

Let the buyer beware no more

APR 2010

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As you may be aware, in 2009 the States of Jersey adopted the Supply of Goods and Services (Jersey) Law 2009 (the "**Law**"). The Law sets out formalities and rights in relation to the supply of goods and services, giving consumers in Jersey statutory rights similar to those enjoyed by consumers in England and Wales.

This Law applies to contracts for the sale of goods or supply of services. Contracts for the supply of services will include, for instance, professional services supplied by advocates, accountants, and trust companies.

Although the general application of the Law to these professional service firms did not give rise to any material problems for these professional service firms, the regulations recently introduced by the Supply of Goods and Services (Jersey) Regulations 2010 (the "**Regulations**") may well force some firms to operate outside of their comfort zone.

It is fairly standard practise for professional firms to seek to limit their liability in respect of the services provided. This limit is also, usually, well within the professional indemnity insurance cover of these firms. Due to the high value of some of the transactions in Jersey, it has become generally acceptable for firms to contractually limit their liability, by having a capped liability stipulated in their engagement letter and/or standard terms and conditions of business.

Taking into account that certain professional firms (such as advocates) are, by law, not allowed to operate their business within a limited liability structure (such as, for instance, a limited liability company or limited liability partnership), it is understandable why these limits on liability were required. Surely we cannot expect these individuals to have unrestricted personal liability in respect of the

liabilities of their respective businesses, or can we?

From 27 January 2010, being the date when the Regulations came into force, a term of a contract or agreement shall be void if it purports to exclude or restrict liability for breach of the obligations arising from, amongst others, the supplier's warranty under Article 28 of the Law, being the implied warranty of a supplier in a contract for the supply of a service that he or she will carry out the service with reasonable care and skill.

Any provision of a contract seeking to limit the liability of such a professional firm notwithstanding that the firm had not acted with reasonable care and skill shall, therefore, be void. As there is usually allegation of some form of negligence on the part of the supplier (i.e. that the supplier had not acted with reasonable care) in the event where a consumer wishes to hold a supplier liable for damages, the limitation of liability wording found in these supplier contracts will likely be void in most such cases.

It appears as though the old Latin phrase "*caveat emptor*", meaning "*let the buyer beware*", will find limited practical application in modern day Jersey. Although I do not question the expertise and integrity of professional firms in Jersey, the introduction of the Regulations will no doubt cause some firms to now follow the cautious or prudent approach. We appear to be entering an era of "*let the supplier beware*", which, in my view, may stifle business.