

# BIMBO RESULTS IN LASTING BUSINESS AFFAIR

The cut and thrust world of high end business is not normally associated with the term 'Bimbo', but for company owner James Newey, it heralded the start of his lasting affair with Fans and Blowers, the Somerset based engineering firm.

James initially invested in the company back in 2004 as part of a "Buy in Management Buy Out – or BIMBO for short – and five years later he was well and truly in the driving seat having acquired the remaining shareholding to own the business outright. Hawkins Hatton assisted with implementing the BIMBO and have since provided on-going advice to James on all areas including corporate and commercial, commercial property and dispute resolution.

Fans and Blowers was originally founded in 1970, but had fallen into gradual decline due to a lack of investment from previous owners including a large engineering group, as James explained. "When we purchased the company it was a great engineering company but lacked investment, but I had known the business for some time as I had worked for one of their suppliers, so knew it had the potential to succeed."

Under James's leadership, the company has been determined to keep ahead of its nearest competitors by investing in new machinery, design improvements and of course its people.

We have provided commercial as well as legal advice to James on various commercial agreements including those to regulate the relationship with overseas distributors amongst other things.

Laser cutting machinery and state of the art bending and robot welding technology have been introduced alongside innovative design modifications which have transformed the way the range of industrial centrifugal fans are assembled.

On the people front a graduate from the University of the West of England has recently been recruited under the Government's Knowledge Transfer Partnership which enables the company to benefit from the support of two academics within the university. "We have to keep extending the void between us and the competition which means that if and when they do catch-up we are already a step ahead," said James.

Today Fans and Blowers employ 32 staff and has a turnover of £3.5million with the company's products being used in a diverse range of engineering applications both at home and overseas which accounts for 30% of sales. As well as de panning bread out of bakers' ovens, the fans and blowers are used to dry hops at Heineken's brewery plant in Russia and provide aircraft ventilation when planes are on standby. The company is approved to supply General Electric in the USA, whilst its biggest supplier is a Russian firm specialising in pneumatic conveying.

Despite a blip during the heart of the recession in 2009 and 2010, Fans and Blowers have continued to make steady progress and plans to increase turnover to £5 million in the next five years by expanding overseas sales and through selective acquisitions.

Since the initial purchase and James's involvement with the BIMBO, we have been a valuable legal partner providing advice to the business across a range of areas including the acquisition and refurbishment of the commercial property, overseas distribution agreements and litigation issues.

"Colin Rodrigues and the team are forward thinking commercial lawyers who do not get tied down by the complexity of the legal system and are able to speak on a level to business owners in my position," said James. "We are planning to build the business organically and through acquisition so I'm sure we will continue to turn to Hawkins Hatton for advice along the way."



James Newey, Fans and Blowers

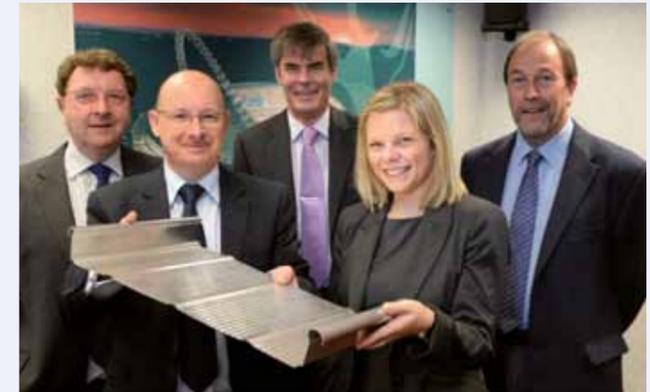
## HAWKINS HATTON ADVISE ON MANAGEMENT BUYOUT OF RIGISYSTEMS

The internationally renowned manufacturers of roofing systems and metal cladding, Rigisystems Limited, has successfully completed a management buyout of the business. The aim of this buyout was to ensure the longevity of the business and help the continued growth of the business into new and expanding markets.

The management team was led by Sales Director Grahame Rankin and Financial director Simon Neale and supported by the other directors Mark Walder and Ray Williams, who have all held major roles in Rigisystems over the last 5 years. The management buyout represented a natural step in the evolution of the business as under the stewardship of the current management team the Company has gone from strength to strength, continually securing major projects both nationally and internationally and growing beyond all recognition from when it was originally founded in 1970 under the name of Talfab Building Products.

The management team, having already achieved success in the business, intend to continue with the same momentum as owners and intend to ensure that there is new and continued investment in the business in order to allow it to continue to secure such high profile and notable projects as the Hong Kong Conference and Exhibition Centre, Wembley Stadium, Paddington train station and the new \$6 billion Doha International Airport. Rigisystems have also developed a range of rainscreen systems, Thermohalter, Tradzinc and ZipLok to name but a few of their innovations and impressive contributions to the metal cladding industry, placing them continually at the forefront in their field.

Malcolm Cook, corporate finance partner at BDO, was instrumental in structuring the deal for the management team, and Colin Rodrigues our Corporate Partner, supported both Malcolm and the management team throughout the transaction by offering prompt commercial advice



Left to right, Ray Williams, Simon Neale, Mark Walder, Victoria Pearson, Hawkins Hatton and Grahame Rankin on the end.

in dealing with complex matters, including multi-jurisdictional negotiations and ensuring a swift process to completion.

