

Corporate Focus



News, views, insights & advice from the UK's market leader.

Issue 11

Welcome

We hope you all survived the final phased implementation of the Companies Act without too much stress. With a number of delayed and ongoing changes remaining, Jordans continues to work closely with Companies House and will continue to keep you up-to-date. We explore some of these changes in this issue.

With business commentators talking of green shoots, we too are seeing trends leading to the growth in demand for support services. Feedback from many of our clients indicates that daily compliance is becoming more onerous. Whether this is as a result of the recent Companies Act changes or the challenging economic climate is unclear.

In response Jordans is developing an ever growing portfolio of compliance support services which can be tailored to specific requirements. Read more in this edition how legal process outsourcing may be a viable option for you.

Paul Townsend
Divisional Director



Minimising risks for directors

Becoming a director used to be cause for celebration. But is the new Corporate Manslaughter Act enough to make many people think again – asks Philip Horner client advocate at Lockton Companies International Ltd.

Mr Justice Field has heard submissions in private and directed that the first ever prosecution under the Corporate Manslaughter Act 2007 be listed to be heard again at Bristol County Court in October 2010. Field took this step because of Mr Eaton's need to undergo urgent medical treatment of a character which would render trial participation at that time "unfair and oppressive" for him.

Mr Eaton the local company director is facing trial alongside his company Cotswold Geotechnical Holdings. The CPS is bringing this ground-breaking joint prosecution following the death of a young employee who was killed in 2008 when a trench from which he was collecting soil samples collapsed.

Mr Eaton has been charged with common law manslaughter and

an offence relating to his alleged consent, connivance or negligence as a director. It is expected that the trial will last for between four to six weeks.

Since it is unlikely that Mr Eaton personally dug the trench, or was even near the incident when it happened, why is he facing a threat of a substantial fine or even imprisonment?

All directors – of companies large and small – face the same responsibilities. In addition to financial duties (like ensuring the success of the company, paying tax and filing accounts) directors must ensure that the company complies with a myriad of employment and health and safety laws, including, since 2008, the requirements of the Corporate Manslaughter Act.

This Act imposes a wide range of new duties on companies and their directors. These include ensuring the health and safety of employees and contractors while under their employment. The charge brought against Mr Eaton carries a maximum life sentence, and the Crown Prosecution Service will be exploring whether they can prove it was a senior management failing that led to Wright's death.

The delay to trial and its outcome might seem to offer a short term release of the forecast 4-6 week trial for the 61 year old director. However,

A fine is unlikely to be for less than £100,000, seldom below £500,000 and in some case could even be measured in millions.

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the potential outcome of his imprisonment or significant fine against the company which had a modest turnover of £330,000 in 2008 is still looming over him.

Furthermore, under new sentencing guidelines published for offences committed after 15 February this year, if found guilty a fine is unlikely to be for less than £100,000, seldom below £500,000 and in some case could even be measured in millions.

With so much at stake, what can directors do to help protect themselves?

Directors need to ensure that all risks to employees, customers, partners and any other people who could be affected by their

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activities are identified and minimised where possible. Once the risks are identified then documented plans must be created, and management measures put in place to reduce or prevent these risks.

All employees should have access to expert health and safety advice, and be regularly consulted about the risks that their work presents, as well as being made aware of all the measures being taken to minimise these risks. If a company fails to take these steps, the directors and the company could be found guilty of gross breach of duty of care, resulting in a criminal prosecution – as in the case of Mr Eaton.

How can directors demonstrate that they are complying with the law? It all comes down to culture and ability to show health and safety is more than just a manual on the boss's shelf.

Prosecutions are less likely if health and safety appears regularly on the agenda for board meetings and the chief executive can prove clear leadership in this area. Some boards find it useful to name one of their number as the health and safety 'champion', or to appoint a health and safety director to give out a strong signal that the issue is being taken seriously. Likewise, setting health and safety targets helps define what the board is seeking to achieve.

