



Over the next four months a team of lawyers from Cleaver Fulton Rankin (CFR) will be advising a fictitious US technology company on the legalities of setting up shop in Northern Ireland.

Laying the Foundations



Scott Kennedy, corporate partner at Cleaver Fulton Rankin.

In this issue the process of turning an inward investment announcement into a commercial reality begins as CFR's client targets an existing indigenous operation. Corporate partner, and project manager on the deal, Scott Kennedy shares his work blog with us.

Mon 16 June:

A frenetic few weeks. A large US software company has instructed us to advise on an exciting new deal. They are looking to acquire a local company and in the process invest millions of pounds in Northern

Ireland, creating hundreds of jobs.

The usual timetable for completing the deal is out the window – the target company is preferred bidder on several large government contracts but only if it can show that it has the resource behind it to deliver – we have two weeks to close the deal otherwise the government contracts will be lost. The pressure's on!

It's going to be a firm-wide effort. We and the client spent most of last week negotiating the Heads of Agreement. These set out clearly the key commercial terms of the deal. Once the heads are agreed it's really difficult for either party to change anything so they have to be exactly right and will be referred to constantly by both sides. It's a critical stage of negotiations.

We also sent our legal due diligence questionnaire to the vendor on Friday. This is essentially a shopping list of questions about all aspects of the business. Each questionnaire is tailored depending on the business being bought. Obviously the value of the company here is in the software so extracting information on intellectual property is critical. The target says they own the copyright to

the software but we need to check this thoroughly. Did their employees write all of the software and do their employment contracts confirm that any IP they create whilst at work belongs to the target? Were outside consultants used at all – have they similarly agreed that the IP they create belongs to the target? Does any of the software incorporate third party software? Is there a licence for this? It all needs to be checked by the IT and employment experts – if there is a problem, better to find out now!

Weds 18 June:

Responses to the questionnaire have arrived accompanied by two large boxes of documents! Doesn't look like there are any big problems but one reply is interesting – it seems that part of the software was written by a contractor who was also a close friend of the major shareholder at that time. Unfortunately there was no written contract in place regarding ownership of this software. The majority shareholder assures us there won't be a problem but we need to ask more questions I think.

First culture shock for our client today! The due diligence replies show that a couple of the target's

employees have a poor disciplinary record and our client wants them gone by the time they have the company. Our employment team has had to gently explain the realities of the unfair dismissal legislation to our client...

Mini-crisis with the acquisition funding lined up with a local bank yesterday. Since the target has no assets of any measurable value to offer as security, the bank wanted a guarantee from the parent company of the group. The parent company's board, however, only meets once a month which would have been fatal to the deal timetable. Suggested to the Bank and our client that with some additional funds contributed from the client's resources sufficient funding could be advanced by the Bank to close the deal on time even if the guarantee was not in place. Additional funding could then follow under the Bank's facility to replace the internal funding once the parent company guarantee is put in place – sensible solution; at least it's within our control. Panic over!

Don't miss next month's blog when our CFR lawyers deliver the contract documentation...