

WELCOME TO THE AUTUMN 2021 EDITION OF

Inside Out

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Welcome to the autumn 2021 edition of *Inside Out*, our newsletter for those with an interest in corporate and commercial services.



[Adrian Seagers](#)

Partner

01223 326613

adrian-seagers@birketts.co.uk

I am happy to announce we have been nominated for five Insider Media Central & East [Dealmakers Awards](#), once again highlighting the hard work of our lawyers. We also have a number of high-profile deals, with the formation of [the biggest employee ownership trust](#) in the UK's construction sector and an acquisition for a vital [technology supply chain manager](#).

Birketts has also advised the UK's biggest bungalow provider on the purchase of a [Hampshire country club](#), an insurance firm with the [acquisition of a brokerage business](#), and the sale of a popular [Suffolk holiday cottage firm](#).

The firm has welcomed Partners [Seamus Clifford](#) and [Colin Tan](#), as well as Senior Associate [Dashna Morarji-Sagoo](#), to its Corporate and Banking and Finance Teams in recent months, and there are also articles on the future of our sector, with [Andrew Priest](#) looking at [smart contracts](#), and [Edward Bouckley](#) assessing the [business environment in Asia](#).

I am also delighted to announce our recent success in the [Legal 500 UK 2022 rankings](#), with more than 100 lawyers mentioned for stand-out contributions to their clients and the firm. My particular congratulations to the [Corporate](#) Team's [James Austin](#) and [James Allen](#) who have both been listed in the 'Hall of Fame' reserved only for Partners at the pinnacle of their profession.

Thank you for your interest in *Inside Out*, and we look forward to working with you soon.

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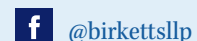
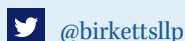
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Corporate Team shortlisted for five Dealmakers Awards

Birketts has once again been nominated at the Insider Media Central & East Dealmakers Awards.

“

To be shortlisted in so many categories is deserved recognition of the tireless work of my colleagues throughout the last 12 months and reflects the reputation that the team has built...”

The annual awards recognise excellence across the region’s corporate finance firms, banks, funders and private equity houses. Shortlisted parties were chosen through a peer voting process and Birketts has six nominations – two in the same category:

- Corporate Law Firm of the Year
- Private Equity/Venture Capital Deal of the Year – [MBO of RGE Services](#) – equity funding by YFM Equity Partners
- International Deal of the Year – [Sale of Bowman Ingredients to Solina Group](#)
- Deal of the Year (£10m+) – [Employee Ownership Trust \(EOT\) of Denny Bros](#)
- Deal of the Year (Sub £10m) – [MBO of RGE Services](#) – equity funding by YFM Equity Partners.
- Deal of the Year (Sub £10m) – Acquisition of European business by Alpha CRC

Birketts’ Partner and Head of [Corporate](#), [Adrian Seagers](#), said: *“Despite the ongoing disruption to businesses caused by the coronavirus pandemic the team has been exceptionally busy. To be shortlisted in so many categories is deserved recognition of the tireless work of my colleagues throughout the last 12 months and reflects the reputation that the team has built for the quality of our work and our approach to client service.”*



UK construction sector's biggest employee ownership trust formed by Buckingham Group

Birketts has advised privately run construction heavyweight, Buckingham Group Contracting Ltd (Buckingham Group), in respect of its sale in to an employee ownership trust (EOT).

The transfer of 100% of the organisation's equity into an EOT will benefit the company's 650-strong workforce and set the business in good stead to realise its succession plans. To celebrate the sale, 540 eligible staff members received a congratulatory £1,000 tax free bonus.

Established in November 1987, multidisciplinary contractor, Buckingham Group, offers stand-alone and fully integrated construction services across a number of industries including civil engineering, sports and leisure and rail.

