

Stanley Davis

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Were Your Directors Appointed By You?

e-formation success at Stanley Davis

Stanley Davis offers the cheapest company formation in the market.

Recognising that much of the mystique around setting up a company has disappeared, Stanley Davis has introduced an e-formation service second to none. Such is the simplicity of the service and the fact that it is offered at the lowest price in the market place that Stanley Davis is dealing with thousands of company e-formation requests per month.

At £32.63 inclusive a private company limited by shares is incorporated within one day. You receive the certificate of incorporation and a copy of the Memorandum and Articles. The fee charged includes the registry fee and VAT.

The service only deals with the mechanics of the formation providing a generic standard set of articles. For many companies this is sufficient. For others more specific provisions are required. Most companies need a company secretary or related support but do not have this expertise inhouse. Stanley Davis nominees are appointed to fulfil this role. Statutory books are needed as well as guidance with their completion and options such as these are offered through the system and are available for selection.

Stanley Davis recognises that actually forming a company is a commodity and an appropriate price is charged. We also recognise that this is not the only requirement within a company set up and have the range of expertise to deal with the fuller service of company formation and secretarial support.

Contact us To take advantage of the eformation service and more visit our website on www.sdgonline.com

CICs to Help Social Enterprises



With effect from 1 July 2005 under the Companies (Audit, Investigations and Community Enterprise) Act 2004 and the Community Interest Company Regulations 2005 a new vehicle for 'social enterprises', that is businesses which trade with a social purpose, can be formed. The activities operated by these Community Interest Companies (CIC) must be for the benefit of the community rather than for members or employees.

CICs can be limited by shares or guarantee and must comply with a Community Interest Test in that they must carry out eligible activities and may not unconditionally transfer or distribute assets. CICs will be supervised by the Regulator of Community Interest Companies.

For a CIC to be formed the Regulator must be convinced that the company satisfies the community interest test and prior approval is needed.

To be eligible for a CIC the company must operate social enterprise activities such as childcare; social care for older people; social housing; fair trade companies; trading subsidiaries of charities; sports clubs and other similar activities. Political organisations would be deemed an 'excluded' activity and therefore would not pass the test for incorporation as a CIC.

Although a CIC may issue shares which bear dividends these dividends may be subject to a cap. Whilst the Memorandum and Articles has not yet been fully prescribed they must contain certain provisions including the restriction on

the transfer of assets without full consideration being paid and dividends only being payable by resolution of the members. A Community Interest Statement will be required to be filed in addition to the usual formation documents together with a declaration confirming that the company will not carry out activities which exclude it from being a CIC.

It will be possible to convert an existing company to a CIC by the filing of a declaration made by the directors confirming that the company is not a charity and complies with the eligibility tests.

On an annual basis a report must be filed at Companies House who will forward a copy to the Regulator. The report will include a statement on how the CIC's activities have benefited the community and provide details of directors' remuneration.

Those likely to want to form a CIC will include those seeking the benefit of limited liability or a familiar corporate structure and those wishing to send a message that the company is for the benefit of the community or to ensure that assets are preserved for the community.

Outsourcing – why it works

Self sufficiency is currently the charter when legal and accountancy firms must appear to perform the full range of specialisms. Given however that so many specific disciplines can themselves be subdivided it is difficult and costly to be masters and self sufficient in all.

This is the first reason outsourcing is useful; the ability to devolve to a suitable partner the missing expertise yet be able to continue to market it as a specialism.

The company secretarial function has grown to be a stand-alone discipline where firms can benefit by outsourcing. It is governed by its own Association, the Institute of Chartered Secretaries and Administrators and there is a clear area of responsibility as the company secretary focuses on the compliance of the company with its governing legislation.

What should firms look for when they seek to outsource to an agent this functionality with confidence?

Expertise

Expertise and/or formal qualification in the company secretarial arena is a prerequisite whether the matter is a basic compliance issue e.g. filing accounts, or a more complex issue e.g. company purchase of own shares. Companies can be struck off where basic compliance functions have been ignored and contracts invalidated where the procedure followed is not in accordance with the company's articles or the Companies Acts.