But no matter how good the planning, at some point an accident will happen and unfortunately, more than 200 people are killed at work in the United Kingdom each year. For this reason in addition to good management practices, it is prudent for directors to take out directors' and officers' insurance (D&O) also known as management liability insurance, which is relatively inexpensive.

No insurance policy can take

away the need for directors to ensure that the company is managed in a sensible and legal manner – nor will it pay fines or stop irresponsible directors and companies being brought to justice. However, what it can do is provide much needed financial assistance at a time of crisis. In particular, directors' and officers' insurance (D&O) will help to fund legal defence costs - which can be exorbitant - enabling directors to get the necessary expert legal counsel if they should need it, without bankrupting the company or themselves.

Another aspect that companies often overlook is the impact that negative publicity can have. Experience shows that if not counteracted quickly with the help of reputation management specialists, this alone can result in the company going to the wall, even if the company and its directors are found not guilty. D&O insurance can also help to fund reputation management experts, if required.

So new and existing company directors would be wise to make sure they are fully aware of their responsibilities.



Philip Horner is a senior broker and client advocate at Lockton Companies International Limited. Lockton represents some of the largest firms within the South West and has been an integral part of the Bristol insurance landscape for over 20 years.

Hope for cut in Northern Ireland corporation tax

A new Tory government could support proposals to lower the rate of corporation tax in Northern Ireland.

In a recent statement, Owen Paterson, the Conservative's Shadow Secretary of State for the North, said that a report by the Northern Ireland Economic Reform Group (ergNI) made "a coherent case for a reduced rate of corporation tax in Northern Ireland".

The Northern Ireland Economic Reform Group is an independent group of economists, accountants and businessmen based in Northern Ireland seeking a more successful and competitive local economy. Their report examines the costs and benefits of a reduction in the existing corporation tax rates, in line with the Republic's rate of 12.5%.

Andrew Cockburn is director of Jordans Scotland and has

responsibility for Jordans operations in Northern Ireland. "It is certainly our experience that a lower rate of corporation tax stimulates new startups which in turn can attract investment and boost the economy" he said "clearly we'll be watching with interest – particularly if the reduction is extended to Scotland, as has been suggested!"

Jordans' activities in Northern Ireland have increased since implementation of the Companies Act 2006. For the first time, the Act brought Northern Irish corporate governance directly in line with that of the rest of UK. At the same time, changes to the Registry and electronic filing at Companies House were introduced. "Our knowledge of the Act and experience of electronic filing has enabled us to provide valuable support to professional firms in Northern Ireland during this difficult transitional period" said Andrew "the industry is now well placed

to deal with the increased levels of new company registrations that could be triggered by a lower tax regime".

The Registrar of Companies in Northern Ireland change of address

The move is the result of the merger of the Companies Registry Northern Ireland (CRNI) and Companies House under the provision of the Companies Act 2006. From 31 May 2010 new address will be:

The Registrar of Companies Companies House, Second Floor, The Linenhall, 32-38 Linenhall Street, Belfast, Northern Ireland BT2 8BG



For information on Jordans services in Northern Ireland contact Andrew Cockburn tel 0131 557 6966 or email on Andrew_cockburn@jordans.co.uk

Founded on knowledge – Jordans seminars deliver once again

We saw unprecedented attendance at our Companies Act seminars during 2009. Delegates attended events around the country, from Newcastle to Bristol, to hear our expert speakers discuss the complexities of the Act.

"The course did just what it promised - a very practical and hands-on approach which dealt comprehensively and efficiently with issues all practitioners will need to apply" Bridget Juckes, Partner at Wards Solicitors, Bristol.

2010 looks set to follow the same pattern with seminars already scheduled at a choice of venues and more to follow. Jordans' latest event timetable features seminars designed to support company directors, company secretaries as well as legal and accountancy professionals.

To find out more visit <http://www.jordans.co.uk/trainingandevents>

How to secure your choice of company name

Choosing and securing your choice of company name is an important part of the company formation process.

