



Corporate & Commercial Update

A round-up of the latest news in company and commercial law

SUMMARY

A round-up of company and commercial news from the last quarter:

- **The Customer is always right** - recent changes in consumer protection law
- **Can you keep a secret?** - proposal for a new EC directive on the protection of trade secrets
- **Corporate Update - New Proposed Transparency Measures**
- **New Company Reporting Requirements** - a report from the FRC

The customer is always right...

...or, for the purposes of this article, the *consumer* is always right. Recent changes in legislation have seen an even greater turn towards consumer protection. In June 2014 we saw the entry into force of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 which, although they affect all traders, focus in particular on traders supplying digital content and on “distance” or “off-premises” selling.

Affecting all traders:

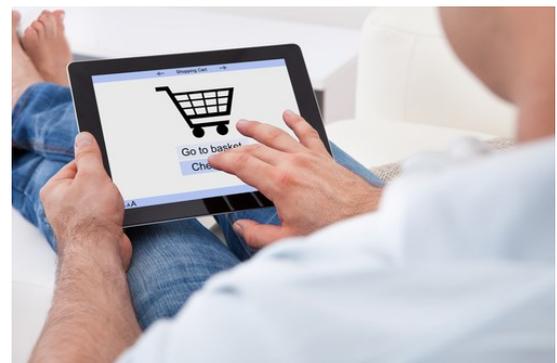
Under these Regulations, all traders in concluding consumer contracts must obtain express consent from the consumer before taking any additional payments. This deals specifically with the problem of the “pre-ticked boxes” which was a favourite of many low-cost airlines. Traders will also be under an obligation to deliver goods within 30 calendar days and not impose excessive payment surcharges when consumers pay by certain means, such as credit or debit cards.

The Regulations also require traders to switch to lower cost “basic rate” prefixes (i.e. those which start with the digits 01, 02 and 03, mobile numbers and those which are free -to-caller from fixed and mobile telephones) for enquiries from customers and therefore 0844, 0845 and 0871 customer service numbers will no longer be permitted. To be clear, these new numbers only apply to *post contract queries*. This means that 0844, 0845 and 0871 numbers will still be allowed for services that do not form part of the contract, such as technical support and sales.

Distance and off-premises contracts:

Traders who enter into contracts with consumers over ‘distance’ means such as the internet, or in person outside their business premises must extend the list of pre-contract information that a trader must give to a consumer and make clear where proceeding with the transaction will trigger a payment. The cancellation period has also been increased to 14 days or one year if the required pre-contract information was not provided when entering into the contract.

In terms of cancellation rights, the trader must provide the consumer with a cancellation form. If the consumer exercises the right to cancel, he will have 14 days from cancellation to return the goods but a trader will be able to withhold a refund until the goods are returned and also deduct an amount if on return, it is clear that the goods have diminished in value.



Digital content:

The new rules on the sale of digital content (data which is produced and supplied in digital form) impose an obligation on traders to provide pre-contract information concerning the serviceability of the digital content and its compatibility with other hardware or software.

“The draft directive introduces a common definition of ‘trade secret’”

For distance and off-premises contracts, the requirements for the consumer's cancellation right will depend upon whether or not the content is downloaded. If the content is downloaded, the consumer must consent to waiving the cancellation right before being able to download the software otherwise he would have to wait 14 days (the so-called “cooling-off period”) before download is permitted. If the software is provided, for example, on a CD, the cancellation period will end 14 days after the day on which the goods come into the physical possession of the consumer.



All traders, regardless of whether they sell on-premises or off-premises should review their standard terms and conditions and their procedures to ensure that they comply with this new legislation.



The draft directive introduces a common definition of "trade secret"; that is, information which:

- Is secret in the sense that it is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question.
- Has commercial value because it is secret.
- Has been subject to reasonable steps by the person lawfully in control of the information to keep it secret.

Can you keep a secret?

The European Commission has adopted a proposal for a directive on the protection of trade secrets, which is designed to harmonise the civil law on trade secrets and how it is enforced across the EU.

Recent studies on trade secrets have highlighted the fragmented and diversified nature of the existing protection for trade secrets in EU member states. Harmonisation of trade secret law in the EU has been considered by the Commission as a way of improving conditions for businesses to develop, exchange and use innovative knowledge and afford greater protection for cross-border research and development within the EU.

