

Corporate FOCUS

05

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

Welcome

June is already upon us, and I'm sure I'm not the only one who wonders where this year has gone. And with change continuing in the corporate world 2007 is set to continue passing at the same speed.

The next commencement date for the Companies Act 2006 is now just over three months away, and with two of those months being the holiday season, October 1 will be with us before we know it.

No more AGMs for private companies, new duties for directors, a new derivative action for shareholders, all the changes to how meetings are held and resolutions are passed plus the business review as part of the directors report – all this will become law in October 2007.

To keep up to speed with the changes, ensure that you register with us at www.companiesact.co.uk. Our next edition of Corporate Focus will concentrate on these changes, so don't miss out. Let us have your email address so we can keep you on the mailing list.



Janis Law

Janis Law Director

June 2007

Use of UK Trusts

Martin Palmer, Jordans' Director of International Business Development, presents the case for non-UK residents to use UK trusts for effective tax planning.

The UK is known as a leading international financial centre for foreign capital, but it is also a leading corporate and trust domicile. In particular the use of UK trusts by high net worth individuals and families located outside the UK is increasing. With appropriate planning a UK trust can constitute not only a tax shelter for foreign capital but can enable both individuals and families to plan their arrangements, including succession arrangements, in a stable and safe environment.

Taxation

It is possible to structure a UK resident trust on behalf of non-UK individuals and families so that no UK taxation is payable on trust income and capital gains. This makes the UK a very important centre for the creation and operation of "international trusts". To achieve the same nil-tax environment in an offshore jurisdiction the vesting of assets in offshore trustees can create tax and administrative penalties onshore. The vesting of substantial assets in UK based trustees should not give rise to these difficulties.

Income tax

Under UK law the basic rule is that a UK trust whose sole trustee is resident in the UK will be liable to UK taxation on the worldwide income of the trust at the rate for trusts which is 40%. This tax charge may be avoided in one of three ways:

- By ensuring that whilst the UK resident trustee (e.g. a UK

company whose directors are located in the UK) is registered as the owner of the relevant trust assets, the absolute right to income from these assets is appointed by the trustees to a beneficiary (often referred to as a life tenant) who is non-UK resident for tax purposes. The life tenant could be an offshore company. This provision of UK tax law is contained in case law of the highest authority: *Williams v Singer*, a House of Lords case decided in 1921.

- By ensuring that whilst the income producing asset is legally vested in a UK resident trustee, there is a non-UK resident co-trustee appointed to the trust. Then, provided that the settlor or creator of the trust is non-UK resident and non-UK domiciled, the rule is that non-UK source income of such a trust is exempt from UK income taxation.
- By appointing a UK company to act as the trustee of the UK trust, whose directors are located in a low tax jurisdiction with a double tax treaty with the UK – e.g. Cyprus or Switzerland. In such a case the trustee although UK registered will be wholly exempt from UK taxation (other than on UK source income).

Capital Gains

The rules for the taxation of capital gains are now similar to the taxation of income. Therefore if the UK trust has a UK non-resident co-trustee acting with the UK trustee (in whom all trust assets may be vested) and



provided that the settlor of the trust is both non-UK resident and non-UK domiciled, then the UK trust will be exempt from capital gains tax.

From the above it can be seen it should be possible to structure UK trusts so that they own non-UK assets which give rise to both income and capital gains without incurring a UK tax charge. At the same time the assets are held under UK law in a robust fiscal and regulatory environment.

For more information on Jordans' trust services, please contact Martin Palmer on 0117 918 1321 or by email at martin_palmer@jordans.co.uk



JORDANS

Companies Act 2006: Impact on Charities

The Companies Act 2006 (CA06) will make a number of changes to the way in which companies are formed and managed. Cecile Gillard, Jordans' Head of Charities and Voluntary Sectors, takes a look at how some of the changes will affect charities, non-charitable "not for profit" organisations and other voluntary sector organisations (VSOs).

Which voluntary sector organisations are affected?

The Act has implications for:

- VSOs and their trading subsidiaries that are companies; and
- companies in which VSOs have a partial interest (e.g. partial ownership of a joint venture).

If a VSO is a charity it is also subject to charity law.

Annual obligations

From October 2007 private companies will be able to dispense with holding an AGM, although it may be necessary to amend the articles of existing companies to enable them to benefit from this exemption.

Dispensing with AGMs will not be desirable for many VSOs for reasons of accountability and transparency and to ensure good

governance, although this change may benefit their wholly owned subsidiaries.

The CA06 makes many changes to annual accounting and reporting obligations. However, the impact on charities and their subsidiaries is limited as the Charities Act 2006 and associated regulations, plus SORP 2005, provide the main obligations, including the new audit exemption thresholds.

Directors

Although directors will be permitted to use a "service address" and keep their residential address off the public record, charity trustees will be under an obligation to disclose their home addresses publicly because of charity law rules.

