

Outsourcing

Commercial advantages

The outsourcing of essential functions within a business can often provide real benefits, both operationally and financially. Outsourced services and functions are diverse: payroll, billing, IT support, call centres, mailroom services, hospitality, cleaning, delivery services and others. In each case, they are activities businesses believe can be more successfully provided by an expert third party with a tailored solution.

Outsourcing means a business can use experienced professionals to provide services and functions with a level of expertise and at a cost that often cannot be matched "in house." It may also provide an opportunity for 'upskilling' existing staff. As well as quality and cost advantages, outsourcing often gives the flexibility a business wants, allowing it to respond with greater agility in a constantly shifting environment. Whether undertaken on a large or small scale, outsourcing raises a variety of commercial, legal and often regulatory issues on the award of the outsourcing contract, during its course, and on termination of the arrangements. Both parties to the outsourcing arrangements need to ensure that their respective positions are adequately protected.

Key issues

The legal issues will vary significantly from transaction to transaction, and may include:

Commercial

- Preliminary advice on tender procedures
- Defining the scope of the outsourced responsibilities
- Any capital expenditure requirements
- Transfers of assets and contracts
- Structuring of key financial terms such as pricing and payment structures
- Providing for transition of services
- Performance warranties
- KPIs/service levels and service credits
- Risk allocation provisions and appropriate limits on liability
- Dovetailing of sub-contracted services
- Exit management and negotiation of early terminations

Employment law

- Impact of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
- Assisting with the TUPE consultation process
- Protection of positions on award of contract and dealing with any transfer of staff to the service provider under TUPE

- Protection of position on termination of the contract or any services and dealing with any transfer of staff to the customer or replacement service provider under TUPE
- Any commercial deal around any redundancies

Pensions

- Dealing with pension responsibilities to transferring staff
- Negotiating and drafting warranties and indemnities

Property

- Underwriting the costs of acquisition of any new property required by the service provider
- Transfer of any property from customer to service provider
- Dealing with other assets that may be required by the service provider or which are redundant to the customer
- Dealing with terms upon which the service provider may occupy any premises of the customer during the term of the arrangements and vacating such property
- Dealing with any transfer of property upon termination back to customer/new service provider
- Underwriting any undepreciated costs of the service provider in relation to property acquired

IT&IP

- Transfer or negotiation of software licences
- Transfer or acquisition of system equipment and funding
- Maintenance of systems/interface issues
- Data protection issues
- Granting of rights to use marks and branding

Competition Law

- Exclusivity issues
- Non-compete covenants

How can Stevens & Bolton LLP help?

Stevens & Bolton LLP can advise on all stages of the legal process using our considerable expertise of outsourcing projects (both domestic outsourcings and outsourcing to overseas jurisdictions), acting for both businesses appointing outsourcers and also service providers, including advising on:

- Key areas outlined above
- Tender documentation - requests for tenders and responses
- Confidentiality agreements and heads of terms
- Preliminary Start-up and other documentation
- The main agreement
- Sub-contract arrangements
- Employment issues
- Termination and settlement agreements

For service providers and others frequently involved in outsource situations, we can also assist with preparing standard documentation, guidance notes and checklists. We also provide advice on 'insourcing' arrangements, where a previously outsourced service is brought back "in house", for example where outsourcing experiments have not worked out.

Stevens & Bolton LLP Commercial Team

The Stevens & Bolton LLP commercial team has extensive experience of a broad range of commercial arrangements, including IT contracts, supply and manufacturing contracts, agreements for service provision, outsourcing, consultancy, agency/distribution and promotional work. We work with specialists from departments within the firm to ensure a comprehensive package of advice is tailored to fit your requirements. We aim to work with you, to understand your commercial objectives and pro-actively develop the deal in a pragmatic manner, whether you are the customer, the service provider or sub-contractor.

KEY CONTACTS

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This information is necessarily brief and is not intended to be an exhaustive statement of the law. It is essential that professional advice is sought before any decision is taken.

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