As we all know, a company name must:

- end in limited or ltd
- not be offensive
- not be the same as a name already registered
- not contain any sensitive words without appropriate justification or permission

Sounds straightforward enough doesn't it? In theory, yes, but in practice, this is becoming increasingly difficult.

There about 2.3 million names already on the register so those names are already out of bounds. In addition, the Companies Act 2006 introduced new provisions. These make ensuring your choice is not the "same as" an existing company name a lot harder.

Companies House will "disregard plurals or certain types of punctuation marks" when considering a proposed company name. A whole host of other words and expressions will be ignored, depending on where in the name they appear.

So for example, if 'Hands Limited' is already registered the following applications would also be rejected:

- Hand-S Limited or Ltd
- H and S Public Limited Company (or PLC)
- H & S Services Limited (or Ltd)
- @H & S Limited (or Ltd)
- Hands: Limited (or Ltd)
- # H & S Limited (or Ltd)

You can read Companies House full guidance on this subject at <http://www.companies-house.gov.uk/about/gbhtml/gp1.shtml>. Or you can let Jordans

take the strain.

Jordans name-checking services

Jordans are committed to providing a "right first time" company formation service. As part of this, we have assimilated all the rules and their quirks to provide an updated name-checking routine. This is freely available on our website and used extensively in our company formation applications.

"Our formations clients can have the utmost confidence when they check a name with Jordans" said Paul Townsend, Director UK Corporate "our advice is to be

wary of some website lookups. Research has revealed a number of instances where a company name has appeared to be available when in fact it

would be rejected at Companies House".

Premium service

Sometimes, securing a particular name for a company is absolutely vital and time is of the essence. Here, Jordans premium name-checking service is the answer. For a nominal additional fee, our specialists will provide a personalised one-to-one service, checking up to three names in detail.

"Our aim is to provide a suite of name-checking service to meet our clients needs" commented Paul Townsend. These services are complemented by Jordans guide to checking company names which can be downloaded from Jordans website. <http://www.jordans.co.uk/companyformation>

For further information about securing the company name of your choice contact Wendy Rees email wendy_rees@jordans.co.uk or tel. 0117 918 1344.

Corporate outsourcing ... a viable option?

In a recent interview, senior in-house counsel of a leading multinational identified some of the key issues they currently face.

Of prime concern is the requirement to manage the growing corporate legal need arising from increased regulation and compliance. This in turn must be balanced against carefully managed budgets and pressure on resources.

In-house counsel, group company secretaries and finance directors acknowledge they have expanding portfolios of responsibilities. Further demand for strategic or ancillary involvement in associated areas places an additional burden on their time.

Outsourcing routine company compliance matters can provide the answer to these key resource allocation challenges.

It is now widely recognised that outsourcing services such as payroll, IT and facilities management can deliver real benefits. It is often both expedient and economic. This is no less true for outsourcing company secretarial services, especially for time-critical or volume-based transactions. In some areas, such as share registration, this has long been common practice. With general corporate activity moving at a more rapid pace, other areas of work can benefit from the efficiencies outsourcing can provide.

"Increasingly, we are working closely with senior executives of large commercial organisations" said Mark Bevan of Jordans "They are looking for us to provide a range of compliance support services on an outsourced basis". Flexibility and adaptability are vital in providing these services. But each organisation varies in its exact requirements and additional corporate law related services often supplement the routine support provided.

The organisations we assist often have the following features in common:

- Substantial in size, turnover and reach (typically national and multi-national).
- A reasonable number of subsidiaries to service and support.
- A senior individual or small team responsible for a broad range of corporate support services.
- A regular ongoing need for annual company compliance requirements e.g. filing of annual returns, officer changes and share transactions.
- Occasional more complex requirements such as structural changes, updating or ad-hoc advice and training.

Our research also indicates that the flexibility of having "pre-briefed" specialist support when needed in the compliance environment is extremely valuable.

