it downgraded. In addition an action plan may be imposed on them at a cost of £1,000 and they may be unable to sponsor further overseas workers until the licence has been upgraded again.

For more information, contact Marian Dixon, head of business immigration.

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Charitable Incorporated Organisations

As mentioned in previous Newsbriefs and E-bulletins, there have been extensive delays in the rolling out of the Charitable Incorporated Organisation ("CIO").

A CIO (an incorporated form of charity) will only come into existence when registered with the Charity Commission. It is not a company, and therefore does not have to register with Companies House. We still do not know when it will be possible to register CIOs, as the regulations which will complete the legal framework for CIOs have not yet been debated by Parliament.

Having said that, the guidance does confirm that the implementation of the regulations, once they are approved, will be phased. New organisations will be able to register first, followed by existing charitable companies which will be able to convert

towards the end of the implementation period.

The Charity Commission has recently published guidance to allow people to look at what becoming a CIO will mean, and to decide if a CIO is the right structure for them to run their organisation.

Included with the guidance are two model constitutions: a foundation model for those wishing to register a CIO whose only voting members will be the charity trustees (good for charities run by a small group that make the key decisions); and an association model for charities, appropriate for larger organisations with a wider voting membership.

To meet the constitutional requirements of the Charity Commission it is recommended that one of the model constitutions is used to register a CIO as it will ensure that the

requirements of the law are met and that good practice is observed, and it should also make the registration process quicker.

We understand that the main area to be resolved relates to what happens on insolvency. It is hoped that any amendments to the draft regulations when they are debated in Parliament will be minor. Once the regulations have been approved, the Office for Civil Society will be responsible for publishing a timetable for their implementation.

You can find a summary of the main points highlighted in the guidance on our website. In the meantime, for a no-obligation chat, more information or advice on CIOs please contact Mark Lewis.

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Wright Business hosts Sir Peter Rigby



L to R: John Rouse, Wright Hassall, Sir Peter Rigby, Nick Abell, Wright Hassall

Small and medium size businesses tapped into the knowledge of the head of Europe's largest independent IT company at Wright Hassall's fourth Wright Business Breakfast.

Sir Peter Rigby, chairman and chief executive of SCC, and one of Europe's top entrepreneurs, addressed those looking to grow their companies. Launched in March, Wright Business Breakfast seminars are

designed to give small and medium enterprises the opportunity to hear from successful business professionals and legal experts in order to help them learn about how to develop such companies.

Sir Peter spoke about the process of building a new business and the importance of being creative in difficult market conditions.

He said: "Taking any business from a

modest beginning to a world class organisation is a thrilling and action packed journey.

"To find and keep good customers, partners and alliances in a challenging environment demands not only excellent customer relationships but also agility and vision. You must always look to introduce innovation through new services and fresh ways of doing business but most importantly always have a close eye on what your competition is doing."

Nick Abell, senior partner at Wright Hassall, said Sir Peter was the perfect fit for the event. He said: "It is well documented how Sir Peter built his business up from an initial investment of just £2,000 to one that now turns over £3 billion.

"He shared some of his experiences from a hugely successful career in business and I know all in attendance found it very useful".

If you are interested in attending the Wright Business Breakfasts, please contact Caroline Venuto on 01926 880793.

Green energy: obligations and opportunities

As a nation we are bound by certain global and European protocols and legislation which have either worked their way through to the domestic statute book or are in the process of doing so. These legislative provisions have introduced, or shortly will, a number of mandatory obligations, the main purpose of which is to reduce our collective carbon footprint. There are also various voluntary codes and incentives.

The driving factors behind the general push towards green energy range from increasing social responsibility and accountability to improving energy security. There can also be a very good business case for embracing green technology.

The installation of green technology can enable the receipt of payments under a relevant incentive scheme (FIT, RHI, ROC) and also improve the valuation of, and the demand for, the property in question. Not to mention the opportunities for manufacturers, consultants and installation businesses in the green energy sector.

OBLIGATIONS

- **Carbon reduction commitment** requires organisations to buy annual allowances to cover their emissions from the previous year.
- **Green Deal**, promoted via the Energy Bill 2010/11, will introduce a charge on energy bills to help both domestic and non-domestic properties to finance energy efficiency improvements.
- **Energy Performance Certificates** provide information on a building's energy use and CO₂ emissions, as well as a report on how to reduce energy use and carbon dioxide emissions. Any building built, rented or sold needs an EPC.
- **Display Energy Certificates** show the energy performance of a building based



Wright Hassall's green team: Back Row L to R: Rachel Gwynne, Paul Guyver, Mark Miller.
Front row: Barry Sankey and Pritpal Singh Swarn.

on actual energy consumption as recorded annually over periods up to the last three years. A DEC is valid for one year and must be updated annually.

