

A JOURNAL OF A CORPORATE LAWYER

Phrases like 'Bolt On' 'Acquisitions' 'Takeovers' were a thing of the past until recent times. In the last twelve months, more clients have decided to expand their business through acquisitions of other businesses rather than organically. In our view, the reason for this is probably down to the increased availability of credit and the fact that entrepreneurs do not want to miss out on opportunities to expand their businesses as we come out of the recession.

Notwithstanding banks are being encouraged to lend and credit is now becoming more available, robust cash flows, business plans as well as skilled management teams are required by any funder before they will approve credit for a transaction.

Funders have been subject to a lot of criticism in recent times for their relaxed approach to lending and they are now taking a more circumspect view of their lending process. As a result, the funders now require broader security for transactional lending which inevitably involves personal guarantees together with security on both the vendor company and the target company.

With a view to obtaining credit sanction, entrepreneurs need to ensure that the opportunity being pursued will achieve, if not exceed, their expectations for success. The one sure way for this to happen is to make sure a good professional team is engaged which is capable of guiding the buyer through the transactional journey and in particular, an accountant and legal team to provide sound, commercial advice around the legal and commercial risks.

Being a corporate law firm, we have found that it is not just quality legal advice an entrepreneur needs, it is guidance around the commercial impact decisions on the structure and intricacies of the transaction will have on the overall success of the venture.

As a niche corporate practice we are better placed to advise on the needs of entrepreneurs and help them through the process of agreeing the basic structure of the deal as documented in the heads of terms, the legal due diligence which helps identify the risks around a deal and the sale and purchase agreement in which those risks will be addressed.



Colin Rodrigues

The sale and purchase agreement sets out the legal framework for how the sale will be concluded and provides for warranties as well as indemnities which allocates risk between the buyer and seller in the transaction. Our firm's ethos is to ensure that we have explained in a clear and precise way all the key steps of the transactional journey including the risks that may occur during the journey and after it has completed, so that the entrepreneur is at all times supported by a true legal partner.

Before you embark on your journey, we would be happy to discuss the help and support we can offer you in respect of the venture.

Contact us on: 01384 216840 • info@hawkinshatton.co.uk

APOLLO AEROSPACE REACHES NEW HEIGHTS

Apollo Aerospace Components Limited (Apollo) has been acquired by Supply Technologies, a subsidiary of Park Ohio Holding Corp, a listed company on the NASDAQ stock exchange. (PKOH)

Supply Technologies are a leading Global Supply Chain Management company. They employ over 1500 people and operate from over 50 facilities located around the world and currently supply directly to over 700 customers across 100 industries. The acquisition will allow Supply Technologies to continue to maintain their position at the forefront of the utilisation of advanced technologies that are used to deliver the very highest levels of operational efficiency throughout the world.

Apollo, having been established for over 25 years in the West Midlands, has grown to become one of the leading suppliers of aerospace parts serving both European and wider international markets with operations based in Poland, France and Asia. Apollo were supported by our firm and by Price Pearson Accountants, together we have supported the growth of Apollo over the years in order to achieve a successful succession to the business.

The acquisition of Apollo marks Supply Technologies expansion of their Aerospace business segment that includes Columbia Nut and Bolt, serving the North American market. Furthermore the acquisition signals a clear intent to progressively build a substantial business serving our Global industry.

Jason Crabtree of Apollo Aerospace Components, commenting on the deal, stated that "Being part of such a strong and dynamic organisation will provide Apollo with the opportunity to continue to enjoy the significant levels of growth that we have experienced in recent years in parallel to forging ahead with the



Left to right, Colin Rodrigues, Hawkins Hatton; Adrian Arscott; Previous shareholder in Apollo

comprehensive programme of organisational development that was started 5 years ago. We will, as a direct result of this acquisition, be far better positioned to support and add increasing levels of added value to our growing list of customers who have their manufacturing facilities in Europe, Asia and around the world."