Boasting a turnover approaching £700m, the Buckingham-based organisation will be led by a new senior leadership team, including Ian McSeveney (Group Managing Director), Simon Walkley (Deputy Group Managing Director), Andrew Kerr (Group Financial Director) and Richard Plant (Group Commercial Director).

Mike Kempley (CEO) and Tim Brown (COO), have been promoted to the roles of Chairman and Deputy Chairman respectively following the retirement of founders Paul Wheeler and Patricia Wheeler. The Buckingham Group will continue to provide support to public and private sector clients in the UK and Ireland.

The Trustee Board (Buckingham Group Employee Ownership Trust) will be represented by a Corporate Trustee (BGC Trustee Ltd), which is comprised of two member directors and two employee directors and led by an independent Chairman, ensuring that decisions about the future of the company represent equally the interests of all.

The Birketts team was co-led by [Ed Savory](#) (Partner, [Corporate](#)) and [Lisa Hayward](#) (Partner, Head of [Employee Incentives](#)) who in turn were supported by colleagues including [Heidi Bond](#), [Sarah Branwhite](#) and [Sam Varney](#) ([Corporate](#)) and [Xiaolei Liu](#), [Jessica Kilkenny](#) and [Kirsty Scripps](#) ([Employee Incentives](#)).

“

The transfer of 100% of the organisation's equity into an EOT will benefit the company's 650-strong workforce and set the business in good stead to realise its succession plans.



“

Knowing that the success of the company was in no small part due to its dynamic and engaged workforce, switching to an employee ownership model was the right choice for Buckingham Group...”

Chairman Mike Kempley, commented: *“Knowing that the success of the company was in no small part due to its dynamic and engaged workforce, switching to an employee ownership model was the right choice for Buckingham Group and we are very excited to embark on this new chapter of the business. The transition not only benefits our people in the short term but we feel confident that rewarding colleagues through employee ownership helps to nurture the very culture that has made us so well respected by stakeholders for over thirty years.”*

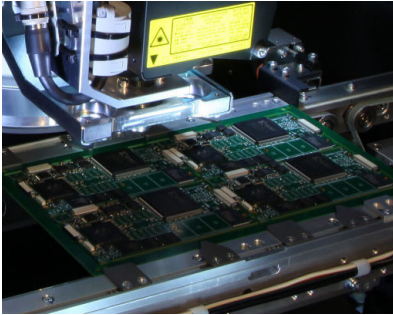
I would like to thank every single one of the Birketts team we have had the pleasure to deal with. My gratitude is not only for your friendly, enthusiastic, helpful nature and your limitless patience, but also for your efficiency, accuracy, judgement and extremely sound guidance and advice.”

Lisa Hayward, Partner and Head of Employee Incentives, concluded: *“It is always a pleasure to assist a company which so clearly values its people and for the Buckingham Group, employee ownership is the natural next step in developing the company’s culture further. Employee ownership offers a seamless way of rewarding employees in a manner that causes no business disruption and avoids the uncertainties of a third party sale. I have no doubt that for a board with growth in mind, this remodel will help the company boost its productivity, creativity and stability and contribute to the continued long-term success of the company.”*

“

It is always a pleasure to assist a company which so clearly values its people...”

Birketts advised alongside BDO LLP (led by Terry Moore, Partner and Head of Real Estate Tax in London). Ed Savory commented: *“It is always such a pleasure working with Terry and his team on EOTs – they seem to have an unrivalled ability to advise clients on how to navigate the intricacies of becoming an EOT, whilst on the one hand being creative and on the other hand ensuring grey areas are avoided. Our teams worked collaboratively on this transaction resolving some highly complex issues.”*



Assembly of a printed circuit board (PCB).
Credit: Vanilla electronics Ltd

Birketts advises leading supply chain management firm on strategic acquisition

Following the team's impressive work last year [advising the shareholders of Vanilla Electronics Ltd \(Vanilla\)](#) on the sale of a majority stake to Literacy Capital plc, Birketts has again supported Vanilla, this time on an acquisition of Wiltshire-based electronics manufacturing services business, Interconics Ltd (Interconics).