The draft directive sets out the circumstances when the acquisition, disclosure and use of a trade secret is unlawful, and establishes the measures, procedures and remedies that should be made available for civil enforcement, including interim injunctions and precautionary seizure of infringing goods.

It also provides a two-year limitation period in which to bring claims and sets out rules on the preservation of trade secrets during litigation. This proposed two-year limitation period for claims is likely to be problematical for many jurisdictions (for example, the UK) that currently allows a much longer time (in the UK, six years) to bring proceedings for trade secrets.

The draft directive has been transmitted to the Council of Ministers and the European



*“enhancing
the
transparency
of UK
company
ownership and
increasing
trust in UK
business”*

Parliament for adoption. If approved, it could enter into force by the end of 2014 however there is no certainty as to whether this will be implemented into UK national law. According to the UK European Scrutiny Committee, existing UK law governing the protection of trade secrets has the same effect as the proposed draft Directive and so any new legislation in this area is not required.

Despite this, the harmonisation of trade secrets law is still welcomed by most. This should create more certainty for businesses sharing confidential information. Equal protection throughout the EU should help prevent the misuse of trade secrets and confidential information. Harmonisation may also help avoiding information leaks caused by employees who have revealed secrets of a previous employer.

Corporate Update

New Proposed Transparency Measures

The Government published in April 2014 a report on enhancing the transparency of UK company ownership and increasing trust in UK business. These reforms and changes to the law are designed, in the Government's words, "to improve corporate transparency and accountability in the UK".

The key measures that have been proposed are the following:

1. A publicly accessible register of company beneficial ownership which will be created and held at Companies House. This register will contain information on individuals who ultimately own or control more than 25% of a company's shares or voting rights, or

who otherwise exercise control over the company and its management. Similar ownership details of LLPs will also be included on the register. The register will cover private and public companies and LLPs, but not companies which already comply with disclosure rules under the FCA's Disclosure and Transparency Rules.

2. Corporate directors will be prohibited, with specific exemptions for large groups of companies.
3. Bearer shares will be abolished and existing bearer shares converted to registered shares.
4. The regime for disqualifying directors will be broadened, with unfitness being determined by a broader and more generic provision. Courts will be able to take overseas misconduct into account when deciding whether to disqualify a director, and sectorial regulation and director disqualification will be better integrated.



Many of the changes outlined will require primary legislation, so change will not be immediate. The Government has conceded that a transitional period for existing companies will be necessary to implement the changes proposed. However, company secretaries and others involved in the running of companies should start to consider how the changes will impact on them.

Some companies may have the possibility to opt out of keeping and maintain their own company registers (i.e. of members, directors, directors' residential addresses, secretaries) and holding a register of beneficial owners. This may reduce the



Autumn 2014

**“companies
need to make a
careful
assessment of
the effect of
new accounting
standards”**

administrative burden on companies as they will no longer have to separately update their own registers.

Companies that will not be exempt from the new requirement to maintain a register of beneficial ownership should start to think about how they will obtain information about beneficial ownership. Groups that currently utilise corporate directors will need to consider how they will replace corporate directors if they fall within the scope of the new prohibition. Corporate shareholders who appoint nominee directors to the boards of investee companies or joint venture companies will also need to consider the impact of any changes to the "shadow director" regime.

Company Reporting Requirements

On 14 October 2014, the Financial Reporting Council published its Corporate Reporting Review Annual Report for 2014, assessing the state of corporate reporting in the UK.

- Companies need to make a careful assessment of the effect of new accounting standards introduced in 2014 in key areas such as consolidation and accounting for joint ventures and associates, as well as the new standard on revenue that will be mandatory

from 2017. Companies are encouraged to report on the likely effect of this implementation as soon as this is reasonably estimable.

- Companies need to make improvements in the quality of disclosure of critical judgements, estimation uncertainties and accounting policies.
- The improving economy has seen a notable increase in mergers and acquisitions. Companies considering acquisitions should revisit their approach to identifying and recognising intangible assets to ensure this is in line with reporting requirements. In the absence of appropriate explanation, the FRC will challenge companies that undertake business combinations resulting in the recognition of material goodwill but few or no separate intangible assets.



PINI FRANCO LLP



22-24 Ely Place, London EC1N 6TE

Tel: 0207 566 3140

Fax: 0207 566 3144

Email: info@pinifranco.com

www.pinifranco.com