ENTERPRISE FINANCE GUARANTEE
WHY LEASE? BUY!

In recent years it has become common practice for companies to rent their business premises rather than carry the capital cost of the property on their balance sheet. One of the reasons for this is that it allows capital to be utilised for assets which help generate more income which inevitably leads to more profit. Another view could be that prior to the Credit Crunch entrepreneurs wanted their pension funds to have the benefit of capital appreciation of the freehold property with certain rental income. However, in the current climate commentators are of the view that rentals are declining and whilst commercial property prices are not appreciating they are still a lot firmer than residential property prices. Whilst we are in a recession, provided that we are reaching the bottom of the curve, this could be the best time to look at future strategy for your business.

One aspect of future strategy could be considering how to strengthen your balance sheet by taking advantage of any future growth in commercial property which inevitably will happen on the upward curve. This is of particular importance if your business lease is coming to an end. The drawback however is funding a purchase in the current economy.

Due to the Credit Crunch some lenders (contrary to their public statements) may have closed their books. Businesses are struggling to obtain conventional loans due to the lack of suitable security, for example debtors are more difficult to leverage upon without the appropriate credit insurance which is more difficult to obtain. Commercial property has always been viewed by lenders as one of the better forms of security when compared with debtors and stock. This is on the basis that in liquidation stock and debtors are substantially written down while property still retains its value.

If you are considering purchasing your business premises the Enterprise Finance Guarantee ("EFG") may be able to assist you. The EFG negates the need for additional security as it provides lenders with a government guarantee against default. The Government will guarantee 75% of the loan to eligible businesses to ensure that they can get the working capital and investment they need, the commercial property being the investment.

The £1.3bn scheme will support bank lending to UK SMEs with a turnover of up to £25 million who are at present having difficulties accessing the finance required. The loans under this scheme are available for 3 months to 10 years and businesses will be able to secure loans of between £1,000 and £1 million. The EFG is available up to 31 March 2010.

The list of participating lenders includes many of the big names, including RBS/Natwest, and in due course the EFG will become available from many other lenders. The EFG can be used to support new loans, refinance existing loans or to convert part or all of an existing overdraft into a loan to release capacity to meet day to day requirements.

Most businesses in most sectors will be eligible for the EFG however businesses in the coal, steel and agriculture sectors are excluded due to the State Aid rules which aim to ensure fair competition and a single common market.

It is incredibly important that applicants have a well prepared business plan as borrowers must convince the potential lender that they have a viable business proposal. A business plan would need to include information on areas such as management, the business' history, finance required, security available and objectives amongst other things. If a company plans to use the loan to purchase business premises this would need to be set out in the business plan. The decision on whether or not it is appropriate to use the EFG in connection with any specific lending transaction is fully delegated to the individual lenders.

The Small Firms Loan Guarantee ("SFLG") which was the Government's initial proposal has been suspended, however the lending previously provided under the SFLG will still be available under the new scheme. The EFG provides loans up to £1 million compared with an upper limit of £250,000 for the SFLG and it is available to businesses with a turnover of up to £25million rather than £5.6million under the SFLG. The Government will be bringing forward proposals for a scheme post March 2010 later this year.

If you would like further information on any of the issues raised by this article please contact -

Laura Raby at Hawkins Hatton LLP on (01384) 216840 or lraby@hawkinshatton.co.uk.

HawkinsHattonLLP
Solicitors

AVONDALE
adding value to you and your business

Hawkins Hatton will be taking part in Avondale's "The perfect Deal" seminar in Birmingham on 4 June 2009 at 07.45 am. This educative seminar is aimed at owners of commercial businesses that are considering their next strategic move – selling or acquiring. The seminar will offer a unique opportunity for you to meet and learn from key professionals involved in successful business sales and acquisitions. A representative from Hawkins Hatton will be a guest speaker and other members will be attending. if you would be interested in attending please contact Colin Rodrigues or Ruth Coleridge on 01384 216840 for further details.

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Newsletter April 2009

DEAL CHANGES THE BUSINESS LANDSCAPE

Colin Rodrigues (left), corporate partner, Hawkins Hatton and Tom Rimell (right), managing director, Smart Cut.

A Gloucestershire based landscaping business has changed hands for an undisclosed sum. TFN Landscapes Limited in Longford, Gloucester has been sold to Pershore based Smart Cut Limited, as a going concern.

Colin Rodrigues, corporate partner Hawkins Hatton acted for Ian Grant and Liz Righton, directors of TFN Landscapes which was formed 29 years ago.

The company provides landscaping, maintenance and infrastructure services to property developers, construction companies and local authorities across the region.

As part of the deal the two directors will be retained in a part time capacity for 12 months to ensure a smooth transition of the business and customer base.

Smart Cut was established by owner and managing director Tom Rimell in 1994 and provides ground maintenance to contractors, district councils and housing associations.

"This deal strengthens both our client base and capability, enabling us to expand in the future by tendering for larger contracts," said Mr Rimell.

Colin Rodrigues, said: "The two directors of TFN are nearing retirement and this deal was structured in a way that ensures the successful continuation of the business, whilst providing a return on the investment and hard work that has helped build the company over the years."

In This Issue

ACAS PUBLISHES UPDATED DISCIPLINE AND GRIEVANCE CODE

ACAS has published its updated Code of Practice on handling discipline and grievance matters in the workplace. Among the surprises is the possibility that in the future, employees will have the right to call their own witnesses to disciplinary hearings, even where the employer is not considering dismissal.