It's Vanilla's second acquisition, both of which have completed within the last six months and will allow the company to increase its electronics manufacturing capability and the organisation's market reach globally.

Formed in 2002 and based in Thetford, Vanilla offers a fully outsourced service, boosting operational efficiency for technology manufacturers worldwide by streamlining complex supply chain processes. Shipping over a million parts per day from its 25,000sq ft automated warehouse to a range of customers including start-ups, high-tech SMEs and multi-national, corporate manufacturers, Vanilla is a leader in supply chain management across the electronics manufacturing industry. Vanilla provides a range of services including but not limited to design, procurement, manufacturing, order fulfilment and repair.

Founded in 1987 by Dave Weston, Interconics is the leading automated manufacturer of Printed Circuit Board (PCB) assemblies. This niche, complex and cutting-edge offering has been instrumental in cementing the organisation's reputation as a highly respected manufacturing company. Dave Weston, present MD at Interconics is set to take up a new role as Group Chief Technical Officer whilst Gary Wearing, Group Chief Operations Officer, will step into the position of Managing Director of Interconics. Both will lead the business with close guidance from Dan Croft and Matt Negus (Group Chief Financial Officer).

Birketts' team was led by Partner [Ed Savory](#) with assistance from [Adam Jones](#), [Alex Forwood](#) and [Macauley Alsford](#) (Corporate). Further support was provided by [Andrew Ridout](#) and [Emily Mills](#) (Commercial Property), [Karl Pocock](#) and [Ben Clarke](#) (Tax), [Jack Shreeve](#) (Commercial), [Lucy Churchill](#) (Employment) and [Melanie Harvey](#) (Corporate). Literacy Capital also supported on the transaction.

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Shipping over a million parts per day from its 25,000sq ft automated warehouse to a range of customers including start-ups, high-tech SMEs and multi-national, corporate manufacturers, Vanilla is a leader in supply chain management across the electronics manufacturing industry.

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The Birketts team impressed us again with their responsiveness, commercial insight and excellent customer service. Their depth of knowledge makes them a natural match to support us...”



Andrew Priest
Partner
 07557 161211
andrew-priest@birketts.co.uk

Dan Croft, Group Chief Executive Officer at Vanilla, commented: *“Following the acquisition of Bela Electronic Designs, a leading provider of PCB design and low volume production earlier this year, the purchase of Interconics complements Vanilla’s growth plans and enables us to cover the supply chain management process in full, from design to manufacture, all within the UK. We are very excited to enter this new collaboration with Interconics and boost our capability in higher volume, automated electronics manufacturing services. The Birketts team impressed us again with their responsiveness, commercial insight and excellent customer service. Their depth of knowledge makes them a natural match to support us as we continue to realise our ambition of growing the organisation to increase the technical and commercial value we offer our customers.”*

Ed Savory, Corporate Partner at Birketts, concluded: *“It has been a pleasure to work once more with the Vanilla team, this time working alongside Literacy’s team, as they continue to grow the business, joining forces with Interconics to increase their capabilities in high volume Printed Circuit Board assembly. I have no doubt that this exciting partnership will prove very fruitful for both companies and we wish them all the best for the future.”*

Can smart contracts get smarter?

What kind of a world would we be living in if we had contracts which could automatically be created, executed and enforced without the need for human intervention?

Well, you don’t need to think too hard because we already have those types of smart contracts and they are the key to the operation of blockchain and cryptocurrency trading. Perhaps the better question is – what next for these smart contracts?

Smart contracts have until now developed rather ‘in the background’. The UK Government Chief Scientific Adviser has described them as the ‘application layer’ (some might say ‘glue’) that enables blockchain technology to support a multitude of uses such as cryptocurrency transactions, supply chain management and music distribution. The list of uses of blockchain technology is growing by the day, and with it comes the increasing use of associated smart contracts.

