

Subject: RE: Business Transfer Agreement
From: Piers Larbey <Piers@Fletcherday.co.uk>
Date: 31/08/2016, 17:30
To: "Jason Earl, JET Group" <jason.earl@je-trading.com>

Thanks Jason, I will amend the agreement as requested and send over the list of assets on receipt. Michael has told me that he is chasing George for this.

With regard to TUPE I would ordinarily refer you to our employment colleague who can advise formally on this but in the absence of this I attach a guide produced by ACAS that has all the information that you need to know.

Saying that however, and this is not a substitute for proper advice from an employment solicitor, if the employees are happy then this should mean that the chances of a claim being made for non-compliance will be reduced and provided that you inform and/or consult with the affected employees that is more or less all you need to do. But remember you can't make changes to the employment contracts and generally you will be unable to make any of the employees redundant as a result of the transfer. Following the transfer you will take over responsibility for all liabilities and obligations in relation to the employees so need to be know exactly what these are and make the necessary preparation e.g. payroll, PAYE (tax and national insurance) etc. Are they are employees that will not transfer? If so they may feel disgruntled and look to bring a claim (to say that they should have transferred)? Let me know if this is the case.

With regard to the property have you spoken to the landlord and has it consented to the transfer? Also is it a lease of a licence? Taking over payments under a lease is usually a taxable disposition and you'll have to pay SDLT whereas a licence is usually not. Moor Place looks like a serviced office so it may be a licence but we would need to see the agreement to be sure (I have asked Michael for this).

If you don't want a PG that will not be a problem save that I am concerned that your security otherwise might not be of any value as the Company will not have a lot post-transfer (but I guess that is your call). I will amend the agreement to provide that you can take security.

Are you proposing to sign the agreement tomorrow (as this is very short notice)? Are you comfortable that you have everything in place to do so? As mentioned earlier we have carried out no due diligence at all and so are unable to verify title to, and the Seller's ability to transfer, any of the Assets and what consents may be required or any other problems that may be attached to any of the Assets (or in any of the contracts). As I am sure you will understand it would be remiss of me not to point out that proceeding without any DD and taking time to properly appraise the Business would be against my advice and carry a number of risks.

I shall update you with the documents form Michael asap.

Kind regards
Piers

Piers Larbey | Partner



Fletcher Day | 56 Conduit Street | Mayfair | London | W1S 2YZ
DX: 37227 Piccadilly
DDI: 020 7870 3870 | Fax: 0207 240 7617

Fletcher Day is the trading name for Fletcher Day Limited. Registered in England & Wales with number 08367719. Authorised and regulated by the Solicitors Regulation Authority under number 614192.

This e-mail and its attachments are intended for the above named only and may be confidential. If they have come to you in error you must take no action based on them, nor must you copy or show them to anyone. Please reply to this e-mail and highlight the error.

Cybercrime and fraud

Please be aware of the increase in cybercrime and fraud. Fletcher Day Limited will not change its bank account details without prior notification. If you receive an email stating a change in bank account details purporting to be from Fletcher Day Limited do not send the funds to the account and contact us immediately. Fletcher Day Limited will not accept liability for any money sent to the wrong account.



From: Jason Earl, JET Group [mailto:jason.earl@je-trading.com]

Sent: 31 August 2016 16:53

To: Piers Larbey <Piers@Fletcherday.co.uk>

Subject: Re: Business Transfer Agreement

Cheers, from what I'm aware employees (there's approx 15 full time just to give you an idea of how TUPE affects things). They are aware of the transfer and I get the general impression they are happy with the situation (I know pretty much all of them personally) but I would be grateful if you have some generic TUPE advice for that number of employees if you could send it over asap.

Regarding Moor Place, the offices are rented so there's no property / real-estate involved JET will simply take over the contract liability from the 1st September

In regards to the loan, I don't think there's any need to go as far as personal guarantees - I'd just like to ensure in case of insolvency I won't be left short changed in a the mix of unsecured creditors - i.e. I think the All Assets will be sufficient for my objectives.

Regarding legal wording changes, yep that's all fine by me.

Regards,
Jase.

On 31/08/16 16:04, Piers Larbey wrote:

Thanks Jason and thanks for confirming the commercial terms are broadly as you were expecting.

I've asked Michael to provide the information to go into the schedules and will forward these on to you on receipt.

The information in the schedules is very important as legal implications are likely to arise from it based on the list of assets that are being transferred.

For example the sale purports to transfer the "Property" at Moor Place (details of which I have requested from Michael), a property cannot necessarily transfer under the terms of this agreement and has to be transferred separately (if in fact there is one). Similarly, as you know TUPE will apply to those employees that work (or substantially work) in the Business and the TUPE rules impose legal obligations on the parties that have to be followed otherwise the employees may be able to bring a claim against being made by an employee (I have asked Michael to confirm the numbers of affected employees that will determine which TUPE rules will apply).

Thanks for clarifying the terms of the loan. You mention that you would like to take security over all of the assets, which would typically be a debenture, are you comfortable that there will be sufficient assets of value (after the transfer) over which you can take security? If you are worried about the solvency of the company have you considered taking PG's from the directors?

I will make the amendment to clarify your employment situation and I can also tidy up the rest of the agreement to fill in the blanks, correct a few inconsistencies and make some changes to the legal wording (to help protect your position), which I do not think are likely to be contentious, I trust that is ok? The most important thing is, as you say, to know what you are buying and any legal implications that might flow from that.

