

## Welcome

### New changes to the Companies Act 2006

With the Companies Act 2006 introducing a raft of new changes on 6 April 2008 we make no apologies for devoting this issue of Corporate Focus to those changes.

April heralded the 'one-person' company in the UK, which is a major change for our jurisdiction. We wait to see how quickly this change will be adopted.

Many of the other changes – such as those relating to accounts – only take effect for financial years beginning 6 April 2008. These won't start to have practical application for another 6 months at least. So, make sure you keep this edition handy for when the time comes.



Janis Law  
Group Chief Solicitor

## The company secretary is dead – long live the company secretary?

With effect from 6 April 2008 a private company no longer needs to appoint a company secretary. It is now possible for a company to have a sole participant, who acts as both director and shareholder.

Most existing companies that want to benefit from this change need take no action. The company's articles will only override the Act on this point if they specifically require a company secretary to be appointed.

The Government has confirmed that Table A is not inconsistent with any of the provisions introduced in April 2008. This means that the provisions in Table A, which require or authorise the secretary to do certain things, or which specify the manner or terms for appointing or removing a secretary, do not amount to a requirement to have a company secretary.

So, a company that adopts Table A without amendment may decide not to appoint a secretary. The prohibition on a sole director acting as secretary has also been repealed, so if the company decides it wishes to appoint a secretary, there is no prohibition on the sole director being appointed as the secretary as well.

### So is this the end for the company secretary?

We think not. Public companies are still required to appoint a company secretary, as this new rule only applies to private companies.

And although private companies no longer need to appoint a secretary, all the work that the secretary traditionally has been responsible for still has to be done, such as:

- preparing minutes and resolutions;
- maintaining statutory records, filing annual returns and accounts at Companies House; and
- generally ensuring that the company fulfils its statutory obligations.

The penalties for failure to ensure that this important work is done now rests with the director, who can incur criminal liability and ultimately be disqualified as a director if he defaults in these obligations. Although it is still early days, in the first 5 weeks after this change took effect, only 20% of private companies that formed during that period did not appoint a company secretary. It will be interesting to see whether this % changes over the months to come.

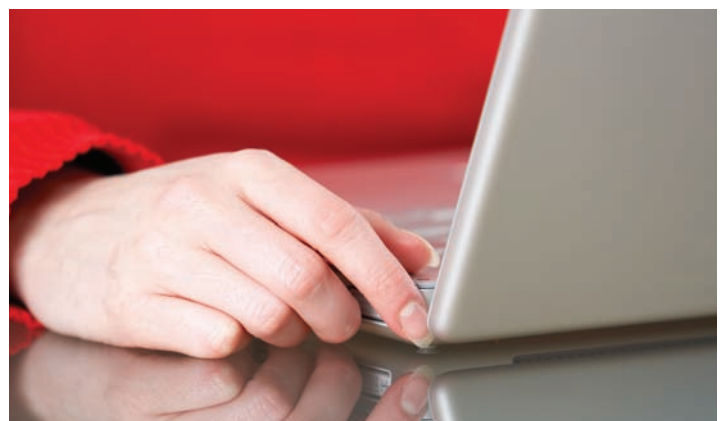
### Our Services

If you need assistance with ensuring that these compliance obligations are properly fulfilled, Jordans has two services for you:

- our directors compliance service, where we provide the necessary support to ensure that the company's statutory obligations are met if no secretary is to be appointed;
- our directors compliance plus service, where we will also provide a company secretary and registered office address as well as the full compliance support.

For more information contact Angela Cotton on 0117 918 1335 or email [angela\\_cotton@jordans.co.uk](mailto:angela_cotton@jordans.co.uk)

We can also assist with removing any obligation in your articles that requires a company secretary to be appointed. Contact Helen Goose on 0117 918 1322 or email [helen\\_goose@jordans.co.uk](mailto:helen_goose@jordans.co.uk) for more information.



## Public companies – authorised minimum

A public company may not carry on business unless it has a trading certificate. A trading certificate is only issued by Companies House if the nominal value of the company's allotted share capital is not less than the "authorised minimum". Similarly, a private company wanting to re-register as a public company must also have an "authorised minimum".

Up to 6 April 2008 the authorised minimum was £50,000. From this date, public companies may now calculate their authorised minimum using the euro equivalent, and the sum of €65,600 has been designated as the euro amount which currently equates to £50,000.

Companies may calculate the authorised minimum either by reference to their allotted share capital denominated in sterling, or by reference to their allotted share capital denominated in euros, but not partly in one currency and partly in the other. When applying for a trading certificate the company must elect which currency it wishes to use to calculate the authorised minimum.



Under supporting legislation the Secretary of State is given powers to change the euro equivalent amount from time to time.

These regulations also provide a means of calculating the authorised minimum where the company has share capital denominated in a currency other than sterling or euros, by using a spot rate of exchange, normally as published in the Financial Times.