A smart contract is really just a set of coding instructions (if ‘X’ happens, then ‘Y’ must follow) which have been written to work with blockchain technology in a way that gives certain outcomes, for example, recording that a payment has been made or that an asset has been registered. The contracts are ‘smart’ because they perform in an automated way. No human intervention, from a contracts lawyer or anyone else, is needed to negotiate, execute or enforce them.

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Is it too difficult to imagine the use of smart contracts in on-line voting for political elections? Or maybe in the buying and selling of residential property?

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...the Law Commission (which is charged with keeping the law of England & Wales under review and recommending reform where it is needed) is currently considering smart contracts and related legal issues.

A smart contract that is replicated and distributed across a blockchain could be used in many different ways in the future. Is it too difficult to imagine the use of smart contracts in on-line voting for political elections? Or maybe in the buying and selling of residential property? Of course there would need to be checks and balances, but in both examples given certain inputs (a ‘yes’ vote or payment in cleared funds), the smart contracts would produce a certain outcome (voting for the next Prime Minister or the transfer and registration of the property).

In other respects, smart contracts are not so smart and do have limitations. As commercial contract lawyers we see many contracts that use words such as ‘reasonable’, ‘satisfactory’ or ‘in good faith’, and other terms which call for a subjective, rather than an objective, interpretation. There are often important commercial terms which cannot readily be translated into the binary approach that is required for a smart contract. Also, a smart contract cannot be varied or amended like a traditional contract if circumstances change (and the parties agree). If a change is required, a new smart contract must be written which replaces the previous contract and modifies its effects.

So how might smart contracts become smarter? Maybe the world of artificial intelligence has a role to play here with algorithms and deep learning techniques being deployed to assist smart contracts in the processing and analysis of big data. Or maybe it would help if we were to develop a legal framework for smart contracts, just in the same way that computer programs were able to flourish once it was established that they enjoyed the protection afforded by copyright.

A law of smart contracts could be used to develop standardised terms applicable to particular uses of smart contracts or blockchain technology, or as the basis for some form of regulation or regulatory bodies. These are the types of development which allow for more investment and innovation, resulting in a wider application of smart contracts to existing or new technology.

You might be surprised to learn that the Law Commission (which is charged with keeping the law of England & Wales under review and recommending reform where it is needed) is currently considering smart contracts and related legal issues. It believes that our current legal framework needs to be reviewed to ensure that it facilitates the use of smart contracts. The intention is to publish a scoping study later this year, but in the meantime the Law Commission has said that there are questions about the circumstances in which a smart contract will be legally binding, how smart contracts are to be interpreted, how vitiating factors such as mistake can apply to smart contracts, and the remedies available where the smart contract does not perform as intended.

All of this suggests that smart contracts will indeed be getting smarter in the future. It’s just a question of whether the law and smart commercial lawyers can keep up!



Top: The fairways at Skylark Golf and Country Club

Bottom: one of the spa treatment rooms
Credit: Skylark golf and Country Club

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James and his team have been fantastic throughout this purchase. Every question was answered quickly and clearly, making the whole acquisition seamless from start to finish.”

UK bungalow giant Time GB completes purchase of Skylark Golf and Country Club

Birketts has advised Time GB on the purchase of the historic Skylark Golf and Country Club Limited from Just Develop It Limited (JDI).

Birketts' team was led by [James Allen](#) ([Corporate Finance](#)), who was assisted by David Hollier.

Time GB is a RoyaleGroup company, the UK's biggest bungalow provider. The firm has more than 70 years of experience in the industry, with properties in every region in England as well as locations in Wales.

