

DIRECTORS' BRIEFING



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New business law in 2000

● This briefing provides an overview of the developments in business law in the year 2000, including tax, that are most likely to affect small and medium-sized businesses.

A separate briefing, **New business law in 1999**, LA 7, covers new laws, regulations and relevant cases in 1999. See the margin note on page two for a list of the material covered in that briefing.

Developments in the specific area of employment law are covered in **New employment law in 1999**, LA 6, and **New employment law in 2000**, LA 8.

These briefings provide pointers to changes that might affect your business, but do not deal with issues in detail. If you need to know more, talk to your professional adviser, or follow the cross reference to the appropriate Directors' Briefing.

This briefing covers:

- ◆ New laws.
- ◆ New regulations.
- ◆ Key court cases that highlight small business issues.

1 Insolvency

A new Insolvency Act made small but significant changes to the procedures for companies which have run into financial difficulties.

A Directors may request a short **moratorium** (stand-off) while they try to make a voluntary arrangement with creditors.

During this period (initially a maximum of 28 days) no creditors would be able to take legal action against the company's assets.

- ◆ The company's 'nominee' (who deals with the creditors) must agree that a voluntary arrangement is feasible.

The directors must provide the nominee with enough information to make an informed decision on whether the voluntary arrangement is likely to be approved, and whether there are sufficient funds to keep the company going.

B There are new restrictions on **landlords' rights** to peaceable re-entry.

- ◆ Landlords will have to obtain leave from the court to re-enter the premises of companies which are subject to voluntary arrangements (CVAs).

C Rogue directors may be **disqualified** more rapidly in future.

- ◆ Provisions within the Act permit the Department of Trade and Industry to accept undertakings with the same legal

FURTHER HELP

There are other Directors' Briefing titles that can help you. These briefings are referred to in the text by name and by the code given to each briefing. For example, the law briefings have the codes LA 1, LA 2, etc.

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effect as a disqualification order obtained through the courts.

This should cut out court delays and speed up disqualification.

D There are provisions to ensure that creditors can benefit from the value of a deceased insolvent's interest in **jointly-owned property**. For example, the matrimonial home.

- ◆ These provisions will apply when the debtor dies before the insolvency order is made.

Effective during the course of 2001.

2 Business finance

The Finance Act contained various measures benefiting small to medium-sized companies.

A **Corporation tax** was modified (see **Corporation tax**, TA 3).

- ◆ Rates of tax were cut and the speed with which companies progress from the lowest to the highest tax rate was reduced. Effective April 2000.

- ◆ Capital allowances were extended and simplified, as was relief for expenditure on research and development. Effective April/July 2000.

B Measures were taken to encourage **investment** (see **Tax and NI**, TA 6).

- ◆ A new corporate venturing scheme was introduced, to encourage large companies to take stakes in smaller companies.
- ◆ Conditions on enterprise investment and venture capital schemes were eased.
- ◆ The holding period for capital gains tax relief on business assets was reduced from ten to four years.

This means that gains on relevant assets will only be taxed at 25 per cent of the rate that would otherwise apply, if the assets are held for four years or longer.

Effective April 2000.

C New schemes to encourage **employee shareholding** were introduced (see **Incentive pay**, HR 11).

- ◆ An enterprise management incentive scheme was introduced, to allow employers to provide key employees with tax-favoured share options. Effective April 2000.

Proposals to make the scheme more flexible were announced in the pre-Budget

statement, and are likely to appear in the 2001 Finance Bill.

- ◆ A new all-employee share scheme was also introduced. Effective July 2000.

- ◆ All shareholdings by employees (including part-timers) now qualify for capital gains tax taper relief.

Effective April 2000.

D **Discounts** on tax were introduced for small companies filing or paying VAT and PAYE electronically (see **Tax and NI**, TA 6).

- ◆ A further discount is available if the business is also paying tax credits.

Effective April 2000.

3 E-commerce

Measures to facilitate e-commerce were brought in under the Electronic Communications Act.

A An **approvals scheme** is to be set up to ensure standards among organisations supplying encryption services.

- ◆ To be registered, businesses would have to prove they were experienced and could work to adequate standards.

Management would be checked to ensure those involved were 'fit and proper' people (eg with no convictions for fraud).

- ◆ Registration is to be voluntary.

Effective 25 May 2000.

B The Act also provides for legal recognition of **electronic signatures**.

- ◆ This includes the processes for generating, verifying and communicating them.

Effective 25 July 2000.