Colin Rodrigues, our corporate partner, stated that "The aerospace industry works in Global Markets and Apollo joining one of the world leading companies will only enhance the name and reputation of Apollo and lead to business within new markets."

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RESTRAINTS OF TRADE

We have seen a number of claims recently where our business clients have been forced to take action against competitors who have engaged employees subject to a restraint of trade.

If a competitor is aware a new employee is subject to a restraint of trade and employs the employee to work in a role which would lead to breach of that restraint, the competitor could face an action. An injunction can be sought to avoid the employee continuing to work for the competitor during the period of the restraint clause and/or damages for losses sustained (i.e. if customers have been poached). In order to enforce a restraint of trade clause it is important to act quickly to prevent the use of confidential information and to preserve evidence of the breach.

Any court proceedings for injunctive relief will require clear evidence substantiating that a legitimate business interest is likely to be compromised.

A restraint of trade does not protect a business against ordinary competition. When deciding whether to enforce a restraint of trade against a former employee the Courts will usually have regard to a number of factors including:-

- a) Geographical scope of restraint – this must be no wider than is reasonably necessary to protect the business' legitimate interests.
- b) Duration of the restraint – for senior and influential employees a period of up to 12 months might be reasonable, what is deemed reasonable is subject to the circumstances of the business and role in question.
- c) Impact enforcement would have on the former employee's ability to earn a living.

A restraint of trade clause must be carefully drafted to suit the needs of the business and the role of the employee in question. Generally a restraint of trade clause will seek to prevent an employee from:-

- a) Competing with a former employer;
- b) Dealing with a former employer's contacts, customers, suppliers etc;



Harminder Sandhu

- c) Soliciting a former employer's clients, customers, suppliers and employees;
- d) Using confidential information.

Restraint of trade clauses must be justified and reasonable in scope to be enforceable. Hence to achieve full protection advice should be sought at the outset of employment for each employee. We can also assist with enforcement action if a departing employee is acting in breach of their post termination restrictions.

For further information or advice on restraints of trade or dispute resolution, contact Harminder Sandhu on **01384 216840** or hsandhu@hawkinshatton.co.uk

THE COMING TOGETHER OF TWO GREAT NAMES

As part of their strategy to become the leading independent accountancy practice in the South Birmingham area, Solihull-based accountants and business advisers Jerroms have expanded by joining forces with Harrison Priddey & Co., a long standing accountancy practice in Bromsgrove.