JDI acquired Skylark Golf and Country Club in 2013, making several expansions and improvements. Surrounded by Hampshire countryside, Skylark boasts a fantastic restaurant, fitness suite and an extensive range of spa and beauty treatments. Beyond the clubhouse is the 18-hole, 5,583yd golf course; a beautiful and accessible course, supported by a pro shop, a fleet of golf buggies and a putting green. Skylark also houses a Grade II-listed barn as a 90-capacity wedding venue.

Partner James Allen said: *“Time GB have made an excellent acquisition in Skylark Golf and Country Club, and I'd like to thank JDI for their hard work bringing this deal to fruition. Their work has seen Skylark move from strength to strength, and Time GB's aspirations for the country club sets it on a positive trajectory for the years to come.*

Our lawyers have worked tirelessly, both within the Corporate Finance Team and across the Birketts. As a full-service firm full of experts in their legal fields, we are able to support clients not matter the size or complexity of their transaction.”

Time GB CEO Robert Bull said: *“James and his team have been fantastic throughout this purchase. Every question was answered quickly and clearly, making the whole acquisition seamless from start to finish. We are excited to get to work at Skylark to further establish it as a one of the premier destinations in Hampshire.”*

Birketts advises energy project manager Stowen Group on sale to Star Windco

Birketts' Corporate Team has advised East Anglian energy project manager Stowen Group (Stowen) on their sale to on-shore wind turbine leader, Star Windco, for an undisclosed sum.

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Our lawyers regularly handle extremely technical and legally complex issues for clients in the energy sector, and our multi-disciplinary practice approach means they can always be assured their matters will be understood.”

The Birketts team was led by [Corporate Partner Ed Savory](#), with support from [Stephen Sumpton](#), [Lucy Churchill](#), [Macauley Alsford](#), [Sofia Jabar](#) and [William Kemp](#).

Founded in Norfolk in 2014, Stowen support oil, gas and renewable energy companies with complete project management solutions, from initial planning through to final commissioned work. The renewable business is a fast growing inspection, servicing and maintenance supplier for offshore wind turbines. Stowen's three directors have almost 50 years' combined experience working in the energy sector.

Speaking after the deal was complete, Ed Savory said: “*Stowen will only go from strength to strength in this new chapter with Star Windco – many thanks to directors Mathew Owen, Colin Stewart and Kieron Ford for their work on this deal, myself and Birketts with them the best of luck moving forwards. Our lawyers regularly handle extremely technical and legally complex issues for clients in the energy sector, and our multi-disciplinary practice approach means they can always be assured their matters will be understood. Working again with FRP was also a pleasure – thanks to Jon and Alex for the relentless energy.*”

Stowen Managing Director Mathew Owen added: “*We are delighted to have chosen Star WindCo as an investment partner and look forward to working with WindCo in continuing our exciting growth trajectory, The support provided by Ed and Birketts meant this transaction ran as smoothly as possible, with all our queries answered quickly and pragmatically.*”

Corporate finance advice was provided by Jon Dodge and Alex Hunton of FRP.





Naomi and Alex Tarry, founders and former owners of Best in Suffolk.

Credit: Alex Tarry

Suffolk holiday cottage firm agrees sale to national holiday letting agency

Birketts has supported Best of Suffolk, an award-winning holiday cottage business, on its sale to Sykes Holiday Cottages.

Based in the village of Badingham, Best of Suffolk founders, husband and wife Alex and Naomi Tarry, started the business in 2006 after spotting a demand for unique self-catering holiday lettings in the county. The pair grew their business from six cottages to more than 400 in their 15 years at the helm but are now stepping back from Best of Suffolk.

Sykes Holiday Cottages have more than 25 years of experience in the industry and more than 14,000 properties available as holiday lettings across the UK. Previously acquiring other businesses based in idyllic areas of the UK such as Devon, Cornwall, The Cotswolds and the Lake District, they now host more than a million holidaymakers every year. Best of Suffolk will run as a sister agency and their headquarters will remain in Suffolk.

