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CC MEMBERS AND PERSONAL LIABILITY – CHECK YOUR CHEQUES AND OTHER CAUTIONARY TALES

If you are a member of a close corporation, you are at risk of incurring personal liability for the CC's liabilities (similar rules apply to companies).

Recent cases illustrate some danger areas: - You must include on the CC's cheques details of its correct name, description and registration number. If you don't, the Supreme Court of Appeal held recently, you are personally liable on the cheque, *even if the holder of the cheque knew it was dealing with the CC and had no expectation of a claim against you personally* – the technicality cannot be avoided. In the case in question, a company had converted to a CC but the cheques weren't changed – that simple oversight cost the member R65k, and no doubt also some serious legal costs;

The same details must also appear on "all notices and other official publications of the corporation", including invoices, letters etc etc (widely defined, and including printed and electronic) – if you aren't sure whether you are compliant, get advice urgently;

If the post of accounting officer is vacant for 6 months (a danger particularly when you acquire a shelf CC and don't think to register a new accountant with CIPRO), you *automatically* acquire joint liability for all debts incurred;

Anything that could be viewed as reckless trading or ignoring the separate legal identity of the CC is extremely dangerous. There are lots of grey areas here, and in particular you must keep adequate accounting records to show that the CC has always been kept separate from your other affairs, and has not incurred liabilities where it is "incapable of trading profitably and of meeting its financial commitments to its [suppliers] as and when they [fall] due".

MAJOR DECISIONS – 18 IS NOW THE KEY

The age of majority in South Africa has been reduced from 21 to 18, with effect from 1 July.

That means that 18 year olds can now marry, and contract, without the consent or assistance of their guardians. Make sure that your teenagers understand the risks involved in signing any form of agreement unless they fully understand all the consequences.

WHAT TO DO WHEN SOME CYBER PIRATE HIJACKS YOUR DOMAIN NAME

In the Internet Age, having the right domain name to host your website and e-mail can literally make or break your business. So if a cybersquatter, or an unscrupulous competitor, gets to

register “your” domain name first, you could be in big trouble if you have to wade through a long and expensive Court process to protect your rights.

The good news is that you now have available a fast, relatively inexpensive way of challenging someone else’s registration of a domain name. You will need to show that the registration is either “Abusive”, i.e. takes unfair advantage of, or is used to infringe, someone else’s rights – cybersquatting and unlawful competition would be examples, or

“Offensive” i.e. contrary to good morals, e.g. sexually or racially offensive (of course an offensive name will be blacklisted, and then no one can use it).

We now have the first example of a dispute resolution under new ZADRR regulations, where an adjudicator from SAIPL (South African Institute of Intellectual Property Law) ruled on a case where two businesses were fighting over a brand name that both had been using for many years - one for 18 years, the other for 27 years. One registered a domain in the trading name, the other objected. In the end, the objector wasn’t able to prove that the name was distinctive to it, and lost the domain name (a good lesson in the dangers of not protecting your trademarks upfront).

Although the procedures involved are relatively simple, you would do well to seek professional assistance in formulating and pursuing your objection – the applicable law is complex and specialised.

CONTAMINATED LAND: PROCEED WITH CAUTION

Don’t buy any land without first checking whether it may be “contaminated”. New legislation in the pipeline (“The National Environmental Management: Waste Management Bill”) will impose new assessment and remediation duties on you.

Crucially, if the land is declared a “remediation site”, you won’t be able to transfer it to a purchaser without Ministerial/MEC permission. And you won’t get that unless the purchaser is aware of the problem, and prepared to remedy it “within an acceptable period”.

The legislation will apply retrospectively, and the risk factors are widely defined, so get advice in case of doubt.

THE CYCLIST, THE POTHOLE, AND THE RULE OF THE ROAD

As the number of potholes on our roads grows, so does the danger to road users of suffering injury and damage through hitting (or trying to avoid) them.

In a recent case, a cyclist sued Provincial authorities after being seriously injured as a result, he claimed, of having to take evasive action to avoid a large pothole in a public road.

The problem was that the offending pothole was in the middle (the very middle – between two barrier lines) of the road. The High Court dismissed the claim, commenting that the cyclist had disregarded the basic rule of the road “to travel on the extreme left hand side of the road”.

It’s a timely reminder to all road users that not following the rules is going to be regarded as negligent at the very least - and to cyclists in particular, to stick to the side of the road.

NEW PROCEDURE FOR ONLINE PAYMENTS TO SARS/CUSTOMS

SARS advises that from 31 July 2007, the FNB nominated accounts payment system will be discontinued. It is replaced by a “Beneficiary ID system via FNB, ABSA, Standard Bank, and Nedbank”. If you are a client of any other bank, you should use SARS eFiling when paying electronically.

See the website for details (select “SARS payment options” under the “taxes” menu).

IMPORTERS - YOUR RIGHTS WHEN SARS SEIZES

In the event of a suspected under-declaration of the value of imported goods, SARS has wide powers, including seizure of the goods. It may then release the goods subject to payment of security (in the form of a provisional payment). SARS may then make its own determination of value, and, if applicable, impose penalties or forfeit the goods. The onus by the way is on the importer to prove SARS' valuation wrong, so keep a thorough paper trail.

In a recent case before the Supreme Court of Appeal, an importer was found to have under-declared a consignment of cheap shoes, and was penalised heavily for doing so. But in the case of two other consignments, where it had paid R900.000 security, it was still waiting for SARS to make its determination of value 2 years later.

That sort of delay can be very hard on a business' cash flow, and whilst we are all resigned to the wheels of bureaucracy turning slowly, the Court has now thankfully confirmed that there is a limit. It held that SARS must return seized goods and provisional payments "once a reasonable period of time for the necessary investigation has elapsed". That of course begs the question of what is "reasonable"; but if your paper trail is there, and if you co-operate fully with the Customs investigators, they are going to be hard-pressed to keep your goods and/or cash on ice for very long.

WEBSITE OF THE MONTH: QUIRKOLGY, AND THE MARKETING ANGLE

Ever wondered how your surname has influenced your life? Or wished that you could tell if someone is lying? Or wanted to understand more about the science of seduction? Surf to the website at <http://www.richardwiseman.com/quirkology/index.html> and find out.

The "quirky psychological research" is not only fascinating – with a bit of lateral thinking, you are going to be using its insights into human behaviour to reinvent your marketing plan.

Take a look at this selection: The Telegraph website at <http://www.telegraph.co.uk/connected/main.jhtml?xml=/connected/2007/05/01/nquirky101.xml> has the results of an experiment with charity collection boxes to see what colour, and what message, would draw the biggest donations – there have got to be lessons there for anyone re-branding, or looking for more sales. And how your surname and initials affect your success in life (wondering whether to take husband's surname? Trying to think of names for Baby? You need to read this!).

How can our memories be manipulated (in fact, completely falsified)? Find out at <http://www.richardwiseman.com/quirkology/Totalextract.html>

An article on the New Scientist website at <http://www.newscientist.com/channel/being-human/mg19426031.700-a-quirky-look-at-our-quirky-species.html> discusses such diverse topics as the power of positive thinking, why onions are stupid, why ducks are funny, and the best pick-up lines.

And last, but certainly not least, the intriguing videos at <http://www.richardwiseman.com/quirkology/stuffvideo.html>.

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