

Question

Having bought a company last year I am now becoming aware of circumstances which may amount to a breach of warranty. How should I handle this?

Legal opinion

When the company was purchased, you will have entered into a Share Purchase Agreement. If you think that there might be potential for a warranty claim, you need to revisit the agreement to establish the basis of your claim and the manner in which it requires to be processed.

The warranties in your agreement amount to assurances from the seller with regards to the condition of the business and outstanding liabilities at the time the deal was completed.

In order to raise a successful claim you will need to show that the warranty was not true and that, as a result, the company you purchased is worth less than you thought.

The agreement will lay down the procedure for letting the seller know about the breach and it will almost certainly contain some time and financial restrictions. There will also be notification provisions which should be carefully complied with.

The recent case of John Forrest and Others v John Glasser and John Whitley highlighted the importance of being aware of the notification provisions. In that case the contract stated that the purchasers had to inform the sellers of any breach as soon as practicable and also within three years. "Without prejudice" to this they also had to provide sufficient information for the seller to be able to look into the claim and reply. Initially the court held that the claim was time barred because the letter had not provided the seller with enough details. However, on appeal it was successfully argued that the words "without prejudice" meant that at that stage the purchaser only had a duty to inform the sellers of a claim not to provide them with details.

In short, you need to revisit your Share Purchase Agreement to clarify the basis of your claim and ensure that you follow the appropriate procedure in terms of the agreement.



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Question

Are your employees travel patterns making your company's carbon footprint unacceptable?

Advisor's opinion

The Kyoto protocol is an amendment to the existing UN Treaty on climate change. Developed nations have agreed to cut emissions to below 5 per cent of 1990 levels by 2008-12, and 50 per cent by 2050. Though no legislation is in existence at the moment, the recent Tyndall Report would lead one to predict that such a Bill will probably arrive soon. For now, UK targets have been suggested at a 20 per cent cut by 2010 and 60 per cent by 2050, although the Tyndall report is calling for change almost twice as quickly as this.

So, how should you begin to look at reducing your company's carbon footprint?

There are many things you can do such as turning off lights in unused rooms, recycle waste paper, plastic cups and glass. However, the way in which other things such as your travel policy works can seriously impact your business too. If you have a car fleet, for example, how "friendly" is it to the environment? Do your employees really need to make all those journeys by car, or can they use public transport more often? Do people using their own cars on business and claiming on

average 40p per mile really need to make all those trips? Does your travel policy allow for flexibility and are you making the most of technology to cut down travelling?

In some of the UK's remoter places it surely makes sense to use the latest video-conferencing equipment rather than have five people travelling to a meeting by car, or worse, by plane. Live link-ups on secure networks to your other offices or suppliers offices around the UK could also assist. If your car and van fleet is up for renewal, why not consider some of the more environmentally friendly options, and you could even consider stretching these to hybrid cars for inner city pooled vehicles, or LPG vans.

We can undertake reviews of your car fleet, environmental policy and travel and subsistence policy in order to establish ways in which improvements can be made.

Certainly, it is prudent to act now in order to ensure you are setting trends rather than falling foul of legislation and any associated employee green travel taxes which will inevitably be introduced in the not so distant future.



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