Ability to deal with multiple companies and group company situations

Given that firms of lawyers and accountants will act for a variety of clients the agent needs to have the capacity to manage volume movement.

Processing systems to ensure timely returns

All companies have some compliance annually required by the Companies Acts and whether trading or not. The documents required to be submitted to Companies House must be complete and accurate and must be filed within timings set out by the Companies Acts to avoid late filing financial penalties. The agent needs robust systems to ensure the smooth flow of information with an integral reminder system for timely delivery of information to Companies House.

Speed of response

The agent must have the expertise to deal with the matter but also the commercial approach which recognises that decisions

and related documentation are required quickly. A suitable agent will have a bank of precedent documentation for easy access across a range of situations which affect companies generally and to which he can refer to minimise cost and turnaround.

Informal help

Easy communication is important. Although work might be outsourced the link must be seamless. The need for a quick phone call or email to clarify a point or two is invaluable.



Cost

The exercise must make commercial sense and by negating the need for recruitment, training, ongoing staff development, career path management and instead, paying for outsourcing, the result must be a positive return on the bottom line.

Professional Indemnity

Devolving the responsibility for getting it right is a far step from taking a direct hit. Business operates in a litigious world. Outsourcing offers a separation of risk in respect of the outsourced service.

Stanley Davis has over 40 years experience in the company secretarial arena. With its personnel including lawyers, chartered secretaries and other experienced company secretarial support staff, corporate clients in the UK and internationally benefit from our outsourcing service.

Company Law Review

The following summary whilst not meant to be exhaustive highlights some of the key changes proposed under the Company Law Review started in 1998 with consultation on the recent White Paper just closed. The provisions proposed will be by amendment to the existing Companies Act and not the introduction of a brand new Act.

Key measures:

■ There will be a new model set of articles for a private company limited by shares which effectively updates Table A.

■ There will be no requirement for private companies to hold an AGM and no need to elect to dispense with this requirement using the elective regime.

■ Public companies will be required to hold their AGM within 6 months of the end of their financial year.

■ Proxies will be enabled to more directly respond on behalf of beneficiaries by being able to speak at meetings, demand a poll and vote on a show of hands or on a poll.

■ A formal statement of directors' general duties will be introduced which will replace common law and equitable rules. There will be plain English guidance explaining the statutory duties to ensure that all directors understand what it means to act as a director.

■ It will be possible to make loans to directors subject to shareholders' consent. Shareholder approval will not be required for minor transactions.

■ Companies will be free to pay directors' legal costs up front provided that if convicted the director repays the costs.

■ It will be necessary to have at least one natural person acting as a director. This is in an attempt to prevent the identity of the company management being screened by use of corporate directors. This may be inconvenient for company formation agents who use corporate nominees for the purpose of facilitating incorporation as well as group company structures where the corporate nominee is used for administrative purposes.

■ Auditors' liability can be capped in agreement with the directors of companies for whom they provide an audit service and with the authority of the shareholders. Any such limitation must appear in the annual financial statements.

■ Companies House will enhance and increase their plain English guidance to assist directors to understand their duties and the obligations on companies.

■ Companies House will introduce incorporation via the web during 2007

and in conjunction with the new default articles for a private company.

■ Written resolutions will not require unanimity but a 75% majority for special or a simple majority for ordinary resolutions. The right will remain for 10% of the shareholders to call a general meeting if needed. It will still require a general meeting to remove a director or the auditors. A fixed period of 28 days will be prescribed within which written resolutions must be signed otherwise the resolution lapses.

■ Notice period for all meetings will be 14 days. Shorter notice of general meetings will require 90% of the voting rights, down from 95%.

■ There will be no restrictions on a company's capacity to act thereby removing the ultra vires rule.

■ Table A will be replaced by a new simplified set of model articles for private companies limited by shares. Table A has long since been out of date given the legislative changes since its introduction in 1985. In addition, it focuses on the public company and many of the provisions must be modified or deleted for it to adequately reflect the requirements for a private company.