It is now widely recognised that outsourcing services can deliver real benefits

A confidential, objective "audit" of existing compliance arrangements can have many benefits. Also, selective external

input can give crucial insight into current best practices and benchmarked processes. With the introduction of new legislation such as the Companies Act 2006, this can be vital.



For more information, please contact Mark Bevan tel. 0207 400 3316 or email mark_bevan@jordans.co.uk

New data protection guidance and penalties

“An awful lot of people think they know about data protection, and what they think they know is usually rubbish” said a bullish Christopher Graham, the Information Commissioner, launching new guidance in this area.

The new guidance covers:

- the concepts and definitions behind data protection and the application of the data protection principles
- an analysis of the eight key principles of data protection with useful examples of compliance; and
- the rights of individuals and the key exemptions under the Data Protection Act.

New powers should come into force on 6 April 2010 enabling the Information Commissioner to impose higher penalties for breaches of the data protection legislation. It has been noted that the civil monetary penalties of up to half a million pounds should give real teeth to the Information Commissioner's bite. Whilst most companies controlling and processing data do comply with the principles, misuse of even small amounts of personal data can have very serious consequences. Penalties of up to

£500,000 will act as a strong deterrent in this area.

In addition, the ICO has just finished consulting in relation to the online collection of data. This covers personal details, creating profiles of website visitors, collecting and using personal data for marketing and profiling individuals for other legitimate purposes amongst other things.

Companies and other organisations are advised to review the updated guidance and consider the consultation if they carry out this activity. Given the impact of the proposed new penalties it is an ideal time for companies to review their own policies in this area.

The guidance, consultation and further information can be found on the Information Commissioner's Office website at www.ico.gov.uk.

Companies Act 2006 – Jordans dedicated website for information and updates on the Act

visit www.thecompaniesact.co.uk

New appointment on Company Law Committee

@Jordans is pleased to announce that Kathleen O'Reilly, Jordans Head of Internal Legal Services has been appointed to the Law Society Company Law Committee.

Kathleen, a qualified solicitor with over 12 years' corporate and commercial experience addresses corporate compliance and regulatory issues on a daily basis for all parts of the Jordans Group.

This appointment comes as a direct result of the work that Kathleen and her team carried out in the approach to implementation of the Companies Act 2006.

As the UK's leading provider of corporate services, the Act affected all areas of Jordans business. Ensuring Jordans compliance with all the requirements of the Companies Act 2006 and meeting the October 2009 deadline was a serious undertaking.

Kathleen and her team initially conducted a preliminary review of the statutory model articles, published by OPSI back in December 2008. A lengthy consultation process then followed involving key stakeholders, including company law experts, senior company



advisers and client companies. The result is a set of articles of association settled in conjunction with counsel from Erskine chambers that forms a robust, flexible constitution. It complies with the new Act and meets the needs of businesses as they grow in the 21st century.

“Our congratulations go to Kathleen on this new appointment. It is a testament to Jordans' expertise in this field. Kathleen will be able to offer input to the committee from a practical and grass roots level which I'm sure will be welcomed.” commented Paul Townsend, Jordans Divisional Director. “We pride ourselves on our knowledge and expertise. It is this that will ensure we continue to be the leading company service provider to both companies and their professional advisers.”

Contact Kathleen O'Reilly email kathleen_o'reilly@jordans.co.uk

What's a company secretary?

Will this soon be the question that people are asking as the number of secretarial appointments plummets?

This year has seen a massive increase in the number of new companies opting not to make a statutory secretarial appointment. Companies House figures show that between

October 2009 and February 2010, 67% of companies were incorporated without a company secretary.

The requirement to appoint a company secretary was removed under the Companies Act 2006 with effect from 6 April 2008.

Within five weeks of the change coming into force, 20% of private companies formed did not appoint a company secretary. In an issue of the Focus published at the time, we noted that it would be interesting to see how that percentage changed. Our intuitive view was that it would increase steadily.

