

CorporateBites

Updating you on company and commercial issues



Confidence is a fragile thing. According to the latest UK Business Confidence Monitor survey published by the ICAEW, confidence among business professionals has moved into positive territory for the first time in two years. Levels in the last quarter rose from -28.2 to +4.8 (a record increase and the highest since Q3, 2007). Is this evidence of an improving UK economy or just the first part of the infamous "double-dip" recession?

Our "Shortcut" this month links to a survey that we are running to understand the issues currently affecting UK businesses and the fallout from the recession. Please do take part if you can spare five minutes - we will provide an update next month.

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Recent cases generate interest. . .

With late payment of debts an increasing problem for businesses, two recent Court of Appeal decisions highlight the courts' increasingly pro-supplier attitude to late payment claims.

The case of *Ruttle Plant Hire Limited v Secretary of State for Environment, Food and Rural Affairs* established that, for non-consumer contracts, even if an invoice is incorrect a debtor should pay the amount that it believes is due to the creditor, or risk being charged the statutory rate of interest, currently eight per cent above base, on the full amount outstanding.

In *Taiwan Scot Co Ltd v Masters Golf Co Ltd* the Court of Appeal upheld a contractual interest rate of 15 per cent for late payments notwithstanding that the original trial judge had held that the high rate of interest constituted a penalty, rendering the clause unenforceable. The court looked at the rate of interest at the time that the contract was entered into (which in 2001 was 5.25 per cent). Applying the current statutory rate of 8 per cent, the rate of interest payable would have been 13.25 per cent. On this basis, 15 per cent was not unreasonable and could not justify the court overriding what had been commercially agreed by two companies.



For further information,
contact [Ben Turner](#).

Joint share ownership plans: a better incentive?

Challenging market conditions combined with the prospect of a 50 per cent rate of tax for high earners are leading many companies to review their share incentives schemes for senior executives. In these circumstances, joint share ownership plans (JSOPs) might be worth consideration.

JSOPs allow executives to participate in the growth in value of a company's shares and enjoy a capital return taxable at only 18 per cent. Under a JSOP, an employee and an employee trust both acquire a beneficial interest in shares albeit on an unequal basis. The trust buys most of the initial value of the shares and the employee only a small fraction. The trust, however, has only a limited right to growth in the value of the shares (perhaps up to a hurdle rate of five per cent per annum) and the employee is entitled to all the growth above any hurdle rate. Entitlement can be linked to performance targets and forfeited in the case of leavers.

JSOPs won't, of course, be suitable for all companies - they are generally more complex than conventional share schemes, generate no corporation tax deduction and will require expert valuation advice. On the positive side, they establish a direct link between executive rewards and long-term capital growth, there is no income tax or NICs and no upper limit on the value of the award, all of which are attractive benefits.



For further information, contact **Christopher Townsend**.

Shareholder engagement

The FSA has recently published a letter to the chairman of the Institutional Shareholders' Committee responding to concerns raised that active shareholder engagement might not be consistent with existing rules on market abuse, the disclosure of substantial shareholdings and changes in control in authorised financial institutions.

The clarification follows the recent Walker report on corporate governance in UK banks and other financial entities which, published in July 2009, set out recommendations to strengthen shareholder engagement with the boards of investee companies, with the aim of promoting good corporate governance.

The letter confirms that the FSA does not believe that there is any "fundamental inconsistency" between the existing regulatory requirements and the recommendations of the Walker report. Additionally, it does not consider that ad hoc discussions or understandings between institutional shareholders, designed to raise legitimate concerns on particular corporate issues, would constitute market abuse or trigger the disclosure of substantial shareholdings and changes in control.

To read the FSA letter, click [here](#).



For further information, contact **Stephen Hamilton**.

State Aid justified to assist economic growth

To the relief of the UK's smaller (but ambitious) businesses, the Government has secured State Aid approval with regard to Enterprise Management Incentives (EMIs).

The Government has satisfied the Commission that EMIs - which provide a tax break on share options offered by small and medium sized companies to their employees - will play a crucial role in enabling



For further information, contact **Deborah Clark**.

smaller firms to recruit and retain the highly skilled employees they need to thrive, and will therefore improve the economic health of the Community as a whole.

The Government is also widening the eligibility criteria so that companies based in the UK which carry out considerable overseas activity can use EMI to recruit key UK based staff.

The Economic Secretary to the Treasury, Ian Pearson, said:

"This is excellent news for small and medium-sized companies, particularly at a time when their success will be crucial to economic recovery."

For further information, click [here](#).

Shortcut - one year on from Lehman Brothers - survey

As we approach the first anniversary of the collapse of Lehman Brothers, Fannie Mae and Freddie Mac, to name just a few, we are conducting an online survey of businesses to take the current temperature on a number of the issues falling out of the crisis, including the impact on business confidence, competition, human resources and dealing with increased third party risks. We hope to publish the findings at the end of this month.

If you would like to take part, please click [here](#).



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