



## Europe Key to Riding Out the Economic Storm

European expansion could help small to medium size businesses (SMEs) ride the storm of economic recession, according to a recent seminar on European business hosted by Harris Cartier, HSBC, UK Trade & Investment and SEGRO. It was held at Eton College Rowing Centre and aimed to equip SMEs, with an overview of some of the areas to consider, when setting up an international business.

The seminar provided encouragement to those looking to expand into Europe. Angus Murray, an International Trade Adviser for UK Trade & Investment commented that: "Some regions in Europe are doing better financially than others, particularly in some of the emerging markets and so it can make good commercial sense to attract business from these regions, as well as the UK."

John Casey, Chief Operating Officer for Europe at HSBC Bank, also gave some useful information about how web technology is enabling SMEs to do more in Europe than ever before, including setting up a business, doing business online and carrying out financial transactions.

However, there are also many pitfalls that can beset a business looking to trade overseas. Legal differences can cause disadvantages, if they are not addressed properly. For instance, tenancy agreements can vary considerably across Europe, with some countries taking the side of the tenant, while others have a greater emphasis toward the landlord.

At the seminar, Harris Cartier provided expert legal advice for SMEs about how to structure a business in terms of liability, what to look for in

premises and tenancy agreements, and how Retention of Title can differ in Europe as opposed to the UK. Harris Cartier was supported by several members of Eurojuris, a network of International law firms, who highlighted key legal differences across many European countries, including Austria, Belgium, Denmark, France, Germany, Italy, the Netherlands, Poland, Portugal and Scandinavia.

Also speaking at the event was Neil Impiazzi, Inward Investment Manager at SEGRO, who provided an insight into SEGRO's UK and European growth strategies.

Paul Norris, Chief Executive of Harris Cartier comments: "There was some genuinely useful information for businesses from speakers who have a vast knowledge of how to support them in their expansion into Europe. With the valuable input from a number of members of Eurojuris, there was also a distinct continental flavour to the whole event, illustrating to delegates that Europe is a neighbour to be embraced, with many opportunities for those committed to developing an International business."

A free book by the Eurojuris International Business Group, looks at European expansion from a legal perspective. 'How to expand your business in Europe – Opportunities, Risks & Pitfalls' is available to order from Harris Cartier on 01753 674443. Free - subject to availability.

Harris Cartier seminar - Eton College Rowing Centre



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# Same sex partners and fatal accidents

Apart from its well publicised change to the law, the Civil Partnership Act 2004 also had a less well known but equally important aspect. It rectified a serious injustice which had previously existed in relation to claims arising from fatal accidents.

It is very common in a fatal accident claim for there to be a claim for financial dependency by the survivor. A common scenario is that the deceased is the breadwinner for the family and the survivor therefore depended upon the deceased to look after them and possibly the children of the family as well.

On the assumption that the survivor can establish a reasonable expectation of pecuniary benefit, then the law has always recognised that there are certain categories of people who can make such dependency claims. In the case of a married couple, it has always been the case that the surviving spouse can make such a claim. In addition to a surviving husband or wife, the law also recognised a dependency claim by the survivor in a heterosexual relationship, with the proviso that the couple had lived together continuously for a period of at least 2 years prior to the accident.

Prior to the introduction of the 2004 Act, the law however did not recognise any dependency claim by the survivor in a same sex relationship. The 2004 Act rectified this position in two ways. Firstly, if a same sex couple register their relationship and become civil partners then they are on exactly the same footing as a husband and wife and a dependency claim can therefore be made. Secondly, a dependency claim can also now be made in the case of a same sex couple where the couple have lived together for at least two years.

This therefore is an important development in the law and this change in the law ensures that there is no discrimination in this respect against same sex couples.



by  
Greg Bee

# A Happy New Year



by  
Bea Richardson

*Bea is the Fundraising Manager of The Back-Up Trust, and not employed by Harris Cartier*

This week at **The Back-Up Trust** our first rehabilitative course of 2009 returned from the ski slopes of Sweden and there were plenty of stories to tell. One of the best was that of Peter\* who suffered a spinal cord injury in 1990 – and had such a transformation that he returned this week saying *“My girlfriend won’t recognise me!”*

**The Back-Up Trust** works to support people who’ve had a spinal cord injury, enabling people to find the confidence and motivation that sudden paralysis takes away. Peter had never been on a Back-Up course before. He freely admitted to having been depressed for around the last 10 years as he struggled to adjust to life in a wheelchair. The volunteers on the course were forewarned that he had quite a “stressed” personality.

