

# Taylor&Emmet LLP

S O L I C I T O R S

## Finch International Seminar: Trading overseas – the legal perspective

13 May 2014

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# About Taylor & Emmet LLP

- Full Service regional commercial law firm
- Advise on Business Legal Services and Personal Legal Services
- Focused on serving the needs of South Yorkshire business across the world
- £10 million turnover
- 185 employees
- Specialist industry sectors include manufacturing and engineering, automotive, retail and education
- Clients range from start-up to £100 million + turnover

# About the Presenter

- Peter Crawford – Partner and Head of Corporate Team
- Previously worked in Cambridge and Brussels
- Regularly advises clients on work with an international element
- Dealt with a £34 million disposal to the Belgian state bank
- Negotiated contracts with AIG and Accenture in the US
- Advised on the MBO of a UK subsidiary out of a US group
- Advised on an investment by South African VC
- Prepared a suite of agency agreements (for a client with a network of agents across the world)

# What do our clients do overseas?

- Supply goods and services directly to customers abroad
- Supply goods to customers abroad via agents and distributors
- Buy goods from overseas
- Use overseas manufacturers to produce goods
- Set up overseas offices
- Form overseas subsidiaries
- Buy companies overseas

# What happens when it goes wrong?

- Damage to reputation in whole regions
- Logistically difficult and expensive to effectively “crisis manage” if no permanent presence in relevant country
- Tough to obtain judgment if foreign law governs the contract
- Even if English law applies, still very hard to enforce judgments abroad
- Significant outlay on legal fees (you will probably instruct English and foreign lawyers)
- Very costly in terms of management time

# An apocryphal tale (i)

- Costa's Coffee Paraphernalia Limited (**CCPL**) used an overseas agent to supply its "high end" coffee accoutrements to customers in Italy. The same Italian agent (Marco) had been used for over 20 years, but his sales performance had been getting steadily worse. No formal agency agreement had ever been put in place between the parties and in 2009, CCPL finally decided to terminate the agency.
- In 2010, CCPL was given notice of a court hearing in Naples because the agency agreement had been unlawfully terminated.
- English and Italian lawyers were appointed.
- It was argued that the correct forum to hear the case was the English courts. The Italians rejected this argument.
- Despite commercial agents in the European Union all being governed by the Commercial Agents Regulations 1993, this law is interpreted very differently across the member states.

# An apocryphal tale (i)

- The Italian courts are renowned for favouring “the little man”.
- The case was adjourned on a number of occasions (always at the request of the agent), with significant cost implications.
- After several attempts at a negotiated settlement, the trial finally took place in 2013.
- Judgment was awarded in favour of Marco.
- Damages were awarded pursuant to the “indemnity model” favoured by most continental EU members at a significantly higher level to that which could be expected in the UK.

## An apocryphal tale (ii)

- Frank's Fancy Forklifts Limited were contracted to supply a number of custom-built trucks to a customer in Oman. Payment terms stipulated that 50% of the price was payable prior to shipping, with the remainder to be paid following delivery to Oman.
- The trucks were shipped to Oman. However, after taking delivery of them, the buyer claimed that they were faulty and refused to pay the balance.
- FFFL sent an engineer out to Oman and could find nothing substantive wrong with the trucks.
- No formal written contract had been put in place but it appeared that the contract had been incorporated on FFFL's terms. Judgment was sought and obtained in the English courts (unopposed by the buyer).
- Lawyers were appointed in Oman to try to enforce the judgment and obtain payment.

## An apocryphal tale (ii)

- The Oman courts refused to recognise the judgment as they considered they would have had jurisdiction to hear the claim under Oman law.
- Fresh proceedings were therefore brought in Oman by FFFL. By this point over a year had passed since the forklifts were delivered.
- The buyer defended the proceedings. By this point, there were evidential issues with the forklifts, which had been used heavily in hot dusty conditions.
- Eventually a settlement was negotiated. FFFL accepted a payment of approximately half what it was owed and agreed to provide spare parts for free.

# Getting it right

- Do your due diligence on the other party
- Ensure your overseas delivery model best fits the result you are looking to achieve
- If establishing a presence overseas, ensure you understand local employment, tax, sale of goods and other relevant laws
- Always ensure that there is a written agreement governing the terms of any contract
- If possible, ensure that the contract is governed by English law and that the English courts have exclusive jurisdiction to hear any claim
- Be aware that provisions in non-UK contracts may have a different meaning and/or effect in other countries

# How can we help you?

- Lots of experience in advising on overseas transactions
- Experience ranges from simple contracts for the supply of goods to significant acquisitions
- Where necessary we can put you in touch with appropriate legal advisers in other jurisdictions
- A sensible, friendly, pragmatic approach

# Contact details

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