■ Where no articles are filed the Registrar of Companies will assume that the new set of model articles applies in much the same way as currently is the case with Table A.

■ The office of company secretary will become obsolete for private companies. Caution - as the function of the company secretary remains as before, it will be necessary for the directors to choose one of their number to carry out the role of compliance officer or some other person to deal with the company secretarial function.

■ The status of the 'secretary' is enhanced under the review as if properly charged by the directors to carry out the compliance function failure so to do will render the secretary liable for the default. This is extended to senior employees and others who have decision-making powers and as a result affect the company substantially.

■ Companies House will take an active enforcement stance on companies who fail to ensure that the statutory minimum number of

Review – A Checklist

The Review has used as its terms of reference a 'think small' approach, the importance of the shareholders and their involvement in the company, a formal statement of directors' duties bringing the degree of responsibility to the attention of proposed directors before they accept the appointment, an easier route to decision making within the company and making it generally easier to set up a company.

directors is maintained and criminal sanctions will be brought to bear on defaulters.

- The Register of Members will remain a statutory register but details of past members will only be required to be kept for 10 years and not the current 20 years.

- Private companies will be freed from the restrictions imposed on the acquisition of their own shares and will be able to provide financial assistance for this purpose.

- Companies wishing to purchase their shares out of capital will take advantage of a new mechanism which will make redundant the current rules on the purchase of own shares out of capital and will not require court approval.

- There will be no requirement for companies to have an authorised share capital.

- No shareholder approval for allotments of shares in private companies will be required except where the allotment might result in more than one class of shares. The duration of authority for directors to allot shares will be abolished.

- Public and private companies will be free to issue redeemable shares without the need to specify the terms and manner of redemption in the articles. The return of allotments will provide the details to the Registrar of Companies.

- Trustees in bankruptcy and personal representatives of deceased members will have the right to be registered as shareholders notwithstanding any provision in the articles to the contrary.

- Companies House will employ a more consumer approach to companies by having the ability to telephone companies who have provided incomplete information and to remove items from the public register placed there by mistake.

- Public companies will be able to take advantage of a provision only permitted to private companies at present to request voluntary strike off from the register.

- The procedure for restoration of companies will be simplified and be dealt with by administrative means where non-contentious.

- Companies will have a shorter time

to file their accounts and in the case of public companies this will be reduced from 7 months to 6 months and for private companies from 10 months to 7 months.

- Companies will retain the facility to file modified accounts on the basis they comply with the Companies Act requirements in terms of what constitutes a small or medium sized company however details in respect of turnover will be required to be shown on public record.

- Companies will be able to move their registered office inter Great Britain without the need to close the company in one jurisdiction and set up in the new one.

- Public companies will be able to reregister as unlimited companies without the need to reregister as private companies first. Share companies will still not be able to reregister as companies limited by guarantee.

- There will be a bringing together of the provisions in the Business Names Act and the Companies Act and the prohibition of names which are misleading and likely to cause harm to the public will extend to all business names and not simply companies registered at Companies House. In addition, there will be one set of requirements for the display of company or business names on letterhead and at the business premises.

- Every director will be able to opt to provide a service address rather than his home address on the public record. The provision will not be retrospective.

- There will be no requirement for a statutory declaration to accompany the formation documentation and a simple statement of compliance signed by a director or secretary of the company will suffice.

- There is no requirement for directors to declare an interest where that interest cannot reasonably give rise to any real possibility of conflict of interest.

- The minimum age for a director is set at 16 years and where at the time of enactment of the Bill any existing directors have not attained the age of 16 they will cease to be directors. The upper age limits for public companies has been removed.

New Service is Confidential

Under the Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 high profile directors, who consider that the exposure of their residential addresses puts them at risk, can apply to retain this information as confidential and instead place on the public record a service address i.e. an alternative address which is not their normal home address.

Proposed within the Company Reform Bill yet to be enacted is the option for any director to provide a service address instead of a home address without the need for formal application.

