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Company Restorations – top tips to avoid rejection

Companies House figures suggest that as many as 90% of administrative restoration applications are initially rejected because of errors in the paperwork required, leading to delays in resuming business and accessing vital company funds.

With more and more companies being struck off for non-compliance than ever before, here are our top 5 tips for making the restoration process easier and reducing the risk of rejection:

- 1 Accounts – if you need to prepare accounts to bring the public record up to date then consider whether the accounts are prepared under the Companies Act 1985 or the Companies Act 2006. The statements required to be made will differ

depending on which Act applies which, in turn, depends on the period that the accounts cover. There are also further rules about signing and stating who has signed under the Companies Act 2006.

- 2 Don't forget the need to have the right letter from the Treasury Solicitor to waive the Crown's claim to any assets.*
- 3 Remember the devil is in the detail. The documents required are relatively complicated so do consider seeking expert help. Failure to put signatures in the right place/ to include all the relevant information or putting statements in relation to the accounts in the wrong places will all lead to rejections.

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A Europe wide form of contract

News from Europe has been doom and gloom of late. One development is seen as having the potential to break down barriers to trading within the EU. The concept of an EU wide form of contract has far-reaching implications.

Online business has the potential to be a significant growth area and in the UK is relatively sophisticated. EU research has shown that worries over a range of contract related issues has significantly held back businesses from selling overseas. In addition, the research found that only 9% of UK consumers currently purchase products from outside the UK compared to 53 % purchasing online domestically. The new proposal under debate could provide consumers with a form of contract wherever they were purchasing from in the EU. This would give a great deal more certainty to consumers and suppliers alike.

A significant argument in its favour is that it will encourage buyers of online products to buy more products from foreign rather than domestic providers because it will bring them

greater certainty. They can then (as with the pub landlady and the Greek digital TV provider) really shop around to obtain the best bargain to be had and in economic terms the market would be operate far more freely than at present.

There are many issues raised by the prospect of an EU contract law. These range from the continuing language barrier problems, preferences of domestic courts to domestic suppliers/consumers, its optional nature meaning it cannot be relied upon and how it would fit in with domestic legislation. Some bodies such as Which? are of the opinion that the proposals do not really achieve much. They are also concerned that it might actually weaken the consumer protection in the UK.

The proposals are currently being considered by the Member States and the European Parliament. For more information visit http://ec.europa.eu/justice/contract/index_en.htm

Kathleen O'Reilly



Company restorations

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- 4 Some companies fail to calculate the late filing penalties due correctly. There is a sliding scale of penalties depending on the period of lateness and, in certain cases, doubling of penalties for successive defaults.
- 5 Make sure you have the correct versions of all the forms you need to file – the annual return may be one required under the Companies Act 1985 and others will be under the Companies Act 2006.

**Special provisions apply to companies with a registered office in the Duchy of Lancaster or Cornwall, Northern Ireland or Scotland.*

Helen Goose, Head of our Corporate Legal Services team says “in a few cases the Treasury Solicitor might have already sold a property previously belonging to a company (leaving the company with only a right to the sale price less their costs etc) or might be in the process of doing so and will expect their legal costs to be paid”.

Helen and her team are rightfully proud of the extremely low levels of rejections experienced by clients who use Jordans restorations service. “Our rejection rate is considerably lower than that generally reported by Companies House. Attention to detail is key in

ensuring the process runs smoothly”, commented Helen.

Of course, prevention is always better than cure. So keeping up with compliance on a regular basis is of course a much better option than having to restore a defunct company.

For further information about Jordans restoration service, contact Helen Goose on 0117 918 1322 or email helen_goose@jordans.co.uk.



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If you need help with ongoing compliance speak to Angela Cotton on 0117 918 1335 or email angela_cotton@jordans.co.uk.

Help shape our future

Ours is a massively diverse marketplace comprising, among others, legal, accountancy and compliance professionals. It is also one that is constantly evolving. In the last decade, the rate of technological change has been unprecedented. During this period, technology has had a huge influence on the development of Jordans core products and services, and the ways in which we deliver them to that marketplace. Significant legislative change played its part too and at the same time, our clients and the climate in which they operate continue to evolve.

But what of the next next ten years, or even twenty? There is no doubt that the pace of changes in technology will continue. The introduction of the ABS and reduction in audit requirements speak of upheaval in the legal and accounting professions, against a backdrop of continuing economic uncertainty.

What will the marketplace look like then? How will it operate? What will it need? We would like to understand how our clients see the future and how the Jordan Group can continue to

provide them with relevant, cost effective products and services that will work for them.

To this end, we are running a series of focus groups in 2012 at the following venues:

Royal College of Physicians, London -24 and 26 January

Park Plaza Hotel, Leeds – 2 February

We'd like to hear views from in-house counsel, Financial Directors, Head of Knowledge management (law firms) lawyers and accountants.

If you would like to contribute by joining one of our focus groups, please register your initial interest by email to carol_prince@jordans.co.uk. We'll be making a charity donation for every delegate who attends.

Bribery Act – impact on charities and civil society organisations

Charities exist for the good of society as a whole. Outward facing organisations, they use the funds and assets in their custody to help others. Whilst there may be a partial commercial aim, Community Interest Companies and other social enterprises also have a prime motive of providing community benefit. So, the law imposes a wide range of controls and safeguards, particularly in the protection and correct use of funds and assets, and through wide public disclosure and reporting obligations.