Partner [Alex Nelson](#) (Corporate) led the Birketts team advising Best of Suffolk, with support from Solicitor [Sarah Branwhite](#) (Corporate), Legal Director [Stacy Aspden](#) (Commercial Property) and Partner [Catherine Johnson](#) (Employment).

Speaking after the acquisition, Partner Alex Nelson said: “Alex and Naomi were a delight to work with and I wish them the very best moving forwards. Best of Suffolk is a fantastic business with a unique collection of more than 400 properties and we very much look forward to seeing its continued success alongside Sykes.”

Alex Tarry added: “My sincere thanks to Alex Nelson and her team for their diligent work, high-quality service and taking the time to understand our specific circumstances. Their attention to detail made us confident the difficult decision to step back from the company was the right one at the right time. Our team, Naomi and myself are all immensely proud of the work we have done to make Best of Suffolk a leading holiday lettings provider in the county. We know our customers will enjoy the same wonderful properties and exemplary customer service, and that the future of Best of Suffolk is sure to be bright thanks to our new partnership with Sykes.”

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My sincere thanks to Alex Nelson and her team for their diligent work, high-quality service and taking the time to understand our specific circumstances.”



Credit: Seamus Clifford

New Corporate Partner in London office

Birketts' Corporate Team has welcomed Partner Seamus Clifford, strengthening the firm's growing presence in the capital.

Described as “knowledgeable, practical and collaborative” in the Legal 500 UK 2021 directory and a former Partner at an East Anglian law firm, Seamus has spent part of his career working in London and establishing a wide array of contacts in the city and across Essex.

With more than 20 years' experience in corporate law, Seamus has an intricate understanding of corporate finance, reorganisations, joint ventures, shareholder arrangements and mergers and acquisitions.

Speaking of his appointment, Seamus said: “I’m excited to take on a new challenge with Birketts. I place the same emphasis on high-quality client service and straightforward legal advice as the firm does, and I’m looking forward to getting started and working with my new colleagues and clients. Complex corporate matters run smoothest when experts can handle each individual aspect, so having the support of a firm with the resources Birketts has will be a huge asset. Thank you to Adrian and the team for making me feel so welcome ahead of joining.”

Adrian Seagers, Partner and Head of Corporate, said: “I am delighted that Seamus will be joining our fantastic Corporate Team. His years of work in London places him in excellent stead to expand the legal offering available to clients of our growing practice in the capital. His experience and expertise, combined with excellent client service make him an asset on every matter and I look forward to seeing his work at Birketts in the coming months.

This is an exciting step in the development of our corporate practice. Seamus has a wealth of experience, an excellent network and we are sure will make a very strong contribution to the growth of the firm.”

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With more than 20 years' experience in corporate law, Seamus has an intricate understanding of corporate finance, reorganisations, joint ventures, shareholder arrangements and mergers and acquisitions.



Credit: Colin Tan

Partner and Senior Associate appointments support new Head of Banking and Finance Team

Birketts has announced the appointment of [Colin Tan](#) as a Partner and [Dashna Morarji-Sagoo](#) as a Senior Associate in its highly reputable [Banking and Finance Team](#).



Credit: Dashna Morarji-Sagoo

Colin has a wealth of finance and general banking experience. In addition to advising on leveraged and structured finance transactions, he has advised banks and corporate borrowers on operating bank facilities such as supply chain financing, working capital facilities, cash pooling arrangements and letters of credit and bank guarantee facilities. He has acted for English and European companies on domestic and cross border financings and commercial matters and advised banks and debt arrangers in the UK, US and Europe. Colin has been practicing law for more than twenty years since graduating from Cambridge and is fluent in Mandarin. He joins Birketts from the London office of a US law firm.