Stanley Davis appreciates that for many reasons directors of companies prefer that correspondence in respect of companies they represent be received away from their home environment. As a consequence Stanley Davis operates a Service Address system where directors may apply to use our London address as an alternative to home addresses. It is intended that our current service be extended beyond the implementation of the Company Reform Bill. We believe that in addition to those

directors who prefer to keep business at the office many of our international clients will welcome this form of support where they are setting up UK companies, particularly those clients who reside in politically less stable international jurisdictions.

Correspondence received for directors using the Stanley Davis Service Address is forwarded to an alternative location provided by you or a collection system agreed with you. The service is confidential and except in the case of court order or formal application from appropriate authorities no information is revealed save for the service address which appears on the public record.

Contact david.kaye@stanleydavis.co.uk for further information.

Were your directors appointed by you?

When new directors are appointed it would be usual for the articles of association to be considered to ensure compliance with the internal regulations of the company, for a board resolution, written or by meeting, being passed confirming the appointment, for a letter by the new director consenting to act or thanking the board for the appointment being circulated or tabled, for the details to be inserted in the statutory register of directors and finally for the statutory form 288a being lodged at Companies House.

Once the form 288a has been lodged at Companies House anyone looking at the public record would be notified of the appointment of a new director.

Although not compliant with companies legislation it is possible to simply file the form 288a at Companies House without following the above procedure. Anyone taking a look at the public record would accept the validity of the appointment on face value.

An increasing number of incidents have occurred where rogue appointments have been made in this way. Fraudsters are completing the statutory forms 288a, signing on behalf of the companies and subsequently filing the document at Companies House. Since the remit of Companies House includes only a cursory check to confirm all relevant boxes have been completed and that the forms have been signed before being placed on the public record, rogue directors are being added to the public record with devastating consequences.

These rogue directors are then in a position to empty bank accounts, contract

illegally and generally asset strip companies.

Unless, and until, the remit of Companies House extends beyond this cursory check and introduces a system to validate the appointments the situation can and no doubt will continue.

Stanley Davis has two answers. Companies can take advantage of the Stanley Davis Monitoring service which alerts you to any document which is filed on your company's public record at the time the document hits the public record or the Stanley Davis Electronic Filing Service where Companies House is notified to accept electronic delivery only.

Companies House can be notified to accept an alternative is to notify Companies House to accept documents by electronic delivery only. Electronic delivery of information to Companies House requires a formal set-up with passwords which would be difficult for a fraudster to copy. The Stanley Davis system can be used to facilitate this with Companies House on behalf of your companies.

Contact fraudmonitoring@stanleydavis.co.uk for details.

of the proposals contact david.kaye@stanleydavis.co.uk.

Stanley Davis – the man and the company

Stanley Davis is an entrepreneur, an ethos and a dream.

Stanley Davis the company is a service provider to professional businesses, including the leading accountancy, law and fiduciary firms both in the UK and overseas.

Stanley Davis the man has been in the search and formations industry for over 40 years. He is a famous name

amongst accountants and solicitors in the UK.

After selling his search and formation agency business to Maxwell, Stanley built up over a ten year period and successfully sold his share registration business, IRG. He made a return to his roots in 2001 and

hopes to continue this success by making Stanley Davis the first agency that the market refers to for company formations and secretarial services, property and company searches. Stanley continues to be involved in the motivation and direction of the group as Chairman, ably supported by

his son Andrew who heads up a strong executive management team.

The ethos also remains and that is the highest levels of support and service to clients. We are responsive and efficient, empathetic to our clients needs and are effective at saving clients time and money.

International Focus - BVI

Although the British Virgin Islands have not abolished bearer shares, there is now legislation in place which requires bearer shares issued after 1 January 2005 to be held by an authorised custodian. Bearer shares issued before 1 January 2005 have until 31 December 2010 to comply. As at the date of print a list of authorised custodians has yet to be issued by the BVI government.

Where bearer shares are not required, registered shares will be issued which offer a level of privacy since the Register of Members is held by the Registered Agent of the Company, and is not public information.

Companies permitting bearer shares in their Memorandum and Articles of Association must pay an annual government licence fee of £750. In addition, all companies with an authorised share capital greater than \$50,000 will also pay an annual government licence fee of £750. These fees are guaranteed to remain the same until at least 2007 subject only to exchange rates.