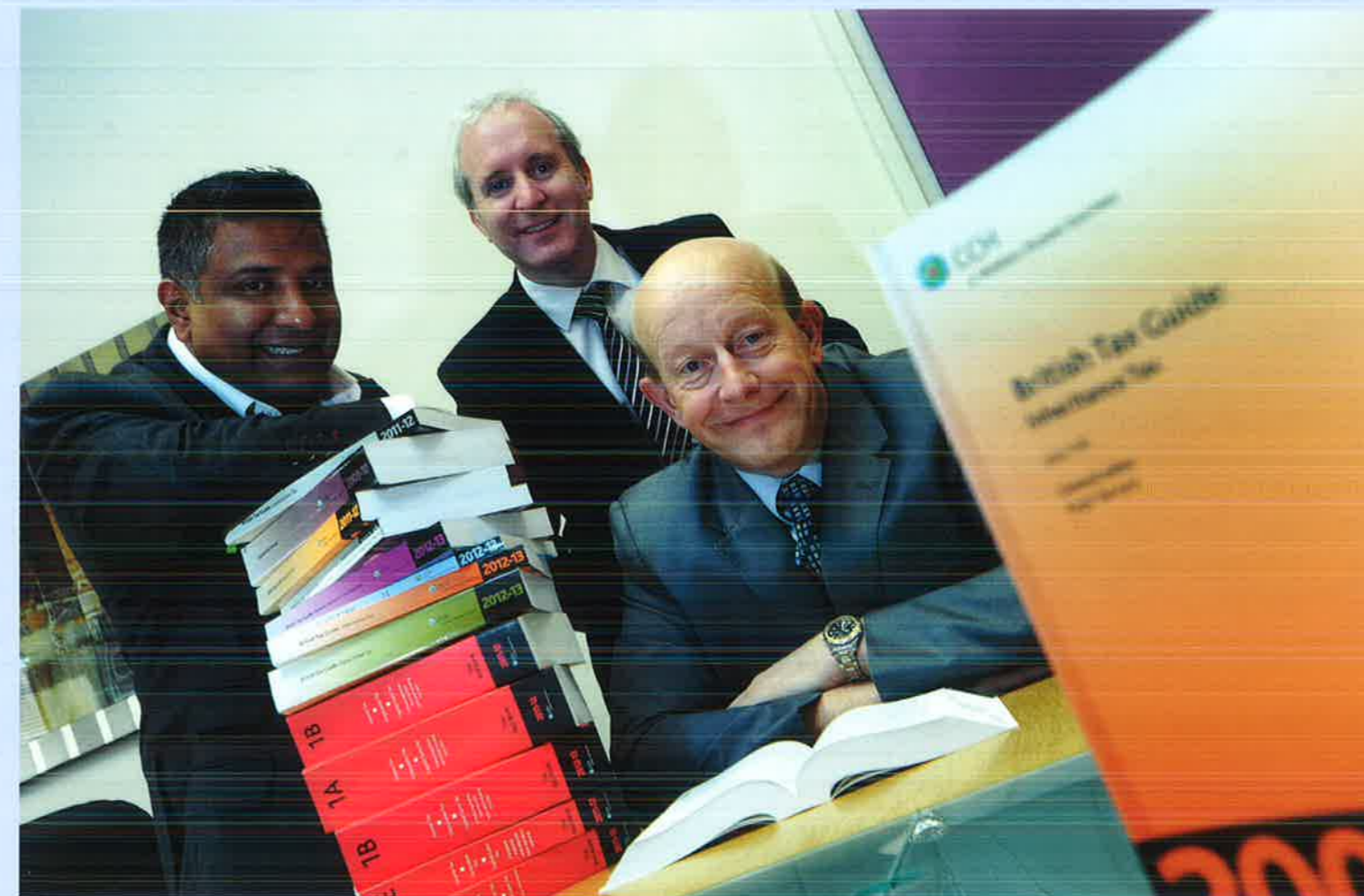
Jerroms have since 1972 specialised in providing accountancy and business advice to owner-managed businesses. It was, therefore, a natural step to join forces with Harrison Priddey & Co., who have been providing complimentary accountancy and tax services through former partners Stephen Priddey and Cynthia Hammond.

The Bromsgrove practice will now be known as Jerroms Priddey and will continue to maintain core principles of client service. The enlarged firm is now better placed to be able to offer a wider range of business advisory services, including tax and succession planning, for businesses in the South Birmingham area.

We advised and supported the directors of Jerroms to ensure that when the merger took place, the structure would facilitate a smooth amalgamation of the two practices without compromising client service and ensuring all clients are fully supported through the new business venture.

Mark Eden, Managing Director at Jerroms, commented on the deal: 'Jerroms have always strived for client excellence; therefore joining forces with Harrison Priddey & Co. seemed a natural fit. We are pleased to be working alongside Stephen and Cynthia and look forward to making this partnership a success.'

Colin Rodrigues who led the deal said: 'This was a complicated deal given the number of parties and professional advisors involved. However, we focused on the key commercial issues to ensure that a swift resolution to any contentious matters was achieved, thereby allowing Harrison Priddey & Co. and Jerroms to look ahead and focus on their businesses going forward.'



Colin Rodrigues, Hawkins Hatton; Richard Horton, Jerroms; Mark Eden; Jerroms