Commenting on his appointment, Colin said: *"I am delighted to join Birketts' highly regarded Banking and Finance Team and to have the opportunity to contribute to a rapidly growing area of the firm's practice. I look forward to undertaking fresh challenges and advising old and new clients."*



Partner Alex Schaafsma
Credit: Carl Middleditch of
Bushfire Photography

With almost 15 years' experience at an international City law firm, Dashna brings her valuable expertise in finance transactions and corporate restructuring and insolvency to Birketts. Dashna advises both lenders and borrowers on lending transactions and her clients include the major clearing banks and larger corporate borrowers. As well as this, a secondment as in-house counsel at a major clearing bank, advising primarily on syndicated and bilateral real estate finance facilities, has given Dashna a well-rounded understanding of her clients' needs throughout their legal matters.

Speaking after her appointment, Dashna said: *"I'm excited to get to work with the Banking and Finance Team, and I appreciate being made so welcome by Devreaux and the wider team. Birketts' advises a number of clearing banks, private lenders and a variety of corporate borrowers, so I look forward to the challenging work this will bring."*

Birketts is also pleased to announce the appointment of [Alex Schaafsma](#), Partner, as the new Head of Banking and Finance, taking over from Mark Henry. Commenting on her appointment, Alex said: *"Birketts has in recent years recognised Banking and Finance as a core area of growth for the firm and I am very grateful to Mark Henry for all his hard work in establishing a specialist team."*



Birketts assist UK's leading travel insurer with strategic acquisition

Birketts has advised leading travel insurer, Staysure Group (Staysure), on its acquisition of ROCK Insurance Group (Rock), an insurance brokerage business. It is hoped that the deal will assist Staysure in remaining ahead of a competitive market by enabling the group to extend its existing service offering and growing its customer base.

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Our thanks go to Birketts for their efficiency, their expert corporate knowledge and their joined up approach to client service. We are excited to enter this new chapter in partnership with the Rock team, and to apply Rock's data-driven approach in order to capture new parts of the market.”

Founded in 2004 and based in Northampton, award-winning Staysure employs a staff of over 500 and offers a range of specialist travel policies for groups, individuals and families, as well as those over 50 and people with pre-existing medical conditions. Established in 2001 and based in Crawley, ROCK provides technology-led agile insurance solutions (including fulfilment and administration) for well-known companies including Jet2 and Tesco Bank. It is also the foremost independent supplier of travel, gadget and commercial insurance in the UK. Rock will remain under the leadership of current Managing Director, Antony Martin.

The deal was led by Birketts' Partner, [Ian D'Castro](#) with assistance from [Grace Shek \(Corporate\)](#) and [Elizabeth Lo \(Corporate\)](#). Additional support was provided by [Devreaux Gravell](#) and [Patrick McCoy \(Banking and Finance\)](#).

Julian Kearney Chairman at Staysure commented: *“Our thanks go to Birketts for their efficiency, their expert corporate knowledge and their joined up approach to client service. We are excited to enter this new chapter in partnership with the Rock team, and to apply Rock's data-driven approach in order to capture new parts of the market. We look forward to growing the business and embracing new opportunities for success.”*

Antony Martin Managing Director at ROCK added: *“Joining forces with Staysure was a natural step for Rock given the crossover in our specialist knowledge and service offering. We are confident that Staysure will honour our innovative background and continue to invest in technological solutions for the benefit of clients across the UK.”*

Partner Ian D'Castro concluded: *“It was a pleasure to work with Staysure on this transaction. This is a very exciting moment for the team, for whom the strategic acquisition of Rock will provide access to additional resources and enable the organisation to broaden its service offering. We look forward to seeing the organisation go from strength to strength over the coming months.”*



Edward Bouckley

Associate

01603 756535

edward-bouckley@birketts.co.uk

Want to sell into Asia? It may not be quite as simple as you think

Asia represents one of the most exciting and fast paced markets in the world. Containing almost two thirds of the world's population, the potential to drive growth and revenue is clear to see.

