ELECTRONIC RECYCLING FIRM SWITCHES ON TO EXPANSION

A company which specialises in recycling mobile phones and other electronic devices is ringing in the changes following a major restructuring deal.

Birmingham based Greencyc is looking towards future expansion following new investment and a move to larger premises.

Greencyc is a recognised e-waste partner for major manufacturers including Nokia, Samsung and other major networks. The company specialises in recycling mobile phones and other electronic goods including computers, televisions and laptops.

Gurshan Surdhar (left), finance director, Greencyc, Saleem Rehman (centre), chief executive Greencyc and Colin Rodrigues (right), corporate partner, Hawkins Hatton.

Founded in 2003, the company has recently moved to a larger, 11500 sq. ft. unit on Long Acre Trading Estate in Aston, Birmingham. The company now employs 32 staff with clients primarily in the UK, and Europe but is also expanding worldwide.

Colin Rodrigues, corporate partner at Hawkins Hatton, acted as lead adviser in the refinancing and restructuring. "The additional investment from the new sleeping partner will enable the company to continue its expansion plans," said Colin Rodrigues. "We are pleased that the transaction completed without any difficulties and the business is now well placed to secure further UK contracts and overseas business"

"I know now that this business will move forward given new investment in the business," said Saleem Rehman, chief executive of Greencyc.

DEALS DIARY

Date	Company	Deal	Role
March 2009	WELCONSTRUCT GROUP LIMITED	Sale of Division	Hawkins Hatton LLP acting for the Seller
March 2009	NATWEST BANK PLC	Finance for purchase of Public House	Hawkins Hatton LLP acting for the Bank
April 2009	FANS AND BLOWERS LIMITED	Management Buy Out	Hawkins Hatton LLP acting for the Purchaser
April 2009	WELL KNOWN RETAIL BUSINESS	Company Re-Organisation	Hawkins Hatton LLP acting for the Company
May 2009	CLIFFORD HOUSE	Management Buy Out	Hawkins Hatton LLP acting for the Purchaser
May 2009	HOME MATTERS PARTNERSHIP	Management Buy Out	Hawkins Hatton LLP acting for the Purchaser
June 2009	NORTHERN STEEL SERVICES LIMITED	Purchase of business out of administration	Hawkins Hatton LLP acting for the Purchaser
June 2009	CAPS (UK) Ltd	Purchase of Company	Hawkins Hatton LLP acting for the Purchaser
June 2009	PARKES AND BILLINGHAM LIMITED	Purchase of business out of administration	Hawkins Hatton LLP acting for the Purchaser
July 2009	SPARTAL LIMITED	Purchase of Company	Hawkins Hatton LLP acting for the Purchaser
July 2009	MADOC AND RHODES (LEA VILLAGE) LIMITED	Management Buy Out	Hawkins Hatton LLP acting for the Purchaser
July 2009	MAJOR STEEL MANUFACTURER	Sale of company	Hawkins Hatton LLP acting for the Seller

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ROGERS RESCUE MOTORS AHEAD WITH DEAL

Kidderminster based Rogers Rescue has purchased the motor rescue division of Eriksons (Motoring Services) Limited at Strensham Services (M5).

Left to right - Nick Dawson (far left), director, Rogers Rescue, Laura Raby, Hawkins Hatton, Roger Dawson, director, Rogers Rescue and Rob MacClaren (far right), director, Michael Duffy Partnership.

Rogers Rescue, a family business founded in 1985 by Roger Dawson, specialises in roadside breakdown repair and recovery operations for motorcycles, cars, light and commercial vehicles along with specialist accident and off road recovery. Following the acquisition, the company now employs 40 staff and operates over 60 recovery vehicles.

Eriksons (Motoring Services), re-branded Auto Support Ltd, is situated off the M5 motorway at Strensham Services at the junction of the M5 and M50. The expanded business will be able to offer a vehicle recovery service covering South Birmingham, West Midlands, Worcester and Gloucestershire.

Colin Rodrigues and Laura Raby, at Hawkins Hatton, acted as lead advisers in the refinancing and restructuring. "We are delighted that the transaction was able to proceed to a smooth completion without any problems and the business will now be able to operate from two strategic locations offering improved cover to existing and new customers."

Michael Dufty Partnership, based in Birmingham, were lead advisors on the financial side of the deal. Director Rob MacLaren said: "The deal will enable the company to double its capacity and provide Roger with a tremendous opportunity to grow the business."

"I have ambitious growth plans for the company and the additional investment will enable us to develop into new sectors and extend our customer base," said Roger Dawson, "I am delighted to have secured this acquisition which will provide a good platform for growing our customer base which includes motoring organisations, private motorists, commercial contracts and working with the new Highways Management contract."

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WHOSE RENT DEPOSIT?

From a landlord's viewpoint, granting a lease to a tenant can be a risky business. There is always the danger that the tenant may not perform its obligations under the lease including primary obligations such as payment of rent and repair. If a landlord does not have a rent deposit and the tenant goes into administration, the landlord will be an unsecured creditor for any sums due for the period prior to the start of the administration process.

