CORPORATE REVIEW – JULY 2023

Welcome to our Corporate Review - an opportunity for our clients and wider network to stay informed on the latest developments in the corporate sector.

It's been a busy start to 2023 for Lewis Silkin as we moved into our new, environmentally friendly office at Arbor**.** You can read more about our office's environmental credentials and our own carbon reduction targets here. In addition, building on the success of our new offices in Belfast and Manchester in 2022, we have recently opened a new office in Leeds.

In terms of corporate M&A activity, across the market, at the start of 2023, soothsayers of doom (and transactional lawyers) were expecting the combined effects of inflation, rising interest rates, supply chain disruption, rising costs and reduced public market activity to bite and to put an end to the extraordinary post-pandemic surge in dealmaking. Our own predictions for 2023 anticipated that there would likely be a significant downturn in transactional activity; although we have felt the impact of some of these factors, the Corporate team at Lewis Silkin has remained busy during the first six months of 2023 on a wide range of transactional, corporate advisory and financial services/regulatory matters.

Notwithstanding the obvious economic challenges that the UK economy faces we remain confident that transactional deal flow will continue into the second half of 2023. However, we expect this to be slightly subdued compared to last year as these macro-economic drivers bite.

On the other hand, private equity and venture capital sponsors remain under pressure to return cash to investors, and this is likely to drive some transactions. As we noted in January, there is likely to be an increase in divestment activity in some sectors, driving some M&A activity and presenting opportunities for private equity and venture capital investors.

Our corporate finance team has also had a busy six months despite the challenging market conditions for growth companies. Investment rounds and exits remain at the heart of the practice, and the team has advised on several investment rounds, ranging from small seed and pre-seed rounds to high value Series A and B rounds. Increasingly we are being instructed on qualified and non-qualified financings as the Future Funds' loans are now reaching their three-year maturity. A feature of our work is that many of these transactions are not published. These successfully completed transactions include advising Mercia on its syndicated investment in Cansense, Needi Ltd on an ASA conversion and equity seed investment by Techstart Ventures Limited Partnership, and Sensoteq Ltd on loan financing by White Rock Capital Partners. The team has also advised on several re-organisations and other corporate structuring matters.

The team has also encountered multiple instances of clients who have struggled to agree valuations, meaning that anticipated investment rounds and exits have proven challenging to carry out or have started but then aborted. Increasingly, these companies have become obliged to resort to (further) convertible debt until the market improves. These instruments can pose risks to companies and deleteriously impact a company's share structure upon conversion if onerous terms are not properly considered at the outset. This is a particular challenge when convertible instruments are layered on top of one another in the absence of a priced round – this is something we are encountering more frequently in the current market.

How we have helped our clients

Our partner-led Corporate team has advised on numerous acquisitions, disposals, investments and corporate advisory matters across different sectors including technology and communications, financial services, advertising and marketing, retail, hospitality and leisure and media and entertainment.

We're pleased to share some of the recent transactions on which we have helped our clients:

Lewis Silkin - Lewis Silkin has advised Havas on its acquisition of a majority stake (51%) in Uncommon Creative Studio, the most awarded and fastest growing independent creative company in the UK

Lewis Silkin has advised Treasury Spring on its $29 million Series B funding round

Lewis Silkin has advised Publicis Groupe on the acquisition of Publicis Sapient AI Labs

Lewis Silkin - Lewis Silkin has advised NME Networks on the sale of Uncut magazine to Kelsey Media

Lewis Silkin has advised Norstella on disposal of Clinerion to form a strategic partnership with TriNetX

Lewis Silkin has advised Next 15 Group Plc's Palladium Group Limited on the acquisition of onefourzero

Lewis Silkin has advised CECO Environmental on the acquisition of Wakefield Acoustics Ltd

Lewis Silkin has advised 365 Retail Markets LLC on its acquisition of KafoodleLewis Silkin has advised Mercia on its syndicated venture capital investment in CanSense

Introducing… Chris Hallinan - Professional services firms and Partnerships & LLPs

We're pleased to welcome a new Partner to the team, Chris Hallinan to support our Partnerships expertise; Chris has specialised in advising professional services firms and other businesses structured as partnerships or LLPs (including hedge funds and private equity houses) for over 10 years.

Chris' core practice is focused on working closely with senior management at UK and international professional services firms, financial services firms and other owner-led / people businesses on a broad range of non-contentious issues, including strategic transactions and projects, governance and constitutional arrangements, UK and international structuring and regulatory issues, commercial agreements, funding arrangements and partner matters (including profit sharing, performance management, restrictive covenants and other business protection issues).