There will be a new statutory statement of directors' general duties under the Act. However some aspects of those duties or

their application will be modified for directors of charitable companies.

Charities must bear in mind that there are now wider statutory duties for trustees in both England and Wales and Scotland. For charitable companies both sets of duties, company law and charity law, will apply to their board members.

Optional secretary

Private companies may choose not to have a company secretary. Given the governance standards and accountability levels expected of VSOs, the role of secretary remains an important one and it would be unwise for such a company to dispense with a secretary.

Trading subsidiaries of charities

In addition to the simplification of annual obligations, the simplification of the rules on share capital and

various share transactions may be useful for trading subsidiaries.

Where directors refuse to register a share transfer they will have to provide reasons to the disappointed proposed new owner, on request. This may have important implications for partly owned subsidiaries.

Omission of "limited" from company names

There will be new conditions for seeking permission to omit the word "limited" from a company name. There are saving provisions for existing companies that already have such permission.

For further information contact Cecile Gillard on 0117 918 1319 or email cecile_gillard@jordans.co.uk

Client Profile: Group Direct

Group Direct is an insurance firm that is growing extremely quickly through acquisition and organic growth. It became a client of Jordans six years ago, when they had one company; they now have over 60 related companies with us.

Group Direct offers a wide range of insurance and financial services. It was founded at the beginning of 2001 and from small beginnings in the light commercial vans insurance market, the business has grown considerably and during its fifth year of trading recorded over £20.5m turnover with a profit of over £3.5m.

GroupDirect
The Direct Insurance Group

Its current range of activities include: specialist broking services for commercial vehicle insurance, the commercial insurance needs of small businesses, personal insurance in the motor & home market sectors, personal injury

insurance and investigations, premium finance and loans, debt advice and solutions to clients with financial problems and a collection agency that recovers bad debt on behalf of companies.

The growth of Group Direct and its associated businesses has been achieved by bringing together determined entrepreneurial vision with motivated executives. The key to controlling this has been to maintain awareness among the personnel of the big picture and a non-negotiable system of financial control operated centrally for all the businesses.

Hazel Sweeney the group's financial controller says of their relationship with Jordans, "We have

always enjoyed good support from Jordans. They help incorporate new companies into our group and keep a strong handle on our company secretarial administration. As our group expanded and we needed to incorporate more companies, Jordans recommended that we look at their Incorporator product as an effective way to incorporate our new companies cheaply and help to minimise formation fees.

We also have taken advantage of their statutory accounts preparation services and they now prepare our dormant companies' statutory accounts. In addition, Jordans made us aware of the scams that fraudsters have been carrying out in companies' names and

recommended that we register for the PROOF service. Since we have been clients we have also registered to use their **connect** service, which allows us to access our company records at any time."



Changes to Irish Company Law

A major review of Irish Company Law is underway.

Catherine Falvey, an Irish company administration expert with Farrell Grant Sparks, takes a look at the changes brought in last December by the Investment Funds, Companies and Miscellaneous Provisions Act, 2006.

Increase of Audit Exemption Thresholds

The number of companies which can qualify for the audit exemption has increased as a result of the following changes in the audit exemption thresholds:

Turnover

From €1.5 million To €7.3 million

Balance sheet total

From €1.9 million To €3.65 million

These are the maximum allowable thresholds available under EU rules.

Companies will still have to meet the other existing qualifying conditions to benefit from the audit exemption in both the current and in the preceding financial year as follows:

- The average number of employees must not exceed 50;
- The company must not be a parent or a subsidiary;
- The company's annual return must be filed with the Companies Office not later than 28 days after the Annual Return Date; and
- The company must not come within one of the 19 classes of companies listed in the Second Schedule to the Companies (Amendment) (No.2) Act, 1999.

These changes apply to financial accounting periods commencing on or after 24 December 2006, and to financial periods which commenced prior to 24 December 2006 and end on or after 24 February 2007.

Private Companies

Section 7 of the new Act increases the maximum number of members of a private company from 50 to 99.

This Section also allows private companies to issue debentures to the public (being less than 100 individuals) where the minimum consideration payable is at least €50,000 per investor.

It is now an offence for a company to make an offer to the public in breach of the conditions laid down in Section 7. This Section is deemed to have commenced with effect from 1 July 2005.

Statutory Declarations

A Statutory Declaration made outside the State for the purpose of the Companies Acts is valid if it is made before a Solicitor entitled to practice in the State. Such a Declaration will also be valid if it is executed outside the State before a person authorised under the law of that place to administer oaths. Provision is also made for the authenticity of signatures to these Declarations. This Section of the Act (Section 6) was commenced with effect from 24 December 2006.

