
Fwd: Bell Jr Limited - Graham buy in

1 message

Matt Blomfield <matt.blomfield@belljr.com>
To: matt@blomfield.co.nz

Thu, Dec 22, 2011 at 10:25 PM

----- Forwarded message -----

From: **Mike Alexander** <Mike@halaw.co.nz>

Date: Thu, Dec 22, 2011 at 6:40 PM

Subject: Bell Jr Limited - Graham buy in

To: Matt Blomfield <matt.blomfield@belljr.com>, Paul O'Connor <paul.oconnor@belljr.com>, Graham Hare <graham@bizlaw.co.nz>

Gents,

Further to our meeting this morning (Graham, Matt and Mike), I understand that you have agreed that Graham will invest in Bell Jr.

I understand from the meeting today that the investment will be more or less (i.e., subject to come clarification on both parties' fronts) on the following terms (please let me have comments):

1. Graham's "Charlie Trust" will purchase 1/3rd of the shares in the company on a pro rata basis from Paul and Matt's holding entities.

2. The consideration for the share purchase will be a maximum amount of \$200,000 payable as follows:
 - a. \$50,000 (\$25,000 to each of Paul's and Matt's shareholder entities) in cleared funds will be payable in cleared funds on the initial share transfer/settlement date;

 - b. \$50,000 will also be payable on settlement in cleared funds to the Company to use for working capital purposes. As long as the company makes "net coin" (I think you mean by this net profit after tax?) of \$250,000 for the financial year ending 31 March, 2013, then this amount will be regarded as pure purchase price (and accordingly presumably as far as the accounting records go, a pro rata \$25,000 payment to each of Paul's and Matt's shareholder entities who then each loan this amount to the company (is that right? Do they get interest on it – see following comments?) TO CONFIRM). If the company doesn't meet the "net coin" KPI then the amount will be recorded as a loan from Charlie Trust to the company with interest payable (payable or accruing or capitalising?) at 10% per annum beginning on the date that the KPI is realised or not realised (i.e., presumably 1 April, 2013). Not clear when repayment of the loan is – perhaps if the shareholders agree and subject to solvency/pro rata repayment of all shareholder loans?.

Presumably on the other hand if the company does meet the KPI then interest will become

payable at the same rate to Matt's and Paul's entities from that date (as they have advanced part of the purchase price which was due to them)?

c. If "net coin" in the financial year ending 31 March, 2014 is \$400,000 or more then a further \$50,000 in aggregate will become payable by Charlie Trust (\$25,000 to each of Paul's and Matt's shareholder entities) from dividends due to Charlie Trust each year by the company until the amount is paid in full. The amount must be paid in full before Charlie Trust receives any dividends.

d. Charlie Trust will itself loan or procure a loan commitment from (Graham mentioned) Buzz Trust of \$50,000. Such amount must be available for immediate drawdown for agreed working capital or agreed extraordinary expenditure purposes from settlement although the parties anticipate the loan will not need to be drawn immediately. Loan terms will presumably be interest at 10% per annum and loan repayable when the company and shareholders agree.

3. Graham's shareholding will give him a right to appoint and remove a director.

4. A shareholders agreement will need to be agreed with normal pre-emptive rights, reporting obligations and other normal shareholder provisions appropriate for an equal three way split shareholding company – e.g., I expect Graham and his lawyer may request some "key decisions" are not able to be made without his or his shareholder's agreement.

5. Query whether Graham will require a budget/forecast to be agreed (and/or any other conditions) as a pre-condition to any funding.

6. The shareholders arrangements should probably include security for the shareholders and associated lenders to the company for any advances over all company assets?

7. There was a suggestion at the meeting that the parties may agree for Graham to advance the initial \$100,000 without full documentation being prepared on the basis that an appropriate "heads of agreement" type arrangement was completed. The "heads of agreement" or "terms sheet" could record the above and provide for everyone's agreement to the above and agree that they will work in good faith to complete the substantive documentation and "settlement" on or prior to a reasonable date, say 27 January, and, if for any reason, substantive documentation and settlement is not able to be completed by that date then unless the parties agree otherwise, the money will be returned to Graham/be treated as a loan until it was returned with Graham having priority security over Bell Jr.

If you could fill in any gaps/give me any comments then I can knock up a terms sheet or similar for tomorrow for signing.

Graham, as discussed and to reiterate, Heimsath Alexander is acting for Bell Jr and you will need to take independent advice.

Hope that's all clear and helpful.

Regards,

MIKE ALEXANDER PARTNER

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HEIMSATH ALEXANDER **image001.jpg**
— Barristers and Solicitors — 28K