Clients wishing to form a new bearer share company should consider the use of a shelf company permitting bearer shares formed prior to 2005. The use of such a company can be less expensive as well as simpler, at least until 2011.

Another important amendment introduced by the new legislation is the requirement to maintain a Register of Directors at the Registered Office of the company. The information which is set out in the Register of Directors includes the name and address of the Director, his appointment date and the date he is removed or resigned. Under the new rules the Registered Agent will also have an obligation to appoint a director within 30 days of incorporation.

The Register of Directors will not be available to the public nor will it be filed at the Companies Registry or any other government office. It will be accessible only by BVI law enforcement and regulatory officials in the exercise of compulsory powers under relevant legislation or by court order.

International Business Companies incorporated as at 31st December 2004 have until 31st December 2005 to forward a copy of their Register of Directors to their Registered Office.

Contact david.kaye@stanleydavis.co.uk for help with your BVI or International company formation.

Goodbye Company Secretary

The Company Reform Bill proposes to do away with the office of secretary. Since the mid 19th century it has always been necessary for a company to appoint a person or organisation to act as the company secretary in addition to the appointment of directors.

Whilst the company secretary has in the past not been credited with as responsible a position as the directors, nevertheless the compliance function of the company secretary keeps or should keep the company on the right side of legislation.

In many companies the company secretary acts as watchdog as well as compliance officer and advises the directors on the validity of actions they propose. Increasingly and as a result of such involvement the company secretary sits alongside the directors should things go wrong.

The Company Reform Bill reinforces this responsibility but not on the office of company secretary which it proposes to remove, but on the person designated by the directors to perform this task.

The Directors must therefore appoint one of their number or someone else to perform the function. Whilst the bill proposes fewer formalities in terms of decision making, companies must still comply with

the legislation and ensure the company does not fall foul of the requirements of the Companies Acts. The very changes proposed in the Bill require interpretation and understanding. Companies must still abide by the Companies Acts to avoid striking off or penalties being imposed on it or its officers.

Under the proposed changes in the Company Reform Bill a private company may in its articles require a secretary, permit one or provide not to have one. If there is no mention in the articles then the company is permitted to have one but not required to have one. An existing private company may within three years of the enactment of the Bill remove the reference to a secretary or enact the provisions above. A company may only do this once and the resolution must be filed at Companies House. Where the company is required or permitted to have a secretary it must keep a register of secretaries and must notify the Registrar of any changes.

The Company Secretary therefore might be dead, but long live the Company Secretary!

An alternative to NLIS

The National Land Information Service is a Central Government initiative which was the Government's starting point for e-conveyancing. It serves as a system for ordering and receiving property search requests required in a conveyance. It offers a form of one-stop-shop for the lawyer acting for the purchaser of a property. In 2007 the same information will be demanded by the lawyer for the seller of a property as we see the introduction of Home Information Packs.

Many of the data providers whose information is needed for a conveyance are not connected to NLIS and a manual interchange is needed. This is usually provided by a property search agent who will feed the information to NLIS for NLIS to onward transmit to the lawyer. Rightly the lawyer's only concern is receiving accurate information quickly for his client and paying only what is necessary to ensure best service to his client minimising cost wherever possible. The conveyancing market place is a seriously competitive one.

Although the NLIS Channels i.e. the routes used to access the NLIS hub through which the requests and information passes, have negotiated with some local authorities discounted fees for instructions received through NLIS, the lawyer must also pay a fee to the licensed channel and to the hub. The fees are taken for each transaction in advance of the order and directly from the lawyer's client account on request for the information.

Stanley Davis offers a more flexible, human, and cost effective alternative. We already service a number of large firms in London and in the regions with personal and official searches as well as ancillary searches including Con 29DW, coal, tin, brine etc. We are adept at dealing with multi search requirements and portfolios of properties. We receive and deliver electronically. Unlike NLIS, Stanley Davis deals directly with all the land data providers. Our day-to-day contact means