However, the rise to current levels is quite staggering.

“Company directors must appreciate that if they opt not to appoint a company secretary, they are responsible for the company's statutory compliance” commented Angela Cotton, Jordans UK Corporate Administration Manager “Often they fail to anticipate the work that this involves and the penalties they can incur if they fail to comply. This is why so many companies are turning to us to help with some or all of their company administration work”



If you would like to discuss how we might support you with your corporate compliance obligations, contact Angela Cotton on 0117 918 1335 or email angela_cotton@jordans.co.uk

Limited Liability Partnerships – the future of law firms?

Life will be made easier with electronic incorporation

LLPs are in the business news more than usual at the moment. There are two reasons for this:

- on-going debates about the structure of law firms; and
- the advent of electronic incorporation for LLPs.

Future of law firms?

Many law firms are considering the question of corporate structure whilst bearing in mind the changes brought about by the Legal Services Act 2007. This Act introduces the concept of alternative business structures for law firms. The key element of this is the opportunity for outside investment in law firms subject to strict conditions.

The LLP has proved to be a popular vehicle for law firms since its implementation in England and Wales on 6 April 2001. Many law firms consider it a suitable vehicle going forward especially in the light of the changes. LLPs are available to be incorporated by "two or more persons associated for carrying on a lawful business with a view to profit" (Limited Liability Partnership Act 2000 as amended). They combine the flexibility of a partnership (for example, for tax purposes) with the advantage of limited liability that a corporate body can bestow. They are popular with professionals such as law firms and accountants and also other organisations. It should be noted that as a result of the wording of the legislation LLPs are not suitable for most one-man band businesses or for charities.

Kathleen O'Reilly, Jordans Head of Internal Legal Services says "At first, law firms were cautious about changing their status from a partnership to an LLP. It was the accountants who were incorporating as LLPs in large numbers from the start. Contrary to predictions at the time of implementation, we are now seeing significant numbers of law firms choosing to adopt LLP

status. This is in spite of the perceived disadvantages of the requirement for financial disclosure. LLPs are a very flexible vehicle especially for those businesses that are used to being run as a partnership."

Key features and advantages of LLPs

- Limited liability of members – like a company the LLP is liable for its debts. They are met from the assets of the LLP. The members' liability will be limited to the amount they agree to contribute. Under a traditional partnership the general position is that the assets of all the partners are at risk in relation to the debts of the partnership.
- Status as a corporate body – the LLP is a separate legal entity from its members. The LLP can own and hold property, employ people and enter into contractual obligations in its own right. In terms of outside investment this can be an added advantage as members can be corporate entities or individuals. This can assist with succession planning.
- No directors and shareholders – only members. It is a simpler structure than a company. An LLP has no share capital which may suit some business needs. It should be noted that all the members are ultimately responsible for the management of the LLP although they may delegate. Therefore, some provisions which impact on directors in relation to companies, impact upon the members of an LLP, e.g. the Company Directors' Disqualification Act 1986.
- Flexibility – there is no requirement to file articles of association unlike a company. There are no specific requirements in relation to board or general meetings. An LLP has complete flexibility in terms of the internal structure it chooses to adopt. Please note that in the absence of an LLP agreement there are

default rules that apply.

What's the downside?

- Lack of privacy – financial information must be disclosed. Annual accounts must be filed with Companies House.
- Increased administration compared to a partnership – once incorporated it is important to keep up to date with the annual maintenance requirements for an LLP. A partnership would not need to concern itself with this.
- The default rules. In the absence of an LLP agreement covering issues such as decision-making, apportionment of profits etc the default rules will apply to an LLP. The default rules provide, for example, that all the members are entitled to share equally in the capital and profits of the LLP and no member is entitled to remuneration for acting in the business or management of the LLP. It is advisable for an LLP to have an LLP agreement in place. Any such agreement remains private. There is no requirement for it to be filed at Companies House.

