

NEW LOOK FRANCHISE BUSINESS CONVERTS FOR GROWTH

A West Midlands based Cash Converters franchise business is gearing up for future growth following its own conversion to a limited company.

Touchdown Associates, which will be opening its seventh Cash Converters' store in Acocks Green next month, has been incorporated from a partnership base in a move designed to provide a solid foundation for expanding the business.

Cash Converters is the UK's number one retailer of pre-owned goods and a financial services provider. The new store in Acocks Green will be the 174th store in the UK and will be part of the fastest growing network of Cash Converter stores. Worldwide, Cash Converters is fast approaching 600 stores open.

We acted for directors John and Olwyn Walker and Jason Amos, carrying out the transfer of all 62 staff into the new limited company structure.

John Walker has operated a Cash Converters franchise for the last 19 years, opening his first store in Coventry. Since then the business has steadily expanded and today runs sites in Northfield, Redditch, Erdington, West Bromwich and Kings Heath.

The opening of the Acocks Green store in Warwick Road on December 7th is designed to meet the growing demand for Cash Converters which allows the public to trade in used or unwanted goods for instant cash. The stores also offer a range of financial services including cheque cashing and payday loans, providing a valuable service to the growing number of adults in the UK who do not have access to bank accounts or mainstream credit facilities.

"We've seen a marked upturn in demand since the credit crunch and are now attracting a wider profile of customers including those from the leafy suburbs who had their lives impacted upon by the tough economic conditions," said John.

Colin Rodrigues, our corporate partner, said: "The incorporation into a limited company will allow the business to grow from a more stable footing and makes it far easier for the directors to attract senior staff and look at succession planning."



from left to right
Ruth Coleridge, Hawkins Hatton;
John Walker, director, Cash
Converters; Olwyn Walker;
director, Cash Converters; Dawn
Sebbage, Hawkins Hatton.

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SOLICITORS

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NEW RECRUIT STRENGTHENS OUR COMMERCIAL PROPERTY TEAM

We have appointed Benjamin Jones as an associate commercial property solicitor.

Benjamin joins from George Green LLP Solicitors in Cradley Heath where, after completing his training, he spent the last six years working as an assistant and then as an associate solicitor in the firm's commercial property department.

Educated at King Edward VI College in Stourbridge, Benjamin gained a law degree with honours at the University of Birmingham, before gaining a distinction in the Legal Practice Course.

During his time in practice, Benjamin has become well-respected in his field, working on a number of secured lending transactions for major high street banks. He has also gained significant experience in negotiating on behalf of both landlords and tenants and has provided commercial property support in a variety of corporate transactions including management buy-outs, asset deals and share sales and purchases.

Colin Rodrigues, our corporate partner, said "As the commercial property and corporate sectors continue to recover from the recession, the appointment of Ben to work alongside our existing team of solicitors brings a wealth of additional experience to our clients. It also demonstrates the firm's commitment to investing in young talented professionals who are committed to providing the very best in terms of quality of advice and service".

Benjamin Jones comments "I am delighted to be joining this dynamic and progressive firm at this exciting time and am looking forward to working closely with both existing and new clients to sustain and further enhance the firm's excellent reputation."



DEALS DIARY

<p>December 2010</p> <p>GABRIEL & CO LIMITED</p> <p>Re-organisation</p> <p>Hawkins Hatton LLP acting for the Company</p>	<p>December 2010</p> <p>PROPERTY HOLDING COMPANY</p> <p>Refinance for over 50 properties</p> <p>Hawkins Hatton LLP acting for the Company</p>	<p>December 2010</p> <p>FASTENER MANUFACTURING COMPANY</p> <p>Sale of Shares</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>
<p>January 2011</p> <p>SEATING MANUFACTURE AND SUPPLY BUSINESS</p> <p>Sale of Shares</p> <p>Hawkins Hatton LLP acting for the Seller</p>	<p>January 2011</p> <p>PUBLIC RELATIONS COMPANY</p> <p>Introduction of New Shareholder</p> <p>Hawkins Hatton LLP acting for the Company</p>	<p>January 2011</p> <p>PROTECTION, MASKING AND FINISHING PRODUCTS BUSINESS</p> <p>Re-organisation</p> <p>Hawkins Hatton LLP acting for the Company</p>
<p>February 2011</p> <p>CNC MACHINING COMPANY</p> <p>Sale of Shares</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>	<p>February 2011</p> <p>CLOTHING RETAILER</p> <p>Sale of Assets</p> <p>Hawkins Hatton LLP acting for the Seller</p>	<p>February 2011</p> <p>TELECOMMUNICATIONS BUSINESS</p> <p>Sale of Shares</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>

In This Issue

- New Owners Put Autorite On The Road Ahead
- Steel Firm's Move Signals New Era Of Growth
- Avoiding Breakclause Pains
- New Look Franchise Business Converts For Growth

NEW OWNERS PUT AUTORITE ON THE ROAD AHEAD

A West Midlands based recovery and maintenance business is driving ahead under new ownership.

Autorite (Willenhall) Limited, which was established in 1982, has been acquired by Darren Harris and his holding company Midlands Properties. Mr Harris is also a director of Autobits Scrap Metal which operates a mile away from Autorite on the Ashmore Lake Business Park in Willenhall.

We acted for Mr Harris advising him on all aspects of the business and asset purchase as well as the transfer of the five acre site whilst HSBC Bank in Wolverhampton helped fund the transaction.