One day, one of the volunteer Group Leaders on the course was stood at the base of a ski run and she heard screaming. She looked up, and there was Peter, hurtling down the slopes in an adaptive ski cart, yelling several expletives and how much he “loved Back-Up”. A Back-Up course isn’t about skiing however, or drama or sailing or scuba or any of the activities Back-Up offers - it’s about finding yourself again after your whole world has been turned upside down, even if it takes 19 years to get there.

Harris Cartier are long term supporters of **The Back-Up Trust** and it’s because of their support that we can reach people like

Peter who had almost given up after breaking his neck in a diving accident all those years ago. Peter may now go on to be matched with a Back-Up Mentor – a spinally injured volunteer who’s been trained to give one to one support through a series of phone calls and face to face meetings. Back-Up’s entire Mentoring Programme is sponsored by Harris Cartier and this is what one recent mentee had to say about his experience of the service;

*“Life goes on if you want it to. I know that there’s no magical cure that will make me right but I’ve got to get on with it. I have something to look forward to. (My mentor) is an inspiration.”*

Whether it’s abseiling in Exmoor, enjoying a black tie dinner or racing a Dragon Boat on the Thames – Harris Cartier Solicitors have supported Back-Up in every way possible, with volunteers, support and ongoing faith in the outcomes of our work and the impact that Back-Up can have on someone with spinal cord injury.



If you’d like to find out more about the work of **The Back-Up Trust** and how you can get involved, contact Bea Richardson, Fundraising Manager, 020 8875 6727 or email [bea@backuptrust.org.uk](mailto:bea@backuptrust.org.uk) \*(name changed)

## Housing incentives to be disclosed



In an effort to make lending on newly built, converted or renovated properties more attractive to banks and building societies, the Council of Mortgage Lenders (CML) introduced new procedures in September that force builders and developers to disclose details of any discounts or other incentives they offer.

As incentives have become more common in recent years, it has become increasingly difficult for lenders to

establish the true value of a property.

For example, if a property is on the market for £150,000, it has been relatively common for a builder to offer a £20,000 discount, making the true cost of the property £130,000. However the lender may have offered a £135,000 loan whilst this may only be 90% of £150,000 it is effectively more than the property’s true value, placing the borrower in immediate negative equity.

Now, lenders can insist that builders and developers provide a completed ‘disclosure of incentives’ form, enabling them to see the true value of the property and lend accordingly.

According to CML director general Michael Coogan, “This is particularly important at a time of limited funding availability for house purchase transactions. If developers ensure that they are transparent, and disclose any discounts or incentives on offer to buyers, lenders’ confidence should start to return.”

# A few things every business should consider in relation to IP



by  
*Maria Anassutzi*

Intellectual Property (IP) whether in the form of patents, design rights, copyright, databases, know-how or customer lists very often represents a substantial percentage of a business value (research carried out by PWC and UK Intellectual Property Office). This is not always apparent since IP is very often intangible (think of software instead of a building). So what you should do in order to ensure that, although not visible, you make the most of your IP especially during tough economic conditions?

## 1 Identify your IP

Very often undertaking a form of audit of the business' IP is a first step, which may then lead to a review of employees' contracts, service agreements and agreements with suppliers and buyers.

## 2 Manage your IP

Do you have IP that your company is not currently using, can you license it out, should you market one product more than another, should you enter into a new market/territory or do you need to license in IP whether in the form of software or otherwise?



## 3 Ensure that you have a robust legal structure

This ensures that your business gets the most out of your IP, controls your licensees and knows the obligations imposed by your licensors.

## 4 Maximise it

License it out, sell it (or part), use it!

## 5 Protect it

Third parties and competitors will try to take unfair advantage of your name, brand and the success of your business by using names similar to your trade mark and brand, copying your designs, counterfeiting your products.

Now you know your IP, you have taken steps to protect it and given your business a clear differentiation which will sound very positive if you are trying to sell your business or seeking investment due to its potentially increased value.

## hc news



We are pleased to announce the arrival of **Katherine Denham** who has joined us as an Associate and will Head the Family Department. She works from both our London and Slough offices.

**Chris Gooderidge**, Senior Litigation Partner and Head of Clinical Negligence at Harris Cartier LLP acted for a young child who has cerebral palsy.

Judgment against the Defendants, Heatherwood & Wexham Park Hospitals NHS Trust, was obtained.

The child's family desperately needed larger accommodation with the necessary adaptations for a severely disabled child.

The family were living in rented accommodation.

