

# E-Newsletter

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Ortolan  
Legal Ltd



Your latest commercial legal update from Ortolan Legal, the virtual in-house law firm

Hello Nicholas. This month, we have updated the format of our newsletter and we are providing a brief overview of three key areas of law which could have a major impact on your organisation's business. The regular updates and our case series return next month. We have also changed our e-mail provider, so please mark our new mailing address as 'not spam' in order to keep receiving our updates.

## Data Protection Act 1998 *Zurich fined £2.27million*

As indicated in our March newsletter, the Information Commissioner ("ICO") has power to award large fines for breach of the Data Protection Act 1998 ("DPA"). The DPA provides individuals with clearly defined rights in terms of what data can be obtained about an individual and how an organisation can store and handle that data. In particular, it covers data held on employees as well customers and other third parties. The DPA contains eight fundamental principles relating to storage, use and transfer of data and a breach of any principle could result in a fine. Regular reviews should be carried out of all data held by an organisation, to make sure that it is necessary, up to date and stored correctly. All necessary consents should be obtained from employees and customers and data should only be held as long as reasonably necessary. This was emphasised when Zurich was recently fined a record sum for failing to secure data when transferring it to South Africa. The details of some 46,000 customers were lost during the transfer. The level of the fine and the Information Commissioner's policy of "name and shame" has increased the need for diligence by all organisations. Combined with the fine, adverse publicity could also have a significant and detrimental effect on an organisation.

## Corporate manslaughter and corporate homicide *A serious compliance issue*

The Corporate Manslaughter and Corporate Homicide Act 2007 ("the Act") came into force on 6 April 2008. It makes directors of a company liable if a person dies as a result of gross negligence. It applies to most forms of organisations, including companies, trade unions, partnerships and certain government departments. Although the Act is primarily concerned with health and safety issues, it extends to cover any commercial activity such as provision of premises, supply of goods or services, construction or maintenance works and potentially breach of environmental laws. It is unclear whether a company can adequately insure against these risks, so caution is needed to ensure compliance with the Act. An offending organisation can be tried in the Crown Court by a judge and jury and the fine is unlimited. In addition, the court may make a remedial order requiring the organisation to remedy the failure causing the death. Also, if an offence occurred on or after 15 February 2010, the court can make a publicity order forcing the organisation to publicise the conviction.

If you require any advice in connection with the content of this bulletin, or on any other issues, please contact Claudia Gerrard on 0844 5611 638 or e-mail her at [cgerrard@ortolangroup.com](mailto:cgerrard@ortolangroup.com)



## Intellectual property rights *Protection and infringement*

Intellectual property rights ("IPR") may be either registered or unregistered but have a significant impact on a business both in terms of protection of its own IPR and infringement of a third party's IPR. There are restrictions on how businesses can use registered patents, trademarks and designs, as well as copyrighted material and also how they use unregistered trademarks and designs. Even confidential information can be protected in certain circumstances, which may assist a company where there has been a breach of confidentiality. One of the main types of breach relates to passing off, where a business uses a trade mark or symbol of another organisation in order to give the impression of being affiliated to that other organisation. The growing use of brands has increased this type of breach and businesses need to protect their identity by dealing promptly with any offences.

Ortolan Legal is a radically different law firm providing pragmatic and commercially focussed legal advice. We are all experienced in-house lawyers, based remotely so overheads are kept to a minimum. Our pricing structure is entirely flexible; we will adopt your preferred structure and simply ask to earn a fair margin for our work. We don't charge administrative costs. Dealing with ad hoc work or retainer work, we can assist where there is no in-house legal function and also provide holiday cover or supplement existing in-house legal teams. Our work covers non-contentious company commercial and employment law, contracts, tendering, purchase, supply, distribution, franchising agreements and pre-litigation reviews. We also provide general 'Legal Health Checks' and a 'Legal Hotline' offering legal support for a set number of hours each month.

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