Autorite specialises in heavy and light vehicle recovery 24 hours a day. It has both car and commercial vehicle workshops and carries out all types of vehicle repairs and maintenance. Autorite is a car MOT testing station and can prepare and present all commercial vehicles for test to ministry standards.

The business employs 20 long serving and loyal members of staff whose futures have been secured following the acquisition.

Commenting on the purchase Mr Harris said: "Autorite has a solid customer base benefitting from a full range of nationwide recovery services which we service 24/7 365 days a year through our own capability and a network of AVRO approved partners."

Colin Rodrigues, our corporate partner said: "By acquiring the business the new owners have not only secured employment for the majority of the staff, but can ensure the company drives forward positively on the back of their plans to invest further in growing the customer base and services."

Kevin Skym, area director for HSBC, said: "Our bank was supportive of Autorite and will be for other similar businesses who can demonstrate their ability to repay borrowings out of trading profits".



Colin Rodrigues, Hawkins Hatton; Darren Harris, Autorite and Gary Riley, HSBC

STEEL FIRM'S MOVE SIGNALS NEW ERA OF GROWTH

One of Birmingham's oldest established engineering firms is looking forward to a new era of growth following a move to new manufacturing facilities in Smethwick.

Gabriel & Co, manufacturers of alloy steel castings and machined castings for Petrochemical and food processing industries, has purchased premises in Cornwall Road, having spent the last 14 years operating from a rented factory in Tyseley.

We advised Gabriel & Co on all aspects of the property transactions including managing the dilapidation liability on the rented premises and the freehold purchase of the new site.

Colin Rodrigues, our corporate partner worked closely with the management team at Gabriel & Co in order to bring about a satisfactory completion of the transaction in less than four weeks.

Founded by Percy Gabriel in 1884, Gabriel & Co is one of the country's leading stainless steel manufacturers of castings and fabrications. The company produces an extensive range of street furniture and handrail systems for transport operators around the world.

The £800,000 purchase of new premises and capital plant will enable the company to increase production and the size of castings manufactured at the foundry. The firm also plans to increase its 36 strong workforce by up to four people over the coming months.

John Gabriel from Gabriel & Co, said: "The advice we received from Hawkins Hatton was instrumental in helping us negotiate the dilapidations and bring about a successful move to our new manufacturing base."



Ruth Coleridge, Hawkins Hatton; Colin Rodrigues, Hawkins Hatton and John Gabriel, Gabriel & Co.

AVOIDING BREAK CLAUSE PAINS

In this difficult commercial climate, tenants need to be confident that any break clause they have managed to negotiate in principle is, "worth the paper it is written on" when it is exercised.

Benjamin Jones, our Associate Commercial Property solicitor, examines the pitfalls of negotiating a tenant's break clause and why commercial tenants would benefit from legal advice.

If the break clause is unnecessarily onerous and difficult to comply with the tenant's right is likely to be refuted.

In the same way that a tenant is likely to wish to exercise a break clause because of financial difficulties, a landlord is equally likely to want to frustrate the attempt to break in order to "keep the Tenant on the hook" for the remainder of the term so as to maintain an income stream. Clearly a landlord would not wish to be left without a tenant in a falling market.

As break clauses are construed strictly by the courts, the successful exercise of them can be problematic. However, many of these problems may be avoided if solicitors are involved in the early stages of the transaction to negotiate the terms of the break on the tenant's behalf.

Ideally the clause should be conditional only on the tenant providing the landlord with the required period of notice, with the lease coming to an end on the agreed date and no further pre-conditions. However, the landlord will invariably seek to impose additional pre-conditions on the right to break. These often include payment of the annual rent, insurance rent and service charge to the break date, compliance with the tenant's covenants in the lease and providing vacant possession on the break date. Sometimes they also include the tenant making a capital payment to the landlord.

Tenants should avoid such additional pre-conditions since these are strictly enforced by the courts. For example, a problem with the banking system may prevent the tenant from paying the annual rent, there may be a dispute about service charges, or an un-cleared cheque may mean that a capital payment is not made by the due date. Failure to comply with the strict terms of the pre-conditions would render the break void.

A pre-condition that the tenant has complied with the covenants in the lease could also present a problem as most tenants will almost certainly be in at least technical breach of several of the tenant's covenants in the lease. Any dilution of this pre-condition to only "material" or "substantial" breaches must also be avoided due to the subjective nature of these words and hence the potential for dispute and costly litigation. One well reported case saw a tenant's right disallowed on the basis that the tenant had redecorated with two coats of paint rather than three as was required by the lease.

Furthermore, the concept of providing vacant possession as a pre-condition to exercising a break can leave room for debate when the occupier leaves relatively insignificant fixtures and fittings or rubbish at the property following the expiry of the lease.

One final point, often overlooked by some solicitors, is that unless there is an express obligation to the contrary, the landlord is under no duty, following the break date, to refund to the tenant any of the rents paid in advance in respect of the period following the break date. This is a useful tenant's amendment, particularly where the annual rent is significant and is paid quarterly in advance.

In short, a well negotiated break clause will help reduce the possibility of the break right being refuted by the landlord, which could be disastrous for the tenant. Legal advice taken at the negotiation stage should be money well spent as it will minimise legal costs incurred later in ensuring that the break notice is validly served. This is another problem altogether and a potential "minefield"!

If you would like to discuss this further please contact Benjamin Jones on 01384 216840 or bjones@hawkinshatton.co.uk