"Chris is extremely responsive with a high level of client service and brilliant legal gravitas. He is excellent and keeps everything moving." **– Chambers 2022**

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Focus on Corporate

We've brought together the latest thought leadership articles from the corporate team, if you have any questions on any of the topics raised, please do get in touch.

B Corp certification – not yet an A to Z of luxury and lifestyle brands
In October 2021, Chloé was the first high end luxury fashion brand to become B Corp certified. This was inevitably accompanied by speculation on who would jump on the latest trend. Read more

Corporate Governance for UK companies – are you meeting statutory reporting requirements?
ESG remains a "hot topic"; this year, the Environmental pillar has been a key area of focus. Governance, the third pillar in the ESG framework, has not received the same level of attention, but is important for companies in the UK to consider, as they may be subject to corporate governance reporting requirements if they meet certain criteria. Read more

E-signatures: Industry Working Group Final Report
The Industry Working Group on Electronic Execution of Documents has now published its final report on how to optimise the use of e-signatures in cross border transactions; it addresses the particular challenges, sets out recommendations for reform and also highlights the benefits of e-signatures in guarding against fraud. Read more

M&A deal practice in Spain and the UK – key differences to bear in mind
Whilst mid-market transaction volumes involving UK and Spanish parties are lower than activity between the UK and France or Germany (for example), the UK is an important market for Spanish acquirers (and vice versa) especially now that the post-Brexit landscape has become clearer. Read more

Gender pay gap reporting and startups: what are the issues?
The gender pay gap in UK startups is around 25% - much higher than the UK average. Why is it so high and what can startups do about it? Read more

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Corporate mistakes your business may have made…and what to do about it

Corporate requirements can be fiddly and, sometimes, unintuitive. It is easy for businesses to trip up on corporate issues. In this series we look 10 of the most common corporate mistakes companies makes, and, more importantly, what they should do about them. Read more

#1 of 10: Botched buybacks
When does it happen? Normally when an employee shareholder leaves a business and it is agreed that the company (rather than the other shareholders) will buy the shares…

#2 of 10: EMI errors
When does it happen? EMI options are amazing - when they are implemented properly. However, they are notorious for going wrong (even when external advice is taken) as the rules although not complicated are fiddly…

#3 of 10: Mangled mergers
When does it happen? When two businesses join forces, perhaps with a hope of creating synergies and a "whole" bigger and better than the sum of its parts…

#4 of 10: Rogue registers
When does it happen? Every UK company must keep statutory registers (sometimes called "company books")…

#5 of 10: Over generous founders giving away too many shares
When does it happen? Founders (or even investors) wish to incentivise management, but simply give too many shares away…

#6 of 10: (Liability-loaded) loans to employees
When does it happen? A business seeks to help out an employee or director by giving them a loan, unaware that loans are heavily regulated by law…

#7 of 10: Flawed filings
When does it happen? Companies House filings are managed on an ad hoc basis by external accountants or employees for whom the filings aren't a priority…

#8 of 10: Sub-value shares
When does it happen? Where a business wants to incentivise employees by giving them shares or promising to give them shares in the future, but hasn't considered the tax consequences…

#9 of 10: Rogue records
When does it happen? Usually where a business is a bit older; perhaps because the current management have not always been around and previous directors/shareholders have moved on…

#10 of 10: Business assets not actually owned by the business
When does it happen? Often when a business is in "start-up" mode, it wants to get admin done quickly, so founders can focus on client work and pitching...