In the current economic climate, in particular, taking a rent deposit from a tenant is good practice. Most landlords will require a rent deposit as a mandatory obligation where they are dealing with a newly formed company. This is for the simple reason that the new company may not have substantial assets.

Rent deposits are taken as security in addition to the normal payment of rent in advance. A sum of money is put into a separate designated account and is expressly charged to the landlord (this is known as a charged rent deposit) to ensure that third party creditors cannot access this money.

When a tenant goes into administration, the Insolvency Act 1986 applies a suspension known as a "moratorium" on actions that can be taken against a company which is in administration. For example, nothing can be done to enforce a charge over a company's property. The moratorium also prevents creditors exercising any rights they may have over the company's assets without the consent of the court or the consent of the administrator. At first glance, it would seem that this prevents a landlord taking money from the rent deposit without the administrator's or the court's permission. However, the Financial Collateral Arrangement (No 2) Regulations 2003 (the 'Regulations') disapply this moratorium in relation to any 'financial collateral arrangement'.

The previous consensus was that the Regulations should only apply where either the landlord or the tenant is a specified type of financial institution or public authority. This was based on the fact that the

aim of the Regulations when they were introduced was to implement an EU Directive which was limited to such bodies. However, in a recent case (R (Cukurova Finance) v HM Treasury [2008] ERHC 2567) it was held that the Regulations apply to everyone (except individuals). Following the decision in this case, it appears that a charged rent deposit will be construed as a 'financial collateral arrangement'. Landlords should note that the rent deposit must be in the 'possession or control' of the landlord. If the landlord has sole drawing powers (as is usually the case) and if the account is in the landlord's name, it would be considered to be in the possession or control of the landlord.

In summary, most commercial landlords will be pleased with this outcome. They will be able to take money from a charged rent deposit in the event that their commercial tenant goes into administration without having to account to preferential creditors or any ring-fenced fund for unsecured creditors.

If you would like any further information or advice on this matter please contact Laura Raby at Hawkins Hatton LLP on (01384) 216840 or lraby@hawkinshatton.co.uk.

HOLIDAY PAY AND UNLAWFUL DEDUCTION OF WAGES

The effect of long term sickness absence on the entitlement to receive holiday pay has long been a matter of debate and the subject of many High Court cases such as Delaney v Staples (1991) and New Century Cleaning Co Ltd v Church (2000). This position has been revisited in the recent House of Lords decision in HMRC v Stringer (2009) (the "Case").

Background

The Case involved employees who had been absent from work due to sickness where the company sick pay or statutory sick pay had expired. The employees believed that they were entitled to holiday pay for 4 weeks per year notwithstanding that they did not receive a salary. HMRC argued that as the employees were not working there was nothing from which to take leave and therefore holiday entitlement did not accrue.

The House of Lords held that payment in respect of holiday is part of the consideration for the work done under a contract of employment meaning that holiday pay falls within the definition of wages. Therefore, failure to pay holiday pay could be deemed as an unlawful deduction of wages entitling an employee to bring a claim under the Employment Rights Act 1996 ("ERA").

The House of Lords went on to clarify what constitutes a deduction of wages and the limitation period for an unlawful deduction of wages claim. In summary:

What constitutes an unlawful deduction of wages under the ERA?

The House of Lords looked to section 13 of the ERA which provides that a deduction from wages can not be made unless:

1) It is authorised by statute; or

2) It is authorised by the contract of employment; or

3) The employee has previously given consent in writing to the deduction.

It was argued on behalf of HMRC that holiday pay is not included in the definition of "wages". However, the House of Lords reviewed the definition of wages in section 27(1) which states wages are sums "payable…in connection with…employment". More specifically, holiday pay is included within the definition at section 27 (1)(a). Consequently, the House of Lord's decided that failure to pay holiday pay would constitute an unlawful deduction of wages.

Limitation periods

The Case also involved a discussion of whether the employees should have been permitted to bring a claim under the ERA or whether the claim should have been confined to a claim pursuant to the Working Time Regulations 1998 (the "WTR").

In order to bring a claim under the WTR an employee has 3 months from the date of the deduction to bring a claim, although separate claims must be brought in respect of each deduction. If an employee pursues a claim under the ERA the limitation period is 3 months from the final deduction and the claim can take into consideration a series of deductions, which could potentially date back over several years. HMRC argued the employees sought to use the ERA so they could take advantage of the extended time limits provided in respect of a series of deductions. The House of Lords concluded that claims to enforce holiday pay entitlement can be pursued under the ERA which allows the Claimant 3 months from the last in a series of deductions which could potentially date back many years.

This decision will make it more important for employers to ensure that they carefully manage absent employees and word contracts of employment so as to avoid any ambiguity. It is also advisable for employers to ensure that contracts of employment provide for annual leave to be reduced (where employees are contractually entitled to more than 20 days per year, excluding bank holiday's) to the statutory minimum during lengthy periods of sickness absence.

If you require any further information about how this can be done or on any issues raised by this article then please contact the employment department of Hawkins Hatton LLP on 01384 216840.