Kind regards
Piers

Piers Larbey | Partner



Fletcher Day | 56 Conduit Street | Mayfair | London | W1S 2YZ
DX: 37227 Piccadilly
DDI: 020 7870 3870 | Fax: 0207 240 7617

Fletcher Day is the trading name for Fletcher Day Limited. Registered in England & Wales with number 08367719. Authorised and regulated by the Solicitors Regulation Authority under number 614192. This e-mail and its attachments are intended for the above named only and may be confidential. If they have come to you in error you must take no action based on them, nor must you copy or show them to anyone. Please reply to this e-mail and highlight the error.

Cybercrime and fraud

Please be aware of the increase in cybercrime and fraud. Fletcher Day Limited will not change its bank account details without prior notification. If you receive an email stating a change in bank account details purporting to be from Fletcher Day Limited do not send the funds to the account and contact us immediately. Fletcher Day Limited will not accept liability for any money sent to the wrong account.



From: Jason Earl, JET Group [<mailto:jason.earl@je-trading.com>]

Sent: 31 August 2016 15:00

To: Piers Larbey <Piers@Fletcherday.co.uk>; Jason, JE Trading <jason@je-trading.com>

Subject: Re: Business Transfer Agreement

Hi, thanks for the summary. Yes, I've read through as well, and while the legal side is probably beyond me in some respects the commercial terms seem mostly to be fine, and is pretty much what I've agreed with the other side.

The point regarding employment. I think it needs to be amended as it should only be for 90 days also. I am not intent on providing services to RAN or them beyond that. And because it will only be for 90 days I don't need anymore detail on the employment than what is there - it is only to enable me to help them transition to their

new structure and to help them help me transition RANsquawk to JET. So I don't need to update the detail on employment but I do need it to be limited to 90 days please.

In regards to the loan - this is an OPTIONAL facility and yes if I provide the loan I would want it secured on "All Company Assets".

In regards to the lower settlement and arbitration - arbitration is something they wanted to include and I have agreed to a reduced amount because I fear they would fight / dispute larger amounts and I am not sure they have the ability to pay more and I am greatly concerned about their solvency in the longer term.

In regards to the assets they were supposed to be populated already by Michael Edwards - RAN's solicitor based on what I had agreed with them - We need this to be done as soon as possible now.

I am happy with 4.3 and the rest of it so please if you could attain the updates as requested and get the final copy from Michael as soon as possible please today.

Thank you for your advice it is has been valuable.

Cheers,
Jase.

On 31/08/16 13:34, Piers Larbey wrote:

Hi Jason

I've read through the transfer agreement and, leaving aside legal comments at this stage, can you confirm that the commercial terms as set out below have been agreed by you (I ask this as they are markedly different to your initial proposals and have made a few side comments in square brackets):

In short what is being proposed is that the Seller is acknowledging that the sum of £1.365m is owed by the Company to you (being 91 months of £15,000) for use of the IP. This will be satisfied by the payment of £50,000 in cash and the transfer of the business, which has a deemed valuation of £720,000. In total that being £770,000. [It would appear that the balance is no longer going to be paid to you whereas we previously discussed that this would be paid to you over a period of time (and possibly secured noting the point regarding a statutory demand)].

In addition it is proposed that the parties have up to one year to revisit this valuation and seek an independent valuation, which if different can be used to adjust the purchase price (in cash). [Should this work only in your favour given that you are waiving the balance owing to you?]

Following completion of the transfer of assets you will grant a (i) free licence of your IP to Seller for 90 days; and (ii) a free licence of your client list indefinitely which relates to Tradersworld. There is some ambiguity in the wording of clause 4.3 but it would appear to suggest that you would be offering your/some of your business through this portal, which the seller will operate but that will not compete with your business.

You will then make a loan facility available to the Seller in the sum of £200,000 for a minimum period of 2 years and work for the Seller as, amongst other things, lead web developer [Would you like to secure this loan and also document the terms of your employment?]

Is all of the above accepted by you? If not or if there are any inaccuracies do please let me know. I am very happy to talk through the above over the telephone if that is easier for you?

With regard to the transfer of the business generally, do you know what assets you are going to be buying (the itemised lists in the schedules have not yet been completed) and would you like us to undertake any due diligence (which is something that we would always recommend)?

I look forward to your instructions or discussing this with you before responding to RAN's solicitor.

Kind regards
Piers

Piers Larbey | Partner



Fletcher Day | 56 Conduit Street | Mayfair | London | W1S 2YZ
DX: 37227 Piccadilly
DDI: 020 7870 3870 | Fax: 0207 240 7617

Fletcher Day is the trading name for Fletcher Day Limited. Registered in England & Wales with number 08367719. Authorised and regulated by the Solicitors Regulation Authority under number 614192.

This e-mail and its attachments are intended for the above named only and may be confidential. If they have come to you in error you must take no action based on them, nor must you copy or show them to anyone. Please reply to this e-mail and highlight the error.

Cybercrime and fraud

Please be aware of the increase in cybercrime and fraud. Fletcher Day Limited will not change its bank account details without prior notification. If you receive an email stating a change in bank account details purporting to be from Fletcher Day Limited do not send the funds to the account and contact us immediately. Fletcher Day Limited will not accept liability for any money sent to the wrong account.



— Attachments: —

Handling-TUPE-Transfers-The-Acas-Guide.pdf

602 KB