- **Air conditioning inspections** to be carried out on all air-conditioning systems with an effective rated output of more than 12kw, by an energy assessor at least every 5 years.

OPPORTUNITIES

- **Feed-in tariff (FIT)** scheme became available from 1st April 2010. The FIT covers electricity generated from renewable sources and is currently available for small-scale electricity generation using wind, solar photovoltaic (solar PV), hydro and anaerobic digestion technologies. However, the Government has just announced proposals to halve the current subsidy for solar PV installation from 12 December 2011.

Although consumer groups maintain that householders can still expect a return of about 5%, we await the impact on the industry.

- **Renewable Heat Incentive (RHI)** is a similar scheme to the FIT scheme but is designed to encourage, and provide incentives for, the take-up of low-carbon heating systems. The RHI tariff scheme will begin for non-domestic users from July 2011 and, it is expected, for domestic users from October 2012.

More detail on the schemes and regulations is available on our website but, in the meantime, for more information or advice about green energy, or to find out how our green energy team can help you, please contact Mark Miller.

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THE END PIECE

Short format eventing thrills new audience

Wright Hassall has been one of the sponsors of the 2011 Express Eventing Series. The series has been designed to showcase the Olympic equestrian sport of eventing (dressage, cross country and show jumping) within one arena in a campaign to introduce the sport to a wider audience.

This year, four qualifiers from around the country culminated in a thrilling final at HOYS which was won by Matthew Wright on Sir John Peace's If You Want II.



Matthew Wright on John Peace's If You Want II receiving the winner's cheque at the Express Eventing Qualifier at the 2011 Game Fair, Blenheim Palace.

Paul Rice, a partner in Wright Hassall's equine team, commented that the express format was ideal for demonstrating why the sport is so exciting as well as being able to explain how the three phases work together to achieve the overall result. "This is particularly good in advance of next year's Olympics where team GB is a real

contender for gold. The more people that understand and enjoy the sport, the greater the support will be.

"We're delighted to be involved with the series, and the nail-biting finish at HOYS at the beginning of October was a superb example of the sport in action."

Leamington Basks in Mediterranean Welcome

Andrew Potts has recently helped Mediterranean restaurant, Gallus, and Wootton Park Events and Business Centre to obtain a range of licences.

Gallus in Augusta Place, Leamington, is already forging a reputation for good food and wine and a warm welcome. Wootton Park is a family run farm which has diversified into a Business Park and Events Centre located on the outskirts of the Saxon village of Wootton Wawen.

It now has permission to stage a range of events from functions to sports events and plays with live and recorded music between 8am and 2am.

Double Award Success

Following on from its success in 2010 - when the firm was recognised as UK Transport Law Firm of the Year - more of the firm's specialist skills have been recognised as it has been awarded UK Technology Law Firm of the Year 2011 and UK Corporate Immigration Law Firm of the Year 2011.



Wright Hassall helps property investor save old soldiers' club

Sat Bhandal, a partner in Wright Hassall's commercial property team, has helped to save an ex-servicemen's club in Coventry facing financial difficulties. He advised Coventry property investor, Jaz Somal, in his purchase of The Royal Warwickshire Club's premises in Tower Street, adjacent to the area around the former Royal Mail sorting office and part of the £50 million Bishop Gate redevelopment plan.

The club, which was set up in 1919 by soldiers from the old Royal Warwickshire Regiment, has been based in the same building for over 34 years and had been struggling to keep afloat in recent years. Although it had been in negotiations with three other groups for the purchase and the lease back, it was Mr Somal's willingness to invest in its long term future that persuaded the Club to accept his offer. Club president, John Osborne, was delighted that Mr Somal was able to come to their rescue and acknowledged that his involvement meant that not only were all the bookings for functions leading up to Christmas secure but also that the accompanying cash injection would fund necessary repairs and refurbishment.

Mr Somal was vocal in his enthusiasm for the club, its proud military history and the valuable service that it provides to the local community, noting that social clubs such as these were essential to maintain community spirit particularly in these straitened times.