Significant changes are proposed with regard to the way employers must handle discipline and grievance with the expected abolition of the statutory discipline and grievance procedures this April. The statutory procedures will be replaced by a new Code of Practice ("the Code") issued by ACAS, and employers who fail to follow the Code could find compensation payments increased by up to 25% if an employee is successful in an employment tribunal claim.

Why are the changes being made?

The idea behind the changes is to encourage employers and employees to resolve disputes in the workplace rather than pursue them in an employment tribunal. This was the idea behind the "statutory dispute resolution procedures" ("SDRPs") introduced in 2004 – which will now be abolished when the Code is introduced on 6 April 2009. The 2004 changes did not achieve their objective - they made employers even more cautious than before because of the risk of technical breaches of the law, and this in turn gave disgruntled employees another way of making claims against their employers.

The changes repeal the SDRPs, and employers will have a new ACAS Code to get used to. If they fail to follow the Code, employers face paying increased compensation to employees found to have been unfairly dismissed.

How the Code works in Disciplinary Proceedings

The Code applies to all formal disciplinary proceedings, including those where a written or final written warning are given. This contrasts with the current situation under the SDRPs, which only apply to a disciplinary meeting which results in an employee's dismissal.

The Code also clearly sets out how disciplinary proceedings should be conducted by an employer, including allowing an employee to ask questions, present evidence and call relevant witnesses.

Although the new procedures seem sensible and straightforward, there is a danger for employers, and particularly small businesses who often have little experience in handling disciplinary matters. Such employers may not understand that the whole of the disciplinary process, (and not just the final act of dismissal), is subject to the revised ACAS Code, and that failure to conduct an early disciplinary hearing properly could be taken into consideration if the employee is later dismissed.

How the code works in Grievance Procedures.

Fairness and transparency are promoted by developing and using rules and procedures for resolving disputes. The Code encourages parties to resolve disputes internally before raising a formal written grievance. It will be encumbant on all parties to exhaust the process through informal discussions, formal discussions or even mediated discussions before an employee pursues a claim in the Employment Tribunal.

In a nutshell

- The Code replaces the statutory discipline and grievance procedures from 6th April 2009;
- The Code will apply to all disciplinary action, not just to dismissals;
- The Code will not apply to redundancies or termination of fixed term contracts;
- Failure to follow the Code could mean up to 25% increased compensation if an employee is found to have been unfairly dismissed and a 25% reduction for awards to employees if they do not follow the Code in respect of grievances.

The good news is that Hawkins Hatton can help at all stages of discipline and grievance proceedings. Further guidance on the new procedures will be given to all clients ahead of the April changes.

In the meantime, if you want to discuss how the changes may affect your business, contact Victoria Edwards of Hawkins Hatton on 01384 216840 or vedwards@hawkinshatton.co.uk

HAWKINS HATTON LEAD IN FAMOUS LANDMARK HOTEL SALE

Colin Rodrigues from Hawkins Hatton LLP (second left) congratulates Sukhwant Pahal (second right) on the succesful purchase of the Norfolk Hotel, Hagley Road, Birmingham. They are pictured with Sukhdip Pahal (left) and Tasneem Haq (right).

The landmark Norfolk Hotel in Birmingham is set to undergo a £1million transformation after coming under new ownership.

The hotel in Hagley Road, Edgbaston has been acquired for an undisclosed sum by the Pahal family with Hawkins Hatton, acting as lead adviser for the purchasers.

Renovation work at the 187 bedroom hotel is already underway and will continue for the rest of the year, although the Norfolk will remain open for business throughout the period.

Sukhwant Pahal, said: "We are really excited about the future of the hotel and are planning a total renovation of the bar and restaurant areas, reception and all 187 bedrooms." "We will be investing over £1,000,000 in order to transform the Norfolk into a four star establishment, offering fantastic facilities for business people during the week and leisure breaks for families and visitors to Birmingham at weekends."

Commenting on the sale Colin Rodrigues, who acted as lead legal adviser to the Pahal family, said: "Hawkins Hatton was delighted to have worked on behalf of the purchasers in the acquisition of this high profile hotel. As the family was purchasing both the business and the freehold interests it was a more complex transaction which required negotiations with a number of different parties."

SHAREHOLDER DEAL CREATES THE ENVIRONMENT FOR GROWTH

Birmingham based Altek Midlands Environmental Services is looking towards future expansion following a restructuring which resulted in director Alan Read taking a controlling interest in the business.

The company, which specialises in sanitary products, pest control, hygiene and graffiti removal for the commercial and domestic markets, will shortly be moving from its premises in Kings Heath to a larger, 6000 sq. ft. unit on Frankley Industrial Estate.

Gush Surdar (left), business consultant for Altek, Colin Rodrigues (centre), corporate partner, Hawkins Hatton and Alan Read (right), director Altek Midlands Environmental Services

The move follows Alan Read's share purchase from fellow director Tim Hodges. Mr Hodges will remain in the business as a director and minority shareholder.

Colin Rodrigues, corporate partner at Hawkins Hatton, acted as lead adviser to Alan Read.

"This internal restructuring of the business fulfils the aspirations of both directors whilst ensuring continuity for the customers," said Colin Rodrigues. "We are delighted that the transaction was able to proceed to a smooth completion without any problems and the business is now well placed to capitalise on the growing need for a range of environmental control services"

Altek Midlands Environmental Services was founded in 1997, employs 28 staff and has around 1,000 clients across the region, including a number of local authorities.

"I have ambitious growth plans for the company and the move will enable us to develop into new sectors and secure larger contracts in our core markets," said Alan Read.