## Abolition of Stamp Duty – the Budget 2008 changes

Alistair Darling announced changes to the stamp duty charges in his budget report on 12 March 2008. This is part of the commitment of the HMRC to reduce the administrative burden on business. It is estimated that it will reduce business' stamp duty administration costs by £13.8 million annually.

The changes took effect from **13 March 2008** and remove from the charge to stamp duty the following:

- share transfers subject to ad valorem stamp duty where the consideration is equal to or less than £1,000; and
- share transfers that were previously subject to a fixed £5 charge to stamp duty. This includes transfers between nominees of the beneficial owner etc.

### Where the consideration is equal to or less than £1,000

there will be generally no stamp duty to pay. A certificate will need to be completed on the back of the stock transfer form by or on behalf of the transferor before it is sent to the company or its registrars. The form need not be sent to HMRC.

### Where the consideration is more than £1,000

ad valorem stamp duty will be payable. In this case the share transfer instrument will need to be sent to HMRC for stamping with the payment for stamp duty. It is estimated that of the 350,000 instruments currently sent to the HMRC this will remove 230,000 from the stamping process making the administration for the majority of share transfers much easier. For more information, please contact Helen Goose on 0117 918 1322 or email [helen\\_goose@jordans.co.uk](mailto:helen_goose@jordans.co.uk).

The recent stamp duty changes in the Budget have necessitated changes to the stock transfer form and the certificate on the reverse of it. If you need copies of these you can access them through our website under 'free company forms' under the 'quick links' heading.

Similarly we have a new form of share certificate reflecting the new execution provisions, and these can also be ordered from Dave Giles on 0117 918 1208 or email [dave\\_giles@jordans.co.uk](mailto:dave_giles@jordans.co.uk).

## Accounts and reports – your quick guide to some of the changes introduced on 6 April 2008

The following changes apply only to financial years beginning on or after 6 April 2008.

### Approval of accounts

Directors must not approve accounts unless they are satisfied that the accounts give a true and fair view of the assets, liabilities, financial position or loss of the company or, in the case of group accounts, the group. It is good practice to record in the board minutes that the directors are so satisfied when approving the accounts.

### Qualification as a small company:

At least two of the following must be met:

- annual turnover not more than £6.5 million (was £5.6 million)
- balance sheet not more than £3.26 million (was £2.8 million)
- average number of employees not more than 50 (no change)

### Qualification as a medium sized company:

At least two of the following must be met:

- annual turnover not more than £25.9 million (was £22.8 million)
- balance sheet not more than £12.9 million (was £11.4 million)
- average number of employees not more than 250 (no change)

### Filing deadlines

Private company:

9 months from the end of the accounting reference period (reduced from 10 months).

Public company:

6 months from the end of the accounting reference period (reduced from 7 months). Special rules continue to apply to the first accounting reference period, as now.

### Calculating the filing deadline

The filing date is the same date the relevant number of months later – so if the period ends on 31 January then the filing date for a private company will be 31 October. However, where the financial period ends on the last day of the month, the filing date is the last day of the appropriate month: e.g. 9 months from 30 April is 31 January, not 30 January.

### Sending accounts to members

Private company: no later than 9 months after the end of the accounting reference period or the date on which the accounts are filed at Companies House, whichever is the earlier.

Public company: no later than 21 days before the general meeting at which the accounts are laid.

# Refusing to register share transfers

It has long been the practice for the directors of private companies to reserve the right to refuse to register any share transfer 'without giving any reason therefore'. For example, the standard articles of association produced by Jordans have, for many years, included such a provision.

With effect from 6 April 2008 the Companies Act 2006 now requires a company, when it refuses to register a share transfer, to give notice of the refusal to the transferee together with its reasons for the refusal. This must be provided within 2 months of the transfer being

lodged with the company. The company is also required to provide 'such further information about the reasons for the refusal as the transferees may reasonably request.'

Board minutes have always been documents which are only open for inspection by the directors, and so the Act specifically provides that copies of the board minutes which record the refusal do not need to be provided under these provisions. If the company fails to provide the reasons for the refusal, both the company and every officer of the company who is in default are liable to criminal penalties.

This rule does not apply to a transfer of shares by way of a share warrant (as shares held in a share warrant pass by delivery and do not need board approval), nor to a share transfer which takes place by operation of law.

In addition, these provisions in the Act override any contrary provision in the company's articles. So even if the company's articles contain a provision stating that directors do not need to give a reason for their refusal, the directors will still need to comply with the Act and provide a reason.

# Execution of documents – more flexibility

As a private company no longer needs to appoint a secretary changes have been made to allow a company which only has one director to execute documents.

These new provisions provide more flexibility for companies when executing documents. The changes apply to England and Wales only. In Scotland companies must continue to comply with the provisions of the Requirements of Writing (Scotland) Act 1995.

Companies can execute documents either under company seal (if the company has chosen to have a company seal) or by signature. The main changes relate to execution by signature.

## Execution by signature

A company may now execute a document either:

- by two authorised signatories. Authorised signatories are directors and the company secretary (if one has been appointed); or
- by a single director provided that he signs in the presence of a witness who attests the signature. The witness must also sign and write their name, address and occupation.

