

DBULLETIN

Co-operations, Joint Ventures and Alternative Structures

Devonshires' Corporate Team has for many years been involved in and assisted our corporate, housing, local authority and charity clients with joint ventures and a multitude of different structures to develop varied businesses and projects. We also advise our clients in a variety of industry sectors on all types of strategic alliances and co-operations. We therefore cover the whole space where two or more parties are coming together to share skill sets, expertise, assets and funding for a common enterprise.

Our experience is that "one size does not fit all". The structure of a joint venture needs to suit the particular commercial and practical concerns you may have when considering such a relationship. As a result, the structure can often be highly complex and determined by the circumstances of the parties involved.

By taking into account our clients attitude to risk and reward, tax status and corporate culture, we aim to provide clients with an initial analysis and provide advice on which of the available structures is likely to work most effectively. This has given rise to "market knowledge which we share with you at the end of this Bulletin.

Transaction Experience

Set out below are some examples of recent corporate, housing and local authority transactions involving two or more parties.

Corporate client: CRS Racing Limited

Devonshires' Corporate Team acted recently for CRS Racing Limited, part of Cobra Group Plc in its joint venture with McLaren Group Limited. McLaren operates its Formula 1 business along side a road car manufacturing business which produces its latest model the MP4-12C. In order to boost the sales of this road car, McLaren is producing a GT racing car version with GT racing experts CRS Racing. Leading the deal for Devonshires' was head of Corporate, Jonathan Ebsworth, who said "This was quite an unusual structure to accommodate the commercial needs to the parties and one that

was great fun to be involved in from the start all the way to the chequered flag. With all co-operations of this kind, everyone has to be on the same page or able to work together to get there. This is exactly what happened to provide an exciting new business to CRS Racing and the start of a GT racing car programme for McLaren." Team Principal of CRS Racing, Andrew Kirkaldy was delighted with the deal, "We wanted to get this deal done quickly but without taking short-cuts and Devonshires put in some long hours to make sure this happened."

Corporate client: Management Team

Acting for the management, we recently concluded a joint venture to establish a new healthcare communications agency between Chime Communications and a formidable management team comprising, initially, David Rowley, Roger Selman and Sandy Royden. The deal was concluded under tight time constraints to enable the new limited liability partnership to make offers to new management members and was structured to enable future acquisitions to be financed. Jonathan Ebsworth led the Devonshires' Corporate Team assisted by Zulon Begum. Nicola Philp advised on employment related issues. Jonathan Ebsworth commented, "LLP was used as it is a vehicle we are comfortable with at Devonshires but this deal tested all the professionals on both sides both in terms of the timescales and the complexity of some of the mechanisms used. However, working constructively with all the parties whilst maintaining our clients' interests is how we approach these ventures and

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this contributed to a successful conclusion of the deal, and happy clients at the start of this exciting new venture". "Certainly, without Devonshires commitment to getting this concluded on time, we would have struggled to take the commercial steps we wanted to before the end of 2010. It is an exciting new partnership with Chime and one that we hope to build with the assistance of Devonshires' legal expertise along the way" added Roger Selman, Founding partner.

Social Housing Client: Top 3 Housing Association

Acting for a top 3 housing association client we concluded a £70 million joint venture for a mixed development site in East Anglia built up over 20 years by a private development group. The development was brought into a joint venture vehicle. The deal required structuring to alleviate the impact of VAT on historic costs and needed to ensure that there was flexibility and transparency in the way construction was procured which was important given the length of the project. The housing association was responsible for forward funding the social housing development cost. The private developer provided its development and construction expertise. The transaction was completed within 3 months from inception to finish.

Social Housing Client: Housing 21

Acted for the SPV on behalf of Housing 21 that delivered the Kent Sheltered Housing PFI Project for Kent County Council. Our role included establishing the project company, reviewing and negotiating the bespoke project documents including the project agreement, building contracts, FM contract, professional team appointments and collateral warranties. We also advised the project company on the senior and subordinated debt documents as well as drafting and negotiating the equity documentation.

Local Authority Client: Ealing Council

Acted for the London Borough of Ealing on their two Schools PFI Projects. We drafted and negotiated the project agreement on behalf of the Council and

undertook due diligence on the project company's consortium and funding documentation to ensure that the Council's position was fully protected.

Market Knowledge:

Recent experience that we have collated from those involved in putting together co-operations, joint ventures and alternative structures has indicated the following:

- Value capture is a key reason for undertaking joint ventures particularly property related.
- Another is to find a route to market, particularly, for non-core development or assets for the purpose of maximising value. Often big ticket deals require a multitude of different skill sets which are not always found in-house.
- Management of long term service delivery focuses peoples' minds on the economics arising from improved efficiency of service delivery. This often justifies the formation of a separate, special purpose vehicle (SPV). This is particularly relevant and popular when outsourcing facilities management and similar services.
- We are finding that negotiations with those providing finance to these structures is now taking longer in the majority of circumstances. However, if the deal is right and the funding is agreed, often the documentation is being viewed more commercially by both parties in order to get the deal done more quickly.
- We have found that our experience, gained in the negotiation of step-in arrangements, for example, with funders on PPP and PFI contracts, is now also very relevant in negotiating funding for other corporate, local authority and outsourcing transactions.

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