4 Other measures

A The **Limited Liability Partnership Act** created a brand new corporate entity, the full partnership with limited liability.

This is suitable for professional firms, such as accountants and lawyers, and may also be useful for some start-up businesses.

- ◆ Regulations under the Act require financial disclosure equivalent to that required for a limited liability company.

- ◆ Members can be sued for wrongful or fraudulent trading.

Effective 6 April 2001.

B The **Regulation of Investigatory**

◆ **New business law in 1999**, LA 7, covers:

New laws

Finance Act 1999.
Contracts Act 1999.
Immigration and Asylum Act 1999.
Pollution Prevention and Control Act 1999.
The Food Standards Act 1999.
The Disability Rights Commission Act 1999.
The Rating (Valuation) Act 1999.
The Company and Business Names Act 1999.

◆ **New regulations on Tax.**

Corporate requirements.
Finance.
Consumer rights.
Health and safety.

◆ **Cases** relating to Directors.

Business failures.
Finance.
VAT.
Damages.
Branding.
Passing off.

Powers Act barred interception of private communications (including employees' e-mails, faxes and phone calls), except in defined circumstances (see **New employment law in 2000**, LA 8).

Effective 24 October 2000.

- C** The **Human Rights Act** brought the European Convention on Human Rights into UK law.
- ◆ Its direct effect is on public bodies, but the courts will apply its principles in all cases.
 - ◆ It could have particular implications for employers (see **New employment law in 2000**, LA 8).

- D** The **Transport Act** contained provisions permitting local authorities to introduce road user charging.
- ◆ They have also been given powers to impose workplace parking charges.
- Effective 1 February 2001.

- E** The **Trustee Act** introduced a statutory duty of care, applying to trustees in the exercise of their powers.
- ◆ They must exercise such skill and care as is reasonable in the circumstances, making allowance for their special knowledge, experience or professional status.
- They must also obtain and consider proper advice, unless they reasonably conclude that it is not necessary.
- ◆ The Act gives trustees (although not pension fund trustees, who have their own rules) wider investment powers.
- Unless the trust deeds say otherwise, they will be able to invest in the same range of investments as an absolute owner.

Effective 1 February 2001.

- F** The **Freedom of Information Act** created new rights of access to information held by public authorities.
- ◆ It covers a wide range of public bodies, including local government, publicly-owned companies, and bodies such as waste disposal authorities, licensing planning committees and National Park Authorities.

5 New regulations

A Corporate requirements.

- ◆ The audit exemption level (the level of turnover below which companies do not need to have a statutory audit) has increased from £350,000 to £1m.

Effective 29 May 2000 (for companies with year-ends on or after 26 July 2000).

- ◆ Companies House is accepting documents with automated signatures, on the assumption that those signatures have been properly generated by the signatory.
- Effective 19 September 2000.
- ◆ The three-day 'period of grace' for late filing of accounts at Companies House has been abolished.
- Effective 1 October 2000.

- ◆ Companies House has introduced new versions of three much-used forms, 363A (the annual return), 288(b) (termination of appointment) and 88(2) (allotment of shares).
- Effective 13 September 2000.

- ◆ The Insolvency Service (part of the DTI) has launched a scheme, using the Forensic Insolvency Recovery Service, to take legal action against rogue directors, seeking to recover money from them personally.
- Effective July 2000.

- ◆ Fees charged by Companies House are going up.
- For example, the fee for having a basic set of microfiche documents delivered by post is due to rise from £8.00 to £9.50.
- Effective 2 April 2001.

B Customs and Excise.

- ◆ New electronic customs procedures are being introduced for non-EU exports.
- Effective July 2001.
- ◆ Vans used to smuggle alcohol or tobacco across the Channel can be confiscated.
- Effective February 2000.

C Consumer rights.

- ◆ New 'distance selling regulations' to protect phone and Internet shoppers have come into force.
- Effective 31 October 2000.
- ◆ Large package holiday companies must now reveal their business links in their shops, brochures and advertising material.
- Effective 9 October 2000.

D Marketing.

- ◆ Comparative advertising is now allowed, within certain rules, throughout the EU.
- Effective 20 April 2000.

E Transport.

- ◆ Fees paid for the issue of documents authorising the cross-border operation of goods vehicles have gone up sharply.