Electronic incorporation

Soon it will be even easier to incorporate an LLP. Companies House is changing its systems to enable the electronic filing of the information required to incorporate an LLP. Given the size and complexity of the paper LLIN01 form (incorporation form) this is very welcome news. Jordans have been filing electronically in relation to companies for many years. "Currently, Companies House says that on receipt of the relevant documents they aim to register the LLP within 5 days. Incorporating electronically will mean LLPs formed within hours rather than days. Within the UK corporate environment this is the sort of timescale that business is used to" says Kathleen.

How will electronic incorporation work in practice?

Companies House have converted their electronic filing service to receive LLP formations data in XML (Extensible Markup Language) over the web via the Companies House Gateway. Jordans have updated our systems and as soon as Companies House goes live (probably in the summer)

with their system we will be able to offer you fully electronic LLP incorporations. You can choose to use our online service, where you fill in the details and a new company can be formed with full documentation sent to you. Alternatively contact one of our formations experts who will take your order over the phone. Whichever method you choose we will manage the whole process to make sure your formation goes smoothly and efficiently.

We anticipate increasing numbers of LLPs being formed once electronic incorporation is possible. Those professionals wishing to adopt such status for their firms will find that there has never been a better time to form their LLP.

Visit

<http://www.jordans.co.uk/companyformation/llps.html> or contact company formations on 0117 918 1391.

Corporate directors

Still got a sole corporate director? Concession ends on 1 October 2010

Since 1 October 2008, companies are required to have on their boards at least one individual director. The use of only corporate directors was prohibited. In the UK we have been very used to and familiar with the practice of appointing corporate directors. These were seen as especially useful for groups of companies. As a result a concession was granted under the Transitional Provisions coming into force at that time.

Those companies that on 8 November 2006 had only corporate directors and complied with the minimum number of directors required for their company on that date (2 for public, 1 for private) were allowed to continue with corporate directors until 1 October 2010.

As of 1 October this year ALL companies will have to ensure that they have on their boards at least one individual director.

Failure to do so will see the company in default.

Memorandum – it's all change again!

Few changes introduced last October by the final implementation of the Companies Act 2006, have proved more puzzling than those concerning the memorandum.

On October 1 2009 the memorandum of association that all in the industry knew and loved, disappeared. It was replaced by the new statutory memorandum showing only the subscribers names with no addresses or indication of the amount of shares taken. Submission of additional information risked rejection by the Registrar. This, we were all told, was a decision not taken lightly - Companies House had consulted with leading High Street banks and all would be well.

It came as no great surprise then to hear from clients who took their post-October incorporation documents to their bank only to be told that they were not fit for purpose!

"Added to all the confusion at Companies House at this time, the last thing registration agents like Jordans needed were clients complaining that their company documents were incomplete" commented Paul Townsend, UK Corporate Director. "Whilst Companies House may have consulted with the banks on this at a certain level, it was clear this hadn't filtered down the ranks".

Within a week, Companies House had capitulated under pressure. They permitted the submission of additional information relating to subscribers addresses and shareholding. However, this would be only a temporary reprieve until 6 April 2010, when the situation would revert back.

As April approaches, many remain unconvinced by the merits of this particular change. As Paul Townsend puts it "Jordans take the view that we have a responsibility to our clients in the first instance. We'll certainly be taking steps to protect them from a repeat of the October confusion".

The Jordans approach will be two-fold. After 6 April 2010 all Jordans company formation end user clients will receive an additional, non-statutory document, detailing the subscriber information as part of their registration pack. Following incorporation this will be supplemented by the provision of a pdf of the INO1e (Application to register a company) image direct from the public record.

For more information visit:

<http://www.jordans.co.uk/>

<http://www.thecompaniesact.co.uk/site/home/>

Overseas companies

Deadline imminent

The transitional provision in the Overseas Companies Regulation states that if you have a pre-1 October 2009 branch or place of business, you need to register this as a UK establishment with Companies House before 31 March 2010.

