

CHANGES IN LICENSING LAW SEMINAR A ROARING SUCCESS

In January this year, Archibald Campbell & Harley held their first hospitality seminar which focussed on the wholesale changes taking place in Scottish Licensing Law due to the coming into force of the Licensing (Scotland) Act 2005. Held at The New Club, the seminar was attended by a number of key players within the hospitality sector.



Janet Hood, the head of BII Scotland and a Law Society accredited specialist in liquor licensing provided an entertaining and informative update on the changes in Scottish licensing law. Janet stressed the importance of being aware of the provisions of the new Act and warned that it was imperative all licence holders were completely up to speed with the new requirements and had

made all necessary preparations to ensure they could submit their applications under the new Act in plenty of time, or risk losing both their licence and their livelihood.

For further information or advice, please contact Martin Bennett on 0131 270 8033. We look forward to hearing from you!



AC&H SUPPORT HIT AGAIN

As part of our ongoing commitment to the hospitality and leisure sector, A C & H were delighted to support the Hospitality Industry Trust Scotland's Annual Dinner for the second year running.

This year's theme was "Caledonia Dreaming" and yet again, the night proved to be a huge success, raising over £80,000 and beating last year's total by around £10,000.

For further details about HIT Scotland and their work, please see their website at www.hitscotland.org

Group Chair, Martin Bennett, said "We are delighted to continue our association with HIT Scotland and all that it does to raise standards in the industry.

We believe the Trust's ethos and aims for the industry knit well with our own commitment to give support to the industry beyond simply the provision of legal services, and we look forward to continuing our support of the Trust in the future.



Our next seminar, "Surviving the Storm" will look at how the hospitality sector is coping with the economic downturn. It will take place on Thursday 25th September at The New Club in Edinburgh and is free to attend but places are limited!

To register for your free place, please call Maxine on 0131 220 3000 or email hospitality@achws.co.uk

TO REIT OR NOT TO REIT: THAT IS THE QUESTION

There can be little argument that those in the hospitality sector are facing a sea of troubles at the moment; not only are they having to cope with the general economic downturn, but they have had to deal with other industry-specific slings and arrows such as the high costs of compliance with the new licensing laws, the effects of the smoking ban, the registration requirements of the Private Security Industry Act and the loss of Industrial Buildings Allowances. Any glimmer of a silver lining in this depressing picture must surely come as a welcome change, and rather surprisingly it may have come in the form of a recent decision by HM Revenue & Customs.

Following considerable discussions, the Revenue have recently given Enterprise Inns the green light to convert to a Real Estate Investment Trust (REIT).

The tax rules and requirements for a company to convert to a REIT are extremely complex, and any organisation considering conversion should seek expert advice. At a very basic level, however, a REIT benefits from exemption from UK tax on their income and gains to the extent such profits arise from "qualifying activities", essen-

tially the letting of UK or overseas land and buildings. Qualifying rental activities must be ring-fenced from any non-qualifying activities, and any company wishing to convert must evidence compliance with the following basic criteria:

- ♦ it must be quoted on a recognised stock exchange;
- ♦ it must not be a "close company" (ie not controlled by five or less participants);
- ♦ at least 75% of the total company profits in the accounting period must be qualifying profits and at least 75% of the total value of the company assets must be attributable to the tax exempt part of the business;
- ♦ it must invest in at least three properties and no one property must represent more than 40% of the total properties introduced in the tax exempt part of the business;
- ♦ it must not occupy any of the properties itself; and
- ♦ it must comply with other accounting requirements (the details of which are too lengthy to list in this article – again, seek expert advice!).

In addition to complying with the necessary requirements, a converting company must also pay an "entry charge", currently 2% of the market



value of the investment properties at the time of conversion – payment of this charge can however be spread over four years.

Enterprise Inns are currently considering their position following the HMRC decision, and it could be months before a final decision is reached; if they do go ahead however, it could open the floodgates for conversion by a number of other pub groups – any conversion is likely to involve an internal restructuring to form separate property owning and operating companies ("propco/opco"), with the operating company taking interposed leases of the pubs in the portfolio from the property company as heritable owners of the pubs; analysts, however, believe that the tax benefits could well outweigh any initial restructuring costs. The operating company would collect rent, beer sales and gaming machine income from the occupational tenants and would then pay most of that over to

the property company as rent under the new interposed leases.

If the REIT conversion route is followed by others, it may radically transform the existing pub sector, and already there are signs this may well happen, with other pubco's such as Whitbread, Punch, Greene King and Marstons reportedly investigating their options for conversion, and Mitchells & Butlers having already announced their intention to convert at some point in the future, once conditions in the market are "suitable".

FORTHCOMING EVENTS

19-22 June: Royal Highland Show, Ingliston, Edinburgh
www.royalhighlandshow.org

3 July: Retail & Leisure Awards, Grosvenor House Hotel, Park Lane, London
www.propertyweek.com

25 September: AC&H Hospitality Industry Group Seminar "Surviving the Storm" - How the hospitality industry is coping with the economic downturn. Free entry. Contact Maxine at Archibald Campbell & Harley on 0131 220 3000



Martin Bennett is an Associate and an experienced commercial property lawyer with specific interest in the hospitality and leisure sectors. As head of the firm's Hospitality Industry Group, he deals with all property aspects of the industry, including the purchase, sale and leasing of pubs, hotels, restaurants and caravan parks.

For specific legal advice, please contact Martin on 0131 270 8033 or 07717 838162 or email him at martin.bennett@achws.co.uk.

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