Disqualification of Directors

Section 11 deals with the costs of High Court hearings in relation to



applications for the restriction and/or disqualification of directors or other persons. In both cases, it gives the High Court discretion to order that the directors against whom the restriction or disqualification order is made shall bear not only the costs of the application but also the investigative and associated evidential costs and expenses incurred by the applicant. This Section was commenced with effect from 22 January 2007.

Citation of the Act

The correct citation for the Companies Acts is now "Companies Acts 1963 – 2006".

Legalisation

A company which does business overseas can be asked to provide legalised or apostilled documents (such as copy incorporation documents, a declaration as to officers or shareholders or a certificate of goodstanding).

This article explains the process and offers some tips for getting documents legalised in the UK.

The process

UK documents are legalised by the Foreign and Commonwealth Office (FCO) in London. The FCO checks that the signature, stamp or seal on the document matches its records and then attaches an apostille (legalisation certificate) which confirms that the signature is genuine.

In order to be legalised by the FCO the document must have originated in or been executed in the UK. So it may be:

- A power of attorney or other document which has been signed in the UK and the signature witnessed by a UK solicitor or notary public.
- A document issued by a UK public body, such as certificates of incorporation or goodstanding issued by Companies House.
- A foreign translation of UK documents issued or executed in the UK if the translation has been certified as a true translation by a UK solicitor, notary or by an official of the relevant Embassy, Consulate or High Commission in London.

Information such as the identity of the officers of the company or documents such as board minutes may only be legalised if they have first been notarised.

A foreign document or translation of a foreign document cannot be legalised by the FCO. These must be legalised according to the rules of the relevant jurisdiction.

Effect of legalisation

A document which has been legalised by the FCO will be recognised as genuine in any country which is a signatory to the Hague Legalisation Convention 1961 and also in a number of other countries...

Continued overleaf >>

Legalisation

Continued from previous page >>

which recognise the process but which are not formal signatories to the Convention.

If you are dealing with a jurisdiction where an apostilled document is insufficient (i.e. where the country is not a signatory to the Hague Convention), the document will also need to be fully legalised by that country's relevant consulate. In this case the document is apostilled by the FCO and then sent to the consulate of the country concerned which then adds its own certificate to legalise the document for use in that country.

Checklist

1. The precise requirements vary depending on the jurisdiction in which the documents are to be used and **so it is essential** to check the requirements of that jurisdiction before you begin the legalisation process.
2. Make sure that you factor into your timetable the requirement for legalisation and/or notarisation. In the UK, legalisation may take up to seven days, because it can be a three stage process:
 - First the company secretary will prepare and sign the declaration as to the facts or documents to be verified;
 - The document is then sent to the notary to be notarised; and
 - The notarised document is then sent to the FCO for apostilling.

If the documents require translation and/or legalisation by a consulate then the timescale can be extended considerably.

For emergencies, the FCO and some consulates will offer a public counter service which can provide same day legalisations.

Jordans' legalisation service

If this sounds too daunting, we provide a full legalisation service, including translations and notarisation. Our fees for attending to a notarisation and legalisation in the UK start at around £350, including disbursements. They vary depending on whether notarisation and/or consulate legalisation is also required, so please contact Lee Grove on 0117 918 1382 for more information as to prices and timescales.

What does it mean?

Legalisation is the official confirmation that a signature, seal or stamp on a document is genuine. Having a document legalised does not mean that the content of the document is accurate or approved by the body carrying out the legalisation.

Apostille – a certificate attached by the Foreign and Commonwealth Office to confirm that the signature, seal or stamp on the document is genuine.

Meet the team

Find more out about the Jordans team who are always happy to help...

Sharon Hodge joined Jordans four years ago from Computershare where she worked for 16 years. Sharon works in our International Corporate Administration department. She is an experienced member of the team and administers several large corporate structures in Ireland and for our overseas clients.

Sharon says, "I enjoy my job because of the different types of clients that I work with. One of my clients leases contract aircraft to airline companies and they have over 30 companies in their portfolio.

I mainly specialise in Irish companies so the basic administrative principles are the same as the UK companies but there are some variations relating to how and when the companies have to file their financial and statutory accounts. I often have to communicate with colleagues in other Jordans' offices, such as Jersey, BVI or the Seychelles and/or agents who administer other companies in the same group."

Carmen Stevens works in our UK Corporate Administration department and works for a number of large companies including several high profile international companies that operate through subsidiaries in the UK.

Carmen says that she really enjoys the fact that no two days are the same. "One day I can be dealing with the routine filing of a company's accounts and the next I can be asked to do some ad hoc work.

I have one Japanese company with a large number of subsidiaries that has been keeping me really busy as they have lots of restructuring occurring within their group. I have had to appoint a number of new directors, deal with an increase in the share capital and re-designation of shares for them. This variety of work helps to keep the work interesting and challenging."



Carmen Stevens



Sharon Hodge

Corporate FOCUS

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