The form that you will need to do this is the OS TN01.

Companies House have informed us that there are no penalties if the deadline is not met but they will be writing to request that the form is filed.

Visit Jordans Forms on the Web at

<http://tinyurl.com/yzgak82>. Choose functional area overseas companies. Then scroll down to download the form
Transitional return by a UK establishment of a UK Company.

Bribery Bill creates new corporate offence

The House of Commons gave this bill its second reading on 3 March 2010. The new law is due in force in the near future.

The aim of the Bill is to modernise and provide a comprehensive scheme of bribery offences. This should make it easier for prosecutors and courts to deal with such offences. It will replace the somewhat old and fragmented current legislation. It is largely based on the Law Commission's recommendations.

The Bill creates a number of offences:

- offering, promising or giving a bribe; and
- requesting, agreeing to receive or accepting a bribe either in the private or public sector, in the UK or abroad.

There is also a separate offence of bribery of a foreign official in order to obtain or retain business.

It is important that companies and LLPs note that there is also a new offence created in relation to commercial organisations. Those organisations which fail to prevent a bribe being paid by those who perform services to or on behalf of the organisation will commit an offence. It is a defence for an organisation if it has adequate procedures in place to prevent bribery. This defence may not work in all cases. This offence carries an unlimited fine.

In previous drafts of the Bill this offence was based on negligence. The Government's view was that requiring the prosecution to prove negligence may involve unnecessary complexity. They were concerned that this could undermine the broad policy objectives of bringing about and promoting effective corporate anti-bribery procedures.

For more information on the progress of the Bill through Parliament, please see

<http://services.parliament.uk/bills/2009-10/bribery.html>

Amending Annual Returns – be warned

A significant change in Companies House procedures has prompted a number of calls from clients to our legal team. Previously, if a company filed an annual return or other document with an error then that company could file an amending document to rectify the mistake. This procedure was entirely at Companies House discretion and so did not work in every case. Although it did not have a statutory basis it was, however, a very useful and quick procedure when it did work

"Under the new regime we, at Jordans, are warning clients to take extra care with their documents to get it right first time. There is now a procedure to rectify mistakes in documents set out in statute but the downside is it requires a court order with the consequent time and expense that this involves." Kathleen O'Reilly, our Head of Internal Legal Services commented. "In the main, these mistakes seem to be arising out of the difficulties with stating share rights on allotments and annual returns. Companies cannot file amending documents without following the new procedure".

Administrative restoration

Further good news under the new Companies Act 2006 regime. It is now easier for companies struck off in certain circumstances to be restored to the register.

There is a new administrative restoration procedure. This does not require a court order and as a result is less time-consuming and expensive. The application must be made within 6 years of the date of strike off and will only apply to specific situations.

Companies House has recently confirmed that not only is this procedure available to companies struck off under the relevant sections of the new Act but it is also available to companies struck off under the relevant provisions of the 1985 Act (s652) provided the application is made within the 6 year time period. This is good news for those of us practising in this area as there was confusion as to whether or not it could apply to companies struck off under the 1985 Act.

Help – I want my company back!

"This is great news for clients. Under the previous legislation any company that was struck off the register had to apply to court to be restored. For those cases where a company had been struck off relatively recently for failing to keep up to date with its filings this was seen as particularly onerous" says Kathleen O'Reilly, Jordans Head of Internal Legal Services.

She adds "A surprisingly high number of companies do get struck off for this very reason. We have seen one client that set up their company to own a valuable property in London. After setting the company up the client was so busy on the property side that they failed to keep an eye on the requirements to keep the company on the register. Annual accounts and returns were not filed. It wasn't until they were looking to sell the property that they realised their error. Technically, that property was now the property of the Crown. We were able to help them get their company restored but the court process was complicated."

The intention behind the change appears to be to assist those companies that have been struck off through failure to file the appropriate records at Companies House although they are carrying on in business or in operation.

It should be noted that it is not available to companies that applied to be struck off and in certain other situations.