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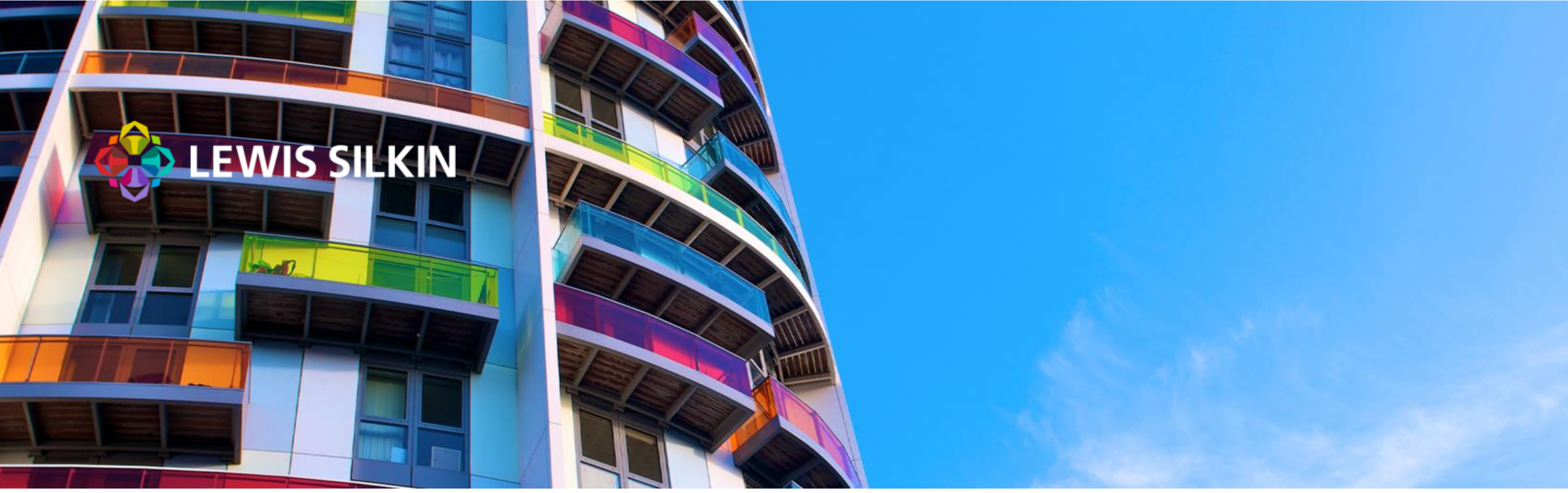

Focus on Tax and Incentives

Some things, in some places, some of the time: Spring Budget 2023 Tax Update
Some of the changes are big. But there's also a low-level thrum of technocratic improvements that we haven't seen as much of over the past few years. Small, incremental improvements to tax rules that aren't showy, will never hit the headlines, but just make things a bit better / easier / tighter. Call it tinkering if you like, but it's generally good to see. Here's a summary of the tax changes for business. Read more

When Less Means More
Change is afoot for those looking to benefit from Multiple Dwellings Relief (MDR). MDR has long been a help in keeping SDLT manageable for certain complex residential purchases. Read more

Behind door number three we have...
There are three types of property you can acquire in England for SDLT purposes – residential, non-residential and mixed use. Mixed used properties are properties that consist of both residential and non-residential elements. An example of this is a building consisting of a shop and a flat. Read more

Government "shake up" of tax-advantaged employee share schemes
The possibility of a revamp to tax-advantaged Save As You Earn (SAYE) plans and Share Incentive Plans (SIPs) schemes under what the government has coined a "shake up" to employee share schemes has been met with widespread enthusiasm, as the government and HMRC simultaneously published a call for evidence on the schemes and a report into their use – shortly after introducing changes to the legislation governing Company Share Option Plan (CSOP) and Enterprise Management Incentive (EMI) schemes. Read more

Welcome changes to the EMI option grant process – but companies to remain mindful
Following the 2023 Spring Budget, two simplifications have been introduced to the process of granting EMI options from 6 April 2023, and a third is expected to be introduced from 6 April next year. Read more

Despite the changes to the legislation, however, companies need to remain mindful of HMRC guidance, which includes some unexpected updates since the recent changes – it seems the process may not be quite so simple after all. Read more

EMI options: Top 10 mistakes uncovered on an exit – and how to avoid them
In this article we explore Enterprise Management Incentive (EMI) options, a extremely popular employee incentive mechanism for qualifying small and medium sized businesses, thanks to their unrivalled tax benefits and the flexibility permitted around setting their terms. Read more

On the Horizon…

Government to consult on Employee Ownership Trusts (EOTs)
The government has announced that it will launch a consultation on the use and effectiveness of employee-ownership trusts (EOTs), to ensure that the reliefs are targeted closely at incentivising EOTs as an employee ownership business model whilst preventing the reliefs from being used for unintended tax planning. The consultation is expected to be published later in 2023.

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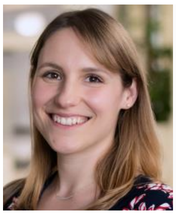

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LEWIS SILKIN

Focus on Financial Services and Regulatory

Regulatory change has continued apace over the last six months. Despite the pessimism of many at the start of 2023 for the UK economy, the financial services and regulatory practice at Lewis Silkin has continued to be busy, and we have advised on a wide range of matters including: a number of financial services firms in relation to non-financial misconduct of senior managers; various firms on complying with financial promotion requirements; various firms on loans to employees; a range of advice concerning crypto from perimeter advice and business structuring to ‘insider dealing’ policies; various firms on regulatory remuneration requirements; a large number of firms on senior managers and certification regime requirements; advice on the appropriate use of communications tools and also on transactions touching on the 17 sensitive areas of the economy engaging the National Security and Investment Act regime.