Simon Neale commenting on the deal said "I look forward to ensuring the continued success of Rigisystems and bringing the same into new markets. The support and advice offered by Colin Rodrigues and Malcolm Cook was invaluable and insightful and taught me that as well as having a strong management team you need strong professional advisers to help achieve success"

Colin Rodrigues, our Corporate Partner, commented "The cross-border complexities added a new dimension to the legal advice for the management team and gave them a different perspective on the transaction as a whole. I know that given the strength of the management team Rigisystems will continue to grow and push boundaries in international markets"

### In This Issue

- The importance of retaining title to goods
- Anopol poised for expansion following MBO
- BIMBO results in lasting business affair

## THE IMPORTANCE OF RETAINING TITLE TO GOODS

We have seen a gradual increase in client's from different industries seeking to protect themselves from non-payers by use of carefully drafted Retention of Title ("ROT") clauses.

In order to rely on a ROT clause it must be expressly stated and incorporated into the contract for sale of goods. A ROT clause will not be implied into a contract such as terms relating to fitness for purpose or satisfactory quality. To avoid any argument from a buyer, a seller should ensure that its terms and conditions (including the ROT clause) are stated on all brochures, invoices, delivery notes and price lists etc.

The ROT clause can be a simple statement that legal title to the goods shall not pass to the buyer until payment has been made to the seller in full. However, in practice ROT clauses are more complicated and require careful legal advice. By way of example consideration should be given to extending the ROT clause to cover payment of all monies due to a seller and not just monies due in respect of a specific order so that legal title does not pass until the seller's full account has been paid.

The real test is when a debtor is insolvent since Liquidators will generally do their utmost to contest a ROT clause in an effort to retain assets for the benefit of secured creditors. We had a dispute recently for a client who supplied aluminium ignots to a customer who subsequently went into liquidation. The liquidator sought to challenge our client's widely worded ROT clause which sought to retain title in goods supplied until all monies owed were paid notwithstanding the goods were converted into other products.

This impacted upon the client's ability to enforce the ROT clause since unpaid goods must be identifiable and once goods have been converted the ROT clause may be defeated. In this particular case the ignots were liquefied at which stage other components were added as part of the manufacturing process. The original goods lost their integrity such that they were no longer protected by the ROT clause.



*Harminder Sandhu*

Consideration should be given to ensuring goods supplied are identifiable by serial numbers, batch numbers and distinguishing features. This is particularly important if the buyer receives the same goods from several suppliers. Buyers often take positive steps on delivery of goods to remove packing or other distinguishing qualities. A ROT claim is not defeated if the goods are still identifiable.

ROT clauses are useful devices to protect against debtors provided these are accurately drafted and incorporated into the contract for sale. Most importantly a seller must take prompt action to enforce a ROT clause in order to benefit from the protection it provides.

For further information or advice on any issues relating to ROT clauses please contact Harminder Sandhu on **01384 216840** or **hsandhu@hawkinshatton.co.uk**

## ANOPOL POISED FOR EXPANSION FOLLOWING MBO

Engineering Group Anopol has started its next level of expansion following a management buy-out supported by us and Michael Dufty Partnership Accountants based in Birmingham.

This management buy-out has taken a number of years to come to fruition after careful planning with the Vendors in order to ensure that there would be a smooth transition for the management team. The Vendors originally purchased the business from a German parent company through a management buy-out themselves some 25 years ago, starting with customers such as Cadbury's. Passing the business on to the next generation also by way of a management buy-out was to them the natural succession of Anopol. As everyone who works within Anopol is wholly committed to the business, the relationship between the Vendor and the Management Team remained strong and supportive throughout the deal.

The MBO was led by the entrepreneurial managing director David Cass, who has been with Anopol since 2006, and was supported closely by finance director Adrian Dallaway and engineering director Philip Spears. Colin Rodrigues, our corporate partner, played a lead role in ensuring that what could have turned out to be a battle between lawyers was in fact an amicable arrangement which benefited both sides, whilst Arran Jones of the Michael Dufty Partnership provided invaluable accountancy support which helped Lloyds structure the funding for the new management team.

The new management team are looking to build on the strong name and reputation of Anopol within the industry to create a world leading chemical and electrochemical polishing business that processes stainless steel and other metals. Anopol have many customers in numerous sectors including gas, automotive, aerospace, pharmaceutical, medical, architectural and nuclear who are recognised the world over, such as Triumph Bikes, Unipart, Stryker Medical, Williams F1 and Bentley, to name but a few.

Part of the MBO's vision for the business includes the growth of Anopol organically as well as focusing on emerging markets which will provide a new source of revenue for the company. David Cass commented that "As part of the strategy for growth for Anopol we will continue to rely on the instrumental commercial advice provided by Hawkins Hatton and Michael Dufty Partnership."

Speaking of the support provided by us and the Michael Dufty Partnership, David Cass explained that: "As well as helping us to manage potential future risk, Colin Rodrigues and Arran Jones were instrumental in advising on mitigating strategies, particularly around environmental risk management and SHA."

Commenting on the deal, Colin Rodrigues said: "The MBO will ensure the continued success of the business by combining some new thinking with many years of experience. This is a great example of effective succession planning and we were delighted to advise David and his colleagues on the MBO."



*Philip Spears; Adrian Dallaway; Arran Jones, Michael Dufty Partnership; Colin Rodrigues, Hawkins Hatton; David Cass*