So what's new?

The new procedure is available only in limited circumstances. It allows the Registrar to restore where the company was struck off under:

- section 1000 – where the Registrar has reasonable cause to

believe that the company is not carrying on business or in operation; and

- section 1001 – under the duty of the Registrar to act where the company is being wound up, and where the Registrar has reasonable cause to believe
 - that no liquidator is acting, or
 - that the affairs of the company are fully wound up, and
 - the returns required to be made by the liquidator have not been made for a period of six consecutive months.

What other conditions are there?

- The application may only be made by a former director or former member of the company.
- The application may not be made after the end of the period of six years from the date of dissolution of the company.
- The Crown's representative (the Treasury Solicitor) must signify consent in writing to the restoration. The applicant must pay the costs of the Treasury Solicitor.
- All documents relating to the company that are needed to bring its records up to date must be filed (annual accounts and returns etc).

The application can be made whether or not the company in question has actually been dissolved. Dissolution can take a matter of time.

As well as ensuring all the above conditions are met and filing the appropriate Companies House form, a statement of compliance will also be required.

What happens next?

If the decision is taken by the Registrar to restore the company then the restoration takes effect on the date that the notice is sent by the Registrar.

The effect of this is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register.

What if I don't fall within the conditions?

A court procedure is still available. For companies that do not meet the above conditions this procedure will be used instead. This procedure remains very similar to the process used under the 1985 Act. It is also open to a wider class of applicants than the administrative restoration procedure.

Impact

We have already had a great deal of interest in the new procedure. Now that fewer companies incorporate with a company secretary the risk of failing to keep up with filings and other administrative obligations is increasing. Companies that do find themselves in this position should find this new procedure most useful.

For more information on restoration of companies

Contact Helen Goose.

Email helen_goose@jordans.co.uk or tel 0117 918 1322.

PCSec – company secretarial software update

PCSec, Jordans highly practical and popular company secretarial software package is now available to new users with extensive Companies Act 2006 features including:

- New Companies Act 2006 events and routines – fully updated with new forms.
- Upgraded electronic filing module to communicate with Companies House via the new XML Gateway service.

- Required changes to corporate/company officers, members' details, share classes, address records and registers all included.
- 140 new limited company and LLP Companies Act 2006 forms available in blank forms section.
- Northern Ireland companies can be added and administered.
- Download links to Jordans Companies Act 2006 fully upgraded electronic incorporation service – "Incorporator".

Future releases include full LLP functionality and electronic change of company name.

For a cost effective, practical and Companies Act 2006 compliant company secretarial package with high quality training options and helpline support backed by Jordans' expertise **contact Michael Stanton on 0117 918 1271 or email software@jordans.co.uk**

Jordans UK Corporate Services

Checking names?
Forming a company?
Need help with corporate
administration?
Looking for information?

visit
www.jordans.co.uk

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KNOWLEDGE**

Companies Act 2006 –
Jordans dedicated
website for information
and updates on the Act

visit
www.thecompaniesact.co.uk

UK company formations

UK private limited company formations
Incorporator for volume company formations

Other UK company formations

Company administration

UK company administration services

Registered office services

Director and nominee shareholder services

Company secretarial software

Corporate legal services

Share capital services

Articles of association

Business restructuring

Other corporate processes

Business support services

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Company secretarial recruitment

Companies Act support

Seminars and training

Your local contacts

England & Wales

Mark Bevan
Jordans Limited
T 0207 400 3316
E mark_bevan@jordans.co.uk

Adrian Brown
Jordans Limited
T 0207 400 3304
E adrian_brown@jordans.co.uk

Daniel Stewart
Jordans Limited
T 0113 258 1583
E daniel_stewart@jordans.co.uk

Scotland, North East of England & Northern Ireland

Andrew Cockburn
Jordans Scotland Limited
(trading as Oswalds)
T 0131 557 6966
E andrew_cockburn@jordans.co.uk

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