



LEFT FIELD



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Gill Grassie, a Partner and head of Brodies' intellectual property team, has recently been awarded an individual gold ranking by the World Trademark Review 1000 2017 – The World's Leading Trademark Professionals (WTR1000) for her expertise in enforcement and litigation.

For a small nation, Scotland has more than its fair share of entrepreneur innovators. There are a huge number of technology-focused businesses in various stages of development spread across sectors including IT and FinTech, life sciences, renewables and oil and gas. These businesses focus on different types of technology and new ideas, but they have one thing in common - they are all steeped in intellectual assets or intellectual property (IP).

Sufficient support is vital to unlocking the potential of those new ideas. Tech incubators and tech hubs, such as Edinburgh's CodeBase (one of the largest technology incubators in the UK and one of the fastest growing in the EU) offer early stage support. Glasgow's BioCity and Edinburgh's BioQuarter offer incubator space for ambitious new life sciences companies. And there is the newly-launched Oil & Gas Technology Centre in Aberdeen, which is backed by the UK and Scottish Governments and will fund innovative technology projects to speed up recovery and maximise potential in the UK North Sea.

In addition to development support, such as that outlined above, securing investment is key. There are a variety of public sector grants available to start-up technology companies. Early stage growth capital is also available through universities, business angels and private equity sources. However, these third party stakeholders will want to know that the business in which they are investing has identified and protected its IP, which is likely to be its key asset, in such a way that their investment cannot be easily undermined by would-be copy cats.

Start-ups need to obtain professional advice on their IP strategy from the get-go and to prioritise protection for their critical innovations. This should ideally take the form of registered IP, such as patents and designs and also by controlling access to their ideas by way of robust contractual and confidentiality documentation. Failing to take appropriate steps early on will only lead to gaps being exposed in any financing due diligence exercise, which in some cases cannot be filled at a later stage. Our industry recognised specialist IP team leads the market in this area.

PLATFORM

Planning for the long-term is a challenge in the current political and economic climate, all the more so now that an IndyRef 2 is firmly on the political horizon. However, we are pleased to say that our clients are rolling up their sleeves, getting on with the job in hand and making provision for the short and medium term factors certain to affect their business.

This is particularly relevant for the care sector in Scotland. An increasingly ageing population (with the latest Scottish Government figures indicating that between mid-2005 and mid-2015 the number of people in Scotland aged 75 and over, 60-74 and 45-59 rose by 17%, 18%, and 11% respectively) must be catered for in the context of high public interest and influence. While an increase in potential users signifies a sector ripe for investment, strict regulation of staffing levels and prescription as to the skills required of staff make the care sector highly sensitive to changes affecting its workforce. In our experience neither the appetite for investment nor the pace of change is being slowed in the current political or economic climate.

We work closely with our clients to keep them abreast of developments at local and national level, with our clients focused on:

- further increases in the National Living Wage and National Minimum Wage in April – which will impact on fees, pricing of services and/or service contracts, as well as workforce harmony and cohesion (as not all staff are entitled to the National Living Wage);
- the annual renegotiation of The National Care Home Contract – with both providers and local authorities under extreme pressure in terms of their own budgets, even before the statutory wage increases are taken into account;
- the continued importance of well-connected sites being serviced by well-run and reliable public transport services for the benefit of residents, visitors and staff; and
- new local competition, seeing the opportunities in the changing demographic.

We are also working closely with our clients and other professional advisors to ensure that the structure of their funding is regularly reviewed and remains appropriate in light of developments affecting operations such as those outlined above.

HADRIAN'S WALL

Scottish Limited Partnerships (SLPs) continue to be a focus for policy makers.

Recent negative media coverage and active political commentary has prompted the launch of an official review by The Department of Business, Energy & Industrial Strategy (BEIS) on Limited Partnership Law. As a reserved area of law, the BEIS review encompasses not only SLPs but limited partnerships registered in England and Northern Ireland.

The clear focus of the consultation remains the significant increase in registration of SLPs (citing the fact that 70% of those currently existing were registered in the last five years), the alleged link to misuse of the SLP vehicle and the appropriate level of corporate transparency to be applied to SLPs going forward. We are responding to the UK Government's call for evidence and our response will make clear that heightened regulation of non-law firm formation agents should not constrain the legitimate uses of SLPs.

The consultation is open for responses until 17 March 2017 and interested parties can find out more about how to respond [here](#).

Should fracking play a part in Scotland's future? Two years after a moratorium on unconventional drilling for oil and gas was imposed, a consultation has been launched by Scottish Ministers to answer this question.

It is said that shale gas extraction could generate up to £3.9 billion in tax revenues, create more than 3,000 jobs, and produce the equivalent of 18 years of Scottish gas consumption. However, at current oil and gas price levels, the economics are challenging. The consultation paper is [here](#).

MARKET REPORTS

Infrastructure Sector - This sector continues to be a potential growth area, but is very much dependent on the UK and Scottish Governments bringing forward investible projects and being able to fund them.