An Application for an interim payment of damages was made to the High Court. This was vigorously opposed by the Defendants but the Judge ordered them to pay £874,000.00 as an interim payment of damages which will enable a suitable house to be purchased and for the necessary adaptations to be undertaken.

The case continues so that a final Order for damages can be made in due course.

## RESTRICTIVE COVENANTS RESTRICT DEVELOPMENT

In a recent case the High Court held that an extension to a property with a restrictive covenant (a "nuisance and annoyance" covenant which is common, particularly in estate built properties) would cause annoyance as it would restrict neighbours' views.

This is not only of importance to homeowners wishing to extend their properties but could also affect the value of property being considered for redevelopment.

The High Court judgement is complex and will not be applicable to many developments but anyone who has, or thinks they might have, a restrictive covenant on their property should take legal advice before they make plans to extend or redevelop.

## PENSION LIMITS

The Government, in the pre-Budget report, has stated its intention to reduce the sums which can be invested in pensions with the benefit of tax relief. The reduction applies both to annual contributions and to total values.

It had been anticipated that in both cases the limits would increase in line with inflation, but they are now to be frozen from 2011 to 2016. The limit for annual contributions will be 100% of salary, capped at £255,000, and the limit on total value will be frozen at £1.8m. In a final salary scheme this would equate to an annual pension of £90,000 p.a.

Those who had pension funds worth more than the "lifetime allowance" on 5 April 2006, when the limits were introduced, are able to apply to HM Revenue & Customs for the excess to be "protected", but must do so before 6 April 2009.

## TAX ON TRUSTS

Another announcement in the pre-Budget report related to the taxation of trusts. With effect from 2011, tax on savings income received by trusts is to be increased from 40% to 45%; and tax on dividend income is to be increased from 32.5% to 37.5%.

The increase will add to the attraction of holding trust investments in an Investment Bond tax-wrapper. When income is accumulated within a Bond it suffers tax at 20% or less, and if segments of the Bond are assigned to beneficiaries the gains are taxed at their personal rates – which clearly favours those paying tax at the basic rate or less.



## PERSONAL DIS-ALLOWANCE

In pursuance of the declared objective of ensuring that the better-off play their part in helping the Government out of its problems, the Chancellor also announced that from 2010/11 the availability of the basic personal allowance will be reduced by £1 for every £2 of annual income over £100,000; and for those with income over £140,000 p.a. the allowance will be further reduced until it is extinguished.

# Avoid making an allegation public!

Be very careful if you make an accusation against someone by email – particularly if you copy it to people other than the person you're accusing.

A recent case highlights this need for care. Before Salford University lecturer Dr Tom McMaster attended a conference in Ireland, he first gained the permission of his employer to travel there by boat. When he submitted a £180 expenses claim for the cost of the trip, however, it was rejected.

When he questioned the decision, he received an email from the university's then finance director, which alleged that the claim was fraudulent. Critically, this mail was copied into four of Dr McMaster's colleagues.

Dr McMaster instructed lawyers to demand an apology, only to receive a repeat of the allegations. He then took the university to the High Court to clear his name and seek damages, receiving £10,000 in libel damages. The cost to the university of defending the action is unknown.

In sharing his allegations with the people on the original email's circulation list, the finance director was effectively libelling Dr McMaster – a step that resulted in significant costs being awarded against his employer.

So anyone who doubts the probity of another person would be well advised to ensure that all communications remain on a one-to-one level!

# Personal injury awards – why the gap?

Have you ever wondered why there is such wide disparity between the personal injury awards made to different claimants? During the summer, several observers commented on the £4.5 million award made to promising footballer Ben Collet, whose career was cut short by a badly broken leg.

In the meantime, people who have been victims of crime, including violence, regularly receive far smaller pay-outs – particularly when the perpetrator is unknown.

The primary reason for this disparity was that Ben's was a 'fault' case, where another footballer and his club (Middlesbrough FC) were known to be responsible for the injury. This meant the case could be heard in court, taking into account factors such as the loss of past and future earnings – and as one of England's most promising stars at the time, Ben was clearly set for a very high income.

If a perpetrator is not caught, however, a case is regarded as 'no-fault'. This means that reparation is paid by the state, with a fixed set of guidelines in place to determine how much should be paid. In a case of violent crime, awards are made by the Criminal Injuries Compensation Authority (CICA), whose guidance, for example, proposes £1,000 as appropriate compensation for a victim who suffers an undisplaced fractured nose.

While this might not be immediately seen as a fair solution, there are many countries where no compensation at all is available in no-fault cases. With the support of a good personal injury solicitor, every UK citizen has the opportunity to win a financial award appropriate to their loss.



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