Areas of regulatory focus that companies will need to consider include the National Security and Investment Act regime, ESG, Diversity and Inclusion requirements, and the new consumer duty and further regulation for crypto. The financial promotion regime is going through a series of complex changes which companies will need to keep on top of, most recently it was extended to apply to qualifying cryptoassets which will be caught from 8 October 2023.

Our recent updates on this ever evolving area of law include:

Does trading in unbacked crypto assets present a regulatory dichotomy? Wendy Saunders writes for City A.M. on trading in unbacked crypto assets
Wendy Saunders of Lewis Silkin examines the recent Treasury Committee report on regulating digital assets and explores whether trading in unbacked crypto assets presents a regulatory dichotomy. Read more

Checklist for a successful crypto-provider registration application
Any business that intends to operate in the UK as a cryptoasset exchange provider or custodian wallet provider is required to register, but many are at risk of falling short at the first hurdle: the application for registration. Read more

SDR implementation: Taking the time to get it right: Wendy Saunders writes for Professional Adviser
In October 2022, the Financial Conduct Authority (FCA) published consultation paper CP22/20 Sustainability Disclosure Requirements (SDR) and investment labels. In this update we set out a broad overview of matters covered, how it fits into the broader ESG regulatory landscape, where we are now and next steps. Read more

CBDC - the future of payments and money in the UK?
The latest development in the UK Bank of England and HM Treasury’s position and preparation for a UK retail digital pound – a UK CBDC. Read more

Financial promotions: draft legislation updating the permitter for qualifying cryptoassets now published
The long-awaited next step in the ever-evolving regulatory framework that applies to crypto. By way of recap, cryptoasset exchange providers and custodian wallet providers need to be registered with the FCA under money laundering legislation. Read more

Financial promotions: final legislation, rules and guidance bringing cryptoassets within the financial promotion regime now published
The final version of Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (Order) has been published relating to the regulation of certain cryptoasset financial promotions. Read more

Promoting cryptoassets: what you need to know and next steps
New legislation, the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (**FPO Amendment Order**) has been made which brings certain cryptoassets within the UK’s framework for regulating financial promotions. Read more

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Spotlight on Northern Ireland

In 2022 Lewis Silkin added to its growing offering in Northern Ireland by joining forces with local specialist commercial, technology, intellectual property and media law firm Forde Campbell.

Northern Ireland is on the rise as a real centre of innovation, with a thriving start-up community and significant investor interest, and as the business landscape continues to evolve legal needs are becoming more complex, and often international in nature. Lewis Silkin has closely aligned itself to this vibrant start-up scene, sponsoring Belfast's Digital DNA, BelFoss, and DevCon conferences, and becoming a Gold Sponsor of Catalyst, the Northern Irish technology and Science Park.

Heading up the Northern Ireland Corporate team, Katey Dixon works closely with the local tech entrepreneur community to understand the building blocks of their products and solutions, data flows and IP issues, and critically, the steps involved in scaling-up.

"I have been fortunate to work with many inspiring clients throughout the life cycle of their business. This means that I often work with founders on the investee/sell side, offering advice on their corporate and commercial needs. Advising a business at such an early stage has given me a useful insight into matters from the perspective of founders, as well as providing me with a deeper understanding of the various growth stages of companies as they evolve." **– Katey Dixon**

As a result, Katey has created a successful Corporate practice that keeps pace with the evolving needs of start-ups, supported by Sinead McPhillips.

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Corporate Team

Our corporate team focuses on M&A, corporate finance, joint ventures, corporate advisory, debt finance, public markets advice and tax. We regularly undertake M&A transactions up to £100 million in deal value, and we have recently been recognised by Legal 500 as a tier 1 practice for M&A lower mid-market. Our firm and our corporate practice have traditionally been market leaders in the advertising and marketing, and media and entertainment sectors, and we have unparalleled experience in these sectors over the last thirty years. In recent years our practice and client base has grown substantially in sectors such as retail, food, financial services, healthcare, real estate and technology.

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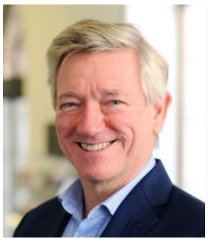

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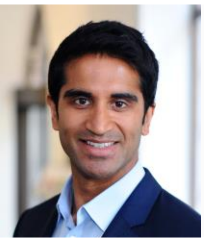

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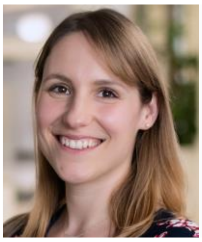

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