Documents that are signed in this way have the same standing as if executed under the seal of the company.

This means that companies now have three options in relation to execution of documents by signature:

- by two directors;
- by a director and secretary (only if the company has a secretary);
- by a single director (subject to the provisions above).

## Execution under seal

Companies that regularly use a seal may have to amend their articles if they only have a sole director, as most articles provide that the seal must be attested by two directors or a director and a secretary.

## Share certificates

We also recommend that companies amend their share certificates to reflect the new signature provisions.

If you need assistance in amending your articles to ensure that a company with a sole director can execute documents using a seal please contact Helen Goose on 0117 918 1322 or email [helen\\_goose@jordans.co.uk](mailto:helen_goose@jordans.co.uk)



# Penalties for the late delivery of company accounts

Late filing penalties were introduced in 1992 as a way to combat the problem of large numbers of company accounts not being filed on time. In the main these penalties have worked – 85% of company accounts are now filed on time and, at any one time, 95.5% of companies have filed their latest set of accounts.

On 6 April 2008, new provisions of the Companies Act 2006 came into force, which apply to accounts filed late after 1 February 2009. These have stiffened the late filing penalties in an attempt to ensure that more companies file their accounts on time.

Under the new rules penalties will accrue if accounts are 1 month late rather than 3 months late. Penalties have substantially increased and there are double penalties for companies that fell under the 2006 Act regime in the previous year and defaulted in relation to the previous year as well as the year in question. The table opposite sets out the penalties in more detail.

Length of period	Private company	Private company – if previous financial year began after 6 April 2008 (under CA06) and failure to comply in previous	Public company	Public company – if previous financial year began after 6 April 2008 (under CA06) and failure to comply in previous year
Not more than 1 month	£150	£300	£750	£1,500
More than 1 month but not more than 3 months	£375	£750	£1,500	£3,000
More than 3 months but not more than 6 months	£750	£1,500	£3,000	£6,000
More than 6 months	£1,500	£3,000	£7,500	£15,000

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## Your local Jordans contacts – real people, real conversations

Technology today has revolutionised the way we all do business. It has brought tremendous benefits in terms of speed and efficiency.

Communication methods unheard of just a few years ago mean that most of us now spend the largest part of our working day in front of a computer screen. However, there are times when a face-to-face conversation with a real person really is the better option. When we ask our clients what's important to them, having a personal contact at Jordans often features highly so we thought we'd take this opportunity to introduce you to our team of Regional Business Managers. A key part of their role is to ensure that our clients receive the best possible service, particularly in these challenging times.

This edition of Corporate Focus may well have highlighted particular issues you need to address or raised questions you need answered – if so, feel free to contact your local business manager to discuss them or perhaps arrange a meeting.

Based in our London office, **Mark Bevan** has over 20 years' corporate experience. With extensive technical experience in company administration and compliance, Mark works primarily with clients based in the City and South East. Contact Mark on 0207 400 3316 or email [mark\\_bevan@jordans.co.uk](mailto:mark_bevan@jordans.co.uk).

**Paul Dunn** looks after clients located along the M4 corridor and the South coast. Paul has several years experience, particularly in the field of company incorporation and the provision of online solutions. You can contact Paul on 0117 918 1205 or email [paul\\_dunn@jordans.co.uk](mailto:paul_dunn@jordans.co.uk).

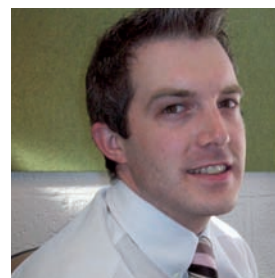
With a strong practical background in company administration, **Wendy Rees** has many years experience in the development and support of Jordans corporate solutions. Based in our Bristol office, she is well placed to advise professional clients in the South West, Wales and the Midlands. Telephone Wendy on 0117 918 1244 or email [wendy\\_rees@jordans.co.uk](mailto:wendy_rees@jordans.co.uk).

Yorkshire-born **Daniel Stewart**, a Manchester University graduate, has recently joined Jordans following four years as a business and key account manager for a major corporate event specialist. From his base in Leeds, Daniel provides service and support to clients in the North of England who can contact him on 0113 258 1583 or email [daniel\\_stewart@jordans.co.uk](mailto:daniel_stewart@jordans.co.uk).

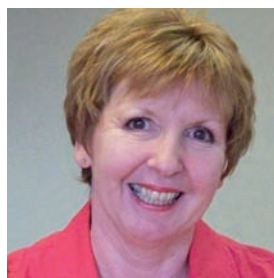
Director of Jordans (Scotland) Ltd, **Andrew Cockburn** has a wealth of corporate experience dealing with Scottish professionals. If you are based in Scotland or the North East of England you can contact Andrew at our Edinburgh office on 0131 557 7126 or by emailing [andrew\\_cockburn@jordans.co.uk](mailto:andrew_cockburn@jordans.co.uk).



**Mark Bevan**



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