

Subject: J Earl Trading Limited
From: Piers Larbey <Piers@Fletcherday.co.uk>
Date: 03/08/2016, 17:39
To: "Jason, JE Trading" <jason@je-trading.com>

Hi Jason

Further to our conversation this afternoon, please find attached draft licence agreement for the licence by J Earl Trading Limited (subject to my comment about whether the company or you own the IP in my earlier email) to RAN Limited.

Please note that:

1. The definition of the IP/software/codes i.e. the substance of the licence, needs to be added. I would be grateful if you could supply this. This should be set out in schedule 1 and referred to in the background at the beginning of the agreement.
2. The payment of the outstanding fee needs to be set out. I will ask Michael to insert this as this will be, amongst other things, the transfer of assets.
3. Would you like to take security (e.g. a charge or personal guarantee) for any of the payments due post-signing of the agreement (I have referenced this in the document itself)?

The above are the key points in the document but we have discussed the other surrounding issues which relate more to the transaction as a whole, namely:

1. You mentioned a shareholders' agreement for RAN. Although I have added a representation to this effect, do you know if the shareholders' agreement requires shareholder consent for this agreement to be entered into?
2. The agreement assumes JET owns the IP. You mentioned you were an employee of RAN for a very short period of time. Ordinarily IP generated during a period of employment would belong to the employer, which may cause an issue if RAN seeks to argue otherwise. We could ask for letter from RAN to confirm the same (over and above the agreement).
3. Most important is the solvency of RAN and whether or not the transaction could later be set aside for, amongst other things, being at an undervalue. You need to be sure that the factual basis for the document is indeed correct and the values ascribed to in it (e.g. the fee) are at market rate. This applies in terms of being too high or too low for example if the agreement was seen as a way of moving value out of the company to the detriment of creditors/shareholders. The directors have to act in their best interests and in accordance with their duties. Essentially this is their issue but you do not want the transaction later set aside or affected by any dispute in this regard. We know that there is a disgruntled shareholder which means that, as we would do any way, we have to be very alive to the fact that the transaction(s) may be challenged.
4. In addition to 3 above, the solvency, also relates to the asset transfer (has the valuation been obtained from an independent valuer?) and what % of the assets this is for the company. Will this be a full transfer of the business, which will have wide ranging implications e.g. TUPE? And again if the transfer leaves the company with no assets but a number of liabilities it may also be subject to attack by a liquidator should the company be made insolvent. I am not an insolvency expert but if you would like me to discuss with an insolvency colleague I am happy to do so.
5. We discussed on the phone the past and potential claims against the company and that any assets that you acquire (and the licence) do not have any bearing/or are affected by these so that you do not inherit a liability that you are not aware of (or are storing up a future liability).

I will send a copy of the draft licence agreement to Michael for his comments. I am happy for us to have a conference call tomorrow morning to go through this agreement and/or arrange a meeting with all parties.

If you have any other questions please do not hesitate to let me know.

Kind regards
Piers

Piers Larbey | Partner



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— Attachments: —

Licence Agreement.doc

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