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Name Changing and the implications for SMEs

The process of starting a business from scratch has always been wrought with risks and obstacles. Now, more so than ever, the hoops and hurdles one faces in running a company are enough to discourage even the most seasoned executives from putting their names above the door. Causing particular concern in recent weeks has been the news that a rise in the number of individuals changing their name has resulted in an increase in fraudulent behaviour affecting small and medium sized enterprises (SMEs). It has been reported that the UK Deed Poll Service will have changed around 60,000 people's names by the end of this year.

The concern is that a change of name makes it very difficult to investigate an individual's background, particularly when they do not want it investigated. This is often the case with individuals who have changed their names in an (illegal) attempt circumnavigate a Director's Disqualification under the Company Directors Disqualification Act 1986. This is of obvious concern to SMEs looking to expand and develop their business.

Recruiting the wrong individual can have far reaching implications. You and your company could find yourselves not just the victims of fraud, but liable to third parties who have also been affected. You could even find yourself subject to criminal investigation, with consequential damage to your company's reputation. It is therefore vital that you make sure you have in place stringent measures to ensure the prevention of corruption within your organisation.

The issue, when dealing with someone who has changed their name, is that it is a permanent, legal change. A Deed Poll certificate, issued upon change of name, can be used to change the name on your passport and your driving licence. The only documents which cannot be altered as a result of changing your name are marriage and civil partnership certificates, birth certificates, or for example educational certificates, as these are historical records. Further difficulty is caused

by the fact that data protection laws prevent third parties from confirming whether or not an individual's name has been changed.

For these reasons it can be difficult to identify a candidate who should be causing you concern. The key principle to adhere to is that of 'prevention is better than a cure'. If you and your company can demonstrate that you have taken all reasonable steps to prevent the commission of fraud within your company, you should find yourself protected, both in the civil and the criminal courts. This concept is reflected in the civil law concept that says any victim of fraud must demonstrate that they did all that was possible to mitigate their loss, and in the criminal law requirement for due diligence.

Due diligence is therefore paramount when looking at recruitment, and there are some steps you can take specifically to target the issue of name changing. For example, you can insist upon sight of the candidate's birth certificate, or education certificates as part of your identity checks. You can request proof of residence at a fixed address for a set number of months or even years. You can ask for assurances that the individual has not changed their name in the past. Incidentally, a change of name does not relieve an individual of their obligation to disclose criminal offences when asked, even if they were received under a different name. If you are misled in this way, you should have recourse to the usual contractual remedies allowed by law. In this way, you can protect yourself from financial loss, to the extent that the individual involved is in a position to pay any damages awarded. It is nonetheless clearly preferable to avoid recruiting or becoming involved with that individual in the first place, and herein lies the importance of these initial identity checks.

It is also important when taking on new partners or staff, to establish a clear and firm corporate structure, or contractual relationship. Clearly identify the individual's roles and obligations within your organisation, and make sure they are aware of them. As in all cases, there must be an element of trust when establishing any sort of business relationship, but it is prudent to ensure that you have tight control over your assets and the assets of your company. Consider carefully how much discretion you are happy to allow an individual when dealing with cash and assets. A written contract is usually a prudent step to take. Ensure there are measures in place to facilitate regular communication, and in some cases it may be prudent to implement measures to monitor your staff's behaviour within the context of your business. In such cases you should be clear with

your staff about how they are being monitored. The general idea is to implement a good internal controls system to ensure that you have a firm knowledge of what is going on at all times within your organisation, and to demonstrate your commitment to preventing fraud and corruption.

The issue in recruitment is, as is the case generally when concerned about corruption within your business, one of common sense. If you have concerns about an individual, these must be investigated and alleviated. If not, you will find it difficult to prove in court that you took all reasonable care to avoid fraud being perpetrated within your company. It can be an attractive option to overlook a somewhat 'clouded' history when considering signing a potential partner with access to lucrative business prospects. However, it is important to bear in mind that by taking on partners and employees, you are legally associating yourself with these people and their behaviour, and you could find yourself subsequently liable for it. The courts and prosecuting authorities are proving more and more confident in bringing criminal prosecutions against corporations, and the sentences for fraud and white collar crime are increasing significantly, as the importance of deterrence intensifies in the current fiscal climate. It is now, more than ever, important to protect yourself and your company from fraud and corruption.

If you would like to talk to us about the issues raised by this note, please contact:

Anil Rajani

Telephone 01895 207832

Email anil.rajani@ibblaw.co.uk

IBB Solicitors

Capital Court

30 Windsor Street

Uxbridge Middlesex UB8 1AB

Tel: 08456 381 381

Fax: 08456 381 351

www.ibblaw.co.uk

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