Liquidity for financing these projects still seems good, but that may come under pressure as the European Investment Bank contemplates whether to withdraw from the UK.

Innovative financing structures will be needed. We were delighted to advise Aberdeen City Council on all aspects of its recent £370 million rated and listed bond issue to enable it to part-fund a £1 billion capital investment programme to be delivered over the coming years. This was the first major UK local authority-listed bond issue, and provides a template for future issues.

The challenge for public bodies is to leverage their own capital spending capability with long-term funds brought in from the private sector. Aberdeen has managed to do this particularly well.

Our investment in infrastructure – The start of 2017 brought news of two significant partner hires for Brodies in this area.

Drysdale Graham, an experienced and well-known UK corporate projects lawyer who recently delivered the Aberdeen Harbour extension project, is joining us shortly.

Chris Dun, widely regarded as a leading lawyer in housing finance, is also joining us to help drive our housebuilders practice in light of the Scottish Government's ambitious plans for new housing development covering all types of tenure.

These appointments underscore our intention to remain at the leading edge of Scottish infrastructure over the coming years.

Farewell to Airdrie Savings Bank – After 182 years and having survived the 2008 financial crisis, the UK's last remaining independent savings bank is closing its doors.

Supported in the past by Stagecoach founders Brian Souter and Ann Gloag, it has finally decided that the low interest rate and increased regulatory environment means that it cannot remain viable. Ten thousand current accounts and 40,000 deposit accounts will be transferred to alternative banking providers.

Did You Know?

Two members of Brodies' Advocacy Unit have secured appointments to the Scottish Government's list of 'Standing Junior Counsel' – advocates and solicitor advocates who represent the Scottish Government in courts, tribunals and inquiries. Niall McLean has been appointed as a Standing Junior, while Brodies' Chairman Christine O'Neill has been appointed as First Standing Junior.

LIFE BEYOND



Jennifer Miller
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Jennifer joined the firm in June 2016 and works in the Edinburgh office. She trained at DLA Piper in Scotland and on qualification joined its finance team in Leeds, where she spent nearly four years. Jennifer undertakes a variety of lender and borrower work and often works on cross-border instructions referred by London-based firms.

What keeps you busy outside work?

Having never lived in Edinburgh before joining Brodies, I enjoy getting out and about and discovering what the city has to offer. I've also joined a choir with some colleagues which is great fun. I've recently taken up cross-stitch, with varying degrees of success...

What are you passionate about?

I love travelling and discovering new places, whether in the UK or further afield. I'm particularly interested in Japanese culture and travelled around the country in 2010. I'd love to make a return trip in the next couple of years.

If you weren't a lawyer, what would you be?

I spent my third year of university in Strasbourg, where I also worked for an MEP at the European Parliament. I was always really impressed by the translators and interpreters there and how they could translate fluently in real time so that would have been an interesting career path – with the added bonus of living in France and having easy access to the world's best pastry!

Credo is the Latin root of credit and trust which emphasises the underlying credibility of the borrower's promise to repay; the foundation stone of our financial system. If you have any comments or questions on the content of Credo please email michael.stoneham@brodies.com or your regular Brodies contact.

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KILTING CORNER

Storm brewing: The 2017 revaluation of business rates taking effect from this April is causing particular concern in Scotland's renewables sector. Figures published by Scottish Renewables in February 2017 have suggested that smaller hydro, wind and solar projects are facing rates increases of up to 650%. Beyond immediate concerns regarding impact on cashflows, Scottish Renewables has expressed concern that such significant rises have the potential to threaten future investment in smaller renewable projects.

Think Green: Public interest in the imminent privatisation of the Green Investment Bank (GIB) continues. Whilst it is a UK Government construct and investment, assurances have been provided that the significance of the GIB for Scotland, as a Scottish employer and headquartered business, has been considered as part of the bid and subsequent privatisation process.

Events may now have been overtaken, however, with the launch of judicial review proceedings by Sustainable Development Capital (SDCL), reportedly the unsuccessful bidder for GIB, on the basis that the bidding process itself has not followed the bidding criteria published by the UK Government. The judicial review process may eventually provide more transparency regarding the bidding process, the lack of which to date has been a key criticism by politicians.

Third party contracts: Finally, continuing the themes of modernisation and transparency, the Contract (Third Party Rights) (Scotland) Bill was introduced to the Scottish Parliament at the end of January 2017. This new legislation seeks to clarify the rights of those who, while not a party to a particular contract, intend to benefit from or wish to rely on it.

This will make contracting simpler for large corporate groups, provide clarity as to who is, and who is not, entitled to the benefit of a particular contract and – importantly for those of us north of the border – align the position in Scotland more closely to that in England and Wales, ensuring that Scots law retains a place in conversations regarding the most appropriate governing law of a contract.

Click here to see the thoughts of our head of commercial services.