However, for UK businesses, selling into Asia brings with it some pretty serious risks (risks which are significantly greater than would be faced if trading in more established markets). These risks are complex and there's a lot a business will need to consider before entering an Asian market. This article, whilst only scratching the surface, intends to provide you with a brief overview of some of the most significant risks a UK business might face if it chose to do business in Asia.

Local laws

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...to the extent to which you're selling goods, it's important to consider whether you'll need any special licence or permit to export your goods. Commonly food, medicines, chemicals and certain antiques and artefacts can require special consents.

You'll likely want to trade on your existing terms and conditions. Whilst your terms may be suitable for doing business in the UK, it's possible that they may fall foul of local law applicable in the market into which you intend to sell. It's therefore crucial that you engage local lawyers to establish if there are any specific local laws you need to be aware of (for example laws relating to product standards). Thereafter, you'll need to update your terms and commercial processes to make sure you'll be operating in accordance with local law.

Also, to the extent to which you're selling goods, it's important to consider whether you'll need any special licence or permit to export your goods. Commonly food, medicines, chemicals and certain antiques and artefacts can require special consents. If you're selling directly to end users it's likely that you'll need to be responsible for ensuring the appropriate licence or permit is in place (although you could engage and export agent to do this for you).

If you're selling through a local distributor, you need to make it absolutely clear in the distribution agreement who'll be responsible for this (and how associated costs are to be apportioned). The use of Incoterms can help here, but if relying on Incoterms you need to be completely sure that the chosen Incoterm reflects what you have agreed with the counter party, and that you're fully aware of your obligations under it.

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...if you do bring a successful claim for breach through the English courts, you'll still have the issue of enforcing the judgment in the local courts of your chosen market. This, even if legally possible, may not be commercially justifiable...

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Whilst many Asian countries have updated their intellectual property laws to bring them up to a standard more equivalent to western markets, counterfeiting and trade mark infringements continue to be common.

Governing law and jurisdiction

It's likely that you'll want your terms (and any other contracts you may enter into with local agents or distributors) to be subject to English law and jurisdiction. This, in many ways is sensible; it'll be easier for you to bring any claim under the contract without having to worry about dealing with local lawyers, courts and translators. However, if you do bring a successful claim for breach through the English courts, you'll still have the issue of enforcing the judgment in the local courts of your chosen market. This, even if legally possible, may not be commercially justifiable when taking into account the time and costs you'll likely incur in doing so. Therefore, you'll need to accept that, other than where the most serious breaches have occurred, you'll most likely have no remedy for breach of contract.

Intellectual property rights

Whilst many Asian countries have updated their intellectual property laws to bring them up to a standard more equivalent to western markets, counterfeiting and trade mark infringements continue to be common. Therefore, you'll need to ensure you IP is appropriately protected and this will involve ensuring any trade marks, designs or other registrable IP is locally registered. This can be costly and timely and will require the involvement of local lawyers.

Moreover, if registering your trademark, you'll also need to take advice from local lawyers as to whether you'll need to register a version of it in local script; it's possible that the registration of your trade mark in Roman characters will not automatically protect you from the same, or a similar, mark in local script being used or registered.

Bribery and corruption

Finally, it's important that you have appropriate processes in place to ensure that any person who acts on behalf of your business in your chosen market is not engaging in any bribery or corruption. The UK Bribery Act has "extraterritorial" effect which means that a business in the UK could be liable under the Act if someone acting on its behalf in a different jurisdiction engages in corrupt practices (e.g., pays bribes). However, as a business you'll be able to rely on the so called "due diligence" defence if you can demonstrate that you had adequate processes and procedures in place to prevent bribery. What is considered adequate will vary case by case, but is based on the size of your business, the sector you are selling into and the level of potential risk in the local market. It's therefore important that you have appropriate anti-bribery policies and procedures in place.

In addition to thinking about UK law, it's also important to consider whether there are any local anti-corruption laws which could apply to your operations and you'll need to take advice from local lawyers on this.