MORE INFORMATION

- ◆ See **Suing**, LA 1.
- ◆ See **Being sued**, LA 2.
- ◆ See **Health and safety**, LA 3.
- ◆ See **Health and safety risk assessment**, LA 4.
- ◆ See **Intellectual property**, LA 5.
- ◆ See **Your firm and the Data Protection Act**, LA 14.
- ◆ See **Tax and NI**, TA 6.

LETTER OF THE LAW

The full text of all Acts of Parliament is available on the HMSO website at www.legislation.hmso.gov.uk, complete with explanatory notes and a search engine to help locate information quickly.

"The Data Protection Act 1998, which came into force on 1 March 2000, extends the rules about obtaining and handling personal data. Transitional arrangements have been put in place for certain types of data, such as information contained in paper files."

*Stephen Mason,
St Pauls Chambers*

Effective 1 January 2001.

F Health and safety.

- ◆ New CHIP (Chemicals Hazard Information and Packaging) Regulations have come into force.

Effective 2 October 2000.

- ◆ An Approved Code of Practice (ACoP) has been produced to go with the revised Management of Health and Safety at Work Regulations 1999. It incorporates changes to the regulations affecting fire precautions, young people and new and expectant mothers.

Effective 31 March 2000.

6 Case law

These cases have been selected because they are potentially important or interesting to small and medium-sized companies.

Decisions in the House of Lords (HL) take precedence over those of the Court of Appeal (CA), which take precedence over those in divisions of the High Court (eg Chancery or Queen's Bench Division). Decisions in the European Court of Justice (ECJ) take precedence over those in British courts.

A Partnerships.

- ◆ Parties who agree on a joint venture to find, acquire and fit out premises (in this case, as a restaurant), become parties in the business from the time they embark on agreed activities. It is irrelevant whether the business has opened for trade. So in this case, Mr Khan (who put up most of the money, but decided against continuing before the restaurant opened) was entitled to 50 per cent of the profits.

Miah and Others v Khan and Another (HL), 2 November 2000.

B Damages.

Where a garage sells petrol unlawfully to 13 year old boys, the possibility that one might sniff and spill some, and that the other might set light to it, was foreseeable and should have been foreseen. The garage owed the injured boy a duty of care, and although his negligence contributed to his injuries, the garage was liable for damages.

Evans v Souls Garages Ltd (Queen's Bench Division), 28 November 2000.

C Patents.

- ◆ Just repairing a product to extend its life is not an infringement of a patent. But it is an infringement if the work carried out is

substantial enough to constitute making (or re-making) the product.

United Wire Ltd v Screen Repair Services (Scotland) Ltd (HL), 20 July 2000.

D Copyright.

- ◆ A design group has an implied duty to carry out work for its client with reasonable care and skill. This includes not using material knowingly copied from a third party (in this case, a picture from Miller's Antiques Encyclopaedia, was used in the design for a new antiques website). Antiquesportfolio.com plc v Rodney Fitch and Co Ltd (Chancery), 10 July 2000.

E Brands.

- ◆ A person using another business's trade mark cannot rely on proving that the use was made innocently. But owners of trade marks must expect to have them revoked if they have not been used within five years of the date of registration. Premier Brands UK Ltd v Typhoon Europe Ltd (Chancery), 21 January 2000.

F Health and safety.

- ◆ A company that sub-contracted the job of dismantling scaffolding, without checking that it was being done safely, was fined when the scaffolding fell down. The fines on all the contractors involved came to almost £40,000, plus costs of £14,500 and compensation for injuries totalling £6,000. HSE v Lyndon Scaffolding PLC and others (City of London Magistrates Court), 5 April 2000.

G Tax.

- ◆ The Inland Revenue can order solicitors to produce papers relating to a taxpayer under investigation, even if this means the solicitors must check through documents involving more than a hundred transactions over six years. R v IR Commissioners, ex parte Davis Frankel & Mead (Queen's Bench Division), 13 June 2000.

H Directors.

- ◆ The sole owner of a business must pay the winding-up costs personally, where the business has been wound up in the public interest. Secretary of State for Trade and Industry v Aurum Marketing Ltd and Another (CA), 20 July 2000.

EXPERT CONTRIBUTORS

Thanks to **Alice Pepper** (University of Wales Institute Cardiff, 029 2050 6318); **William Whiteley** (Clarke Willmott & Clarke solicitors, 0117 941 6600); **Vera Brown** (University of Wales College, Newport, 01633 432366).

► Business law is complex and changes rapidly. This briefing reflects our understanding of the basic legal position, as known at the last update. Obtain legal advice on your own specific circumstances and check whether any of the relevant rules have changed.

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