

COLTER STEELS TARGETS NEW MARKETS AFTER MBO

Colter Steels Limited, the Willenhall based steel stockholder and processor, has changed hands in a management buyout led by the company's commercial director Steve Smallman.

The company, which was established 26 years ago by Malcolm Bowker, has been bought for an undisclosed sum by Mr Smallman and his business partner Colin Giles who joins the company as operations director.

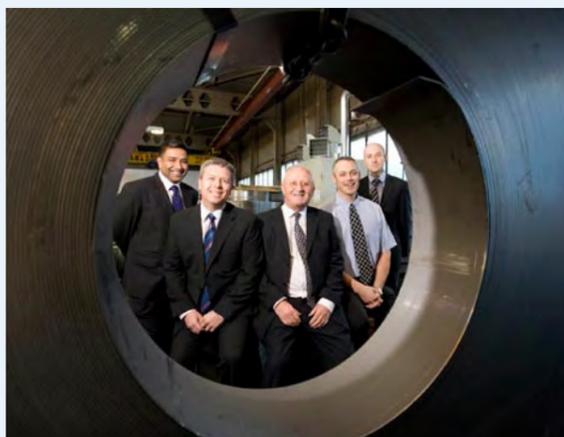
The MBO team was advised by corporate specialist Pat Moore and Alex Nicol of Horwath Corporate Finance, who negotiated the sale with Mr Bowker who wanted to ensure that a fair deal was struck for both parties.

Hawkins Hatton LLP, acted as legal advisors to Mr Bowker and Colter Steels with partner Colin Rodrigues leading the corporate team. Funding was provided by HSBC Bank, represented through Gary Riley.

With three factory units in Willenhall totalling 16,500 square feet, Colter Steels is an independent processor and stockholder of hot and rolled steel strip. The company also stocks a range of cold reduced, zintec and galvanized steel available in coil sheet, strip or blanks.

The new management team has ambitious plans for Colter Steels. "In the first months of trading, as well as successfully growing UK sales, the company has already started exporting to Poland and China," said Mr Smallman.

Hawkins Hatton corporate partner, Colin Rodrigues said: "Malcolm Bowker was keen for the business to continue to grow after his exit and by agreeing a sale to one of the key directors it ensures continuity for the customers. We were delighted that the transaction was able to proceed to a smooth completion without any problems."



Colin Rodrigues (far left), corporate partner, Hawkins Hatton, Steve Smallman (2nd left), commercial director, Colter Steels, Malcolm Bowker (centre), Colin Giles (2nd right), operations director, Colter Steels and Alex Nicol (far right), Horwath Corporate Finance.

REDUNDANCY AND THE CREDIT CRUNCH

In the current economic climate any business making redundancies must follow the correct termination procedures or it could face an expensive and costly employment tribunal claim.

As jobs become scarcer, employees being made redundant or dismissed for other reasons may find it harder to get back into employment. Understandably they are more likely to bring claims for unfair dismissal in the Employment Tribunal to recover the loss of their ongoing salary.

Where employers are considering dismissing employees, a number of issues need to be addressed: -

1. Is the reason for dismissal a fair reason?

There are four fair reasons for which an employee can be dismissed, which are as follows:

- Capability
- Performance
- Redundancy
- Some other substantial reason

2. Has the business followed a proper termination procedure, which either complies with the company handbook or statute?

We at Hawkins Hatton LLP have noticed recently that there has been an increase in the number of employees who have been dismissed for reasons of redundancy when the true reason could be a simple breakdown in the employer/employee relationship or simply one of poor performance. Given the current economic climate and the increase in unemployment levels, redundancy may seem a convenient reason for terminating an employee's employment. However, employers should be extremely wary when using redundancy as the reason for dismissal since if there is subsequently any dispute they will have to demonstrate a legitimate redundancy.