The revised UK anti bribery laws, in the Bribery Act 2010, set out criminal offences of offering bribes, being bribed and, for a “relevant commercial organisation”, of failing to prevent bribery. The legislation is widely worded, for example even if the offer of a bribe is not accepted an offence can still have been committed.

The offence of failing to prevent bribery is aimed at “relevant commercial organisations” – companies incorporated in the UK that carry on business activities here or overseas. A trading subsidiary, carrying out business activities to raise money that will ultimately be used to fund the charity’s charitable activities, could fall within the definition. A CIC is certainly a company and is often carrying on business activities. Even a charitable company limited by guarantee might be doing so – through primary purpose trading in pursuit of its charitable purposes or through its fundraising trading (being undertaken directly by the charity, within the applicable tax exemption thresholds).

People issues

Charities have very few people available to them (many have no paid staff at all) and those they do have are likely to be overstretched and taking on extra tasks, beyond their principal role. This makes it quite difficult to follow fundamental and even basic security and verification procedures, such as division of roles, “four eyes” and avoiding too much power in too few hands.

Frequent changes of people are quite common, so there may be problems of continuity, inadequate handovers and loss of “acquired wisdom”.

Unpaid volunteer trustees probably rarely visit the charity’s “on the ground” operations or even its office (at least during working hours).

So they need to satisfy themselves about the probity of the charity’s activities by other means.

Resources issues

Half of the registered charities in England and Wales have to manage on income under £10,000 pa with only 6% having annual income above £500,000. They cannot fund sophisticated IT systems and may struggle to afford training for their people.

Cultural issues

Many charities serve some of the most challenged and disadvantaged people, often in very difficult situations. In some countries where charities operate, there may be very different social and business cultural norms.

People serving in charities have high standards of personal integrity and tend naturally to trust others. Sadly, this can mean they are less on their guard against those whose aims are far less altruistic.

Activities overseas

When funds are sent overseas or activities are undertaken in places remote from the charity’s base, perhaps in areas where there is conflict, civil unrest or political instability, a charity faces additional difficulties verifying the legitimacy of activities and the correct application of funds.

What about other criminal abuses?

Charities need to be aware of other potential criminal abuses, including:

- Fraud;
- Money laundering (activities intended to conceal the proceeds of crime and make them appear to be legitimate); and
- Terrorist misappropriation of charitable funds and assets.

Conclusions

For most charities and other civil society organisations the small risks are unlikely to become reality. However they should heed Socrates advice: “Regard your name as the richest jewel you can possibly be possessed of” and consider taking these protective actions:

- Have a zero tolerance stance on bribery and other criminal abuses (“We don’t; our people won’t”).

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- Enhance awareness amongst their people (paid and volunteer) – especially those who manage activities and supervise others.
- Obtain appropriate professional advice - from legal and accounting advisers who really understand charities.
- Check there are the basic and fundamental financial and security procedures in place and periodically ensure those are being followed and remain adequate and effective.
- Check and if necessary adjust policies and procedures on expenses, including any "business entertainment" expenses.
- Concentrate on managing the major risks that are of real importance in the organisation's situation.
- Maintain the highest standards of openness and transparency.

In summary, believe the best of people but still

keep your wits about you. At the same time, keep things in proportion, stay focused on your charitable purposes and keep providing charitable public benefit. In the end, that's what you are really all about.



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Visit
www.thebriberyact2010.com
to access valuable resources
including Jordans Bribery
Act compliance pack.

Public sector – employee-owned mutuals

Public sector services - some are being cut, all are feeling the pinch.

As a result many of these services are moving into the private sector. The big question is how to continue to entrench the right values and ensure that the subsequent business is viable?

A key aspect is ensuring that your employees are on board and some form of employee ownership can provide this. This can be either in the form of direct ownership or in the form of employee benefits trusts. John Lewis is hailed as a shining example of this in a sector that produces an estimated turnover of £30 billion annually.

What type of legal vehicle will be most appropriate?

Consider a company or a mutually owned Industrial and Provident Society or some other form of mutual organisation.

In relation to the company model - should it be one that is charitable, will it have a social enterprise element or is it intended that it makes profit? In addition, should employees' incentives be delivered via direct ownership or via an employee benefit trust so that the interests of employees are preserved notwithstanding changes in the composition of the employees? Giving employees a serious stake in ownership is seen as a good model to improve the experiences of consumers and generate motivation.

Key questions on ownership include the

following:

- How will ownership be distributed across employees and other stakeholders?
- Will a share in ownership attract financial, voting and/or other benefits?
- Will anyone have special rights and responsibilities, e.g. the right to appoint a director or to veto certain board decisions?
- Will any social purpose be locked into the structure?
- Will there be a separation between the executive and ownership functions in the new organisation?
- Will ownership be held directly by the employees themselves or indirectly e.g. in an employee benefit trust or via a combination of the two?
- What steps will be taken to ensure long term sustainability and "future-proofing"?

Companies can be very flexible in their structure in order to meet the demands of these new enterprises. With careful drafting of their constitutions it is possible to ensure that the needs of all stakeholders are met.

For further information on constitutional drafting, contact Helen Goose on 0117 918 1322 or email helen_goose@jordans.co.uk.



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More information

For more information on the Jordans range of services please tick relevant boxes and complete the details below.

Then either post it back to FREEPOST BS2348 Jordans Limited
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