A redundancy occurs where the requirement for work of a particular kind has ceased or diminished or has ceased and diminished in a particular place. Employers should remember that it is a job/role that is redundant and not the person. Where practicable, suitable alternative roles should be offered within the business before terminating employment.

As long as employers follow the correct procedures for dismissing an employee and the reason for the dismissal is a 'fair reason', then they will mitigate their position if the employee pursues a case in the Employment Tribunal. Following the correct procedure is imperative since a failure to do so can render a dismissal automatically unfair.

If you are considering dismissing an employee or need further advice please contact Victoria Edwards for more information on (01384) 216840 or vedwards@hawkinshatton.co.uk or come along to our drop-in session free of charge on Fridays between 9am – 12pm.

DEALS DIARY

<p>September 2008</p> <p>TFN LANDSCAPES</p> <p>Sale of shares</p> <p>Hawkins Hatton LLP acting for the Seller</p>	<p>September 2008</p> <p>THE FASTENER NETWORK</p> <p>Purchase out of administration</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>	<p>September 2008</p> <p>ALTEK MIDLANDS ENVIRONMENTAL SERVICES</p> <p>Company Re-Organisation</p> <p>Hawkins Hatton LLP acting for the Company</p>	<p>September 2008</p> <p>WELL KNOWN LOCAL HOTEL</p> <p>Purchase of Hotel</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>
<p>September 2008</p> <p>VOLVO UK</p> <p>Purchase of Assets</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>	<p>September 2008</p> <p>METAL RECYCLING BUSINESS</p> <p>Re-finance</p> <p>Hawkins Hatton LLP acting for the Mortgagee</p>	<p>October 2008</p> <p>GREENCYC</p> <p>Purchase of shares</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>	<p>October 2008</p> <p>RBS</p> <p>Re-finance of a fast food chain</p> <p>Hawkins Hatton LLP acting for the Seller</p>
<p>October 2008</p> <p>LANDSCAPE ARCHITECT</p> <p>Sale of shares</p> <p>Hawkins Hatton LLP acting for the Seller</p>	<p>October 2008</p> <p>BURCHELL EDWARDS ESTATE AGENTS</p> <p>Purchase out of administration</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>	<p>November 2008</p> <p>NATWEST BANK plc</p> <p>Re-finance of night club chain</p> <p>Hawkins Hatton LLP acting for the Bank</p>	<p>November 2008</p> <p>SPECIALIST TRAINING ORGANISATION</p> <p>Purchase of business</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>

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CHEMISTRY IS RIGHT IN DUDLEY FIRM'S ACQUISITION DEAL

Black Country based Chemipetro Limited, the international supplier of petrochemical, chemical oil, gas and food industry products, has purchased Fastener Network Limited and its subsidiaries from the receiver for an undisclosed sum.

Hawkins Hatton acted for Chemipetro, which now employs over 70 people from its factory at Grazebrook Industrial Park, Dudley.

The purchase of Fastener Network in Redditch and its subsidiaries Holbruck Fasteners Limited, the Fastener Warehouse Limited and DB Industrial Fasteners, will allow Chemipetro to supply fasteners along with pipe, pipe fittings and flanges, enabling it to deliver advanced products and total system solutions to its customers.

Chris Massey, director and owner of Chemipetro, said: "The opportunity was impossible to resist and will provide better synergy for customers, significantly complementing the activities of our established business."

Chemipetro's group manufacturing facilities comprise state of the art CNC machinery which will enable Fastener Network Holdings to supply non standard fasteners and bar turned components on faster lead times.

The new group will be looking to invest in enhanced sales and marketing strategies across its three sites in Dudley, Redditch and Christchurch to increase its UK market share and break into new international markets. Following the purchase, a new company will be established – Petrofast Global Supplies – to combine all elements of the expanded operation.

Colin Rodrigues, lead corporate adviser for Hawkins Hatton, said: "This deal proves that despite the current economic climate and banking credit crunch there are still opportunities for businesses to expand through acquisition."



BLACK COUNTRY LAW FIRM CHARGED UP FOR BATTERY SALE

Hawkins Hatton and leading midlands accountancy practice Garratts were fully charged to handle the sale of West Bromwich based battery firm WB Powersource Limited.

The family run business, which has been supplying forklift batteries and battery accessories since the early 1980s, has been sold to WB Holdings Limited for an undisclosed sum.

Following the deal, brothers Richard and Chris Webb will remain in the business as shareholders.

Colin Rodrigues, corporate partner at Hawkins Hatton, said: "The deal was structured to ensure continuity and growth of the Powersource business and we were able to achieve a positive result for the shareholders by providing legal advice throughout the transaction."

Garratts acted as accountants for the company and financial advisors for the Webb family, assisting the vendors throughout the sale process. Garratts being the lead advisors, continue to act for the company following the sale.

Terry Hitchen from Garratts said: "We applied a practical commercial approach to the transaction which enabled completion to be achieved quickly with minimum disruption to the business."



THE COMPANIES ACT 2006 ABOLISHES THE WHITEWASH PROCEDURE

Until 1 October 2008, the Companies Act 1985 (the 'Act'), s.151 prohibited a company from providing financial assistance for the purchase of its own shares unless the whitewash procedure at sections 155 to 158 of the Act was complied with.

What is financial assistance?

The two most common types of financial assistance, both associated with the acquisition of all or most of a company's shares are:

- The target company offering security over its own assets to secure the borrowing of the purchaser, where that borrowing is being obtained in order to fund the purchaser's acquisition of the target;
- The purchaser borrowing cash from the target company in order to fund the purchase. This usually happens because the seller of a cash-rich target company has increased the purchase price in order to "take cash out of the company", without having to declare a dividend (this is generally done for tax reasons).

What is the Whitewash Procedure?

The whitewash procedure is set out at sections 155 to sections 158 of the Act. A private company is allowed to give financial assistance for the acquisition of its own shares or that of its holding company provided the accountants, lawyers and the directors of the relevant company have followed and complied with the whitewash procedure, namely:-

- All directors of the company swearing a statutory declaration that, in their opinion, the company will remain solvent for at least 12 months from the date the assistance is given.
- The company's auditors providing a report that they have enquired into the affairs of the company and they are unaware of anything to indicate that the directors' statutory declarations are unreasonable in all the circumstances.
- The shareholders of the company passing a special resolution approving the financial assistance

Overall, the general principle was that financial assistance could be given by the target company if the assistance did not reduce the net assets of that company or, to the extent that they were reduced, the assistance was covered off by the company's distributable reserves.

What will replace the whitewash procedures?

As of 1 October 2008 the financial assistance prohibition for private companies is abolished. The prohibition is retained for public companies and also where a public company subsidiary is providing financial assistance for the purpose of an acquisition of shares in a private holding company, so groups with a public company subsidiary will need to continue to tread carefully.

What is the reaction of the lenders?

Lenders are expected to still require a form of "net asset letter" from the target company's accountants confirming that the proposed financial assistance will not reduce the company's net assets. Lenders may also require a declaration of solvency from each of the target company's directors and the purchaser's company directors (if relevant) on the date of their lend. As a result of this and the codification of directors duties, directors may be still best advised to follow a procedure similar to the whitewash, i.e. to formally consider the effect of the proposed arrangement on the company's solvency over the following 12 months; to ensure that the arrangement either does not deplete the company's net assets, or to the extent that it does, that the assistance is provided out of distributable profits; and to obtain the approval of shareholders.

Other considerations

There are also concerns about whether common law rules regarding the maintenance of capital may still operate to prevent a private company from giving financial assistance for the purpose of the acquisition of its own shares. The government have however argued that no further amendments to the legislation will be necessary. We will be closely monitoring how these new changes impact on the way private companies provide financial assistance for the purchase of own shares. Should you have any questions or queries, we would be happy to assist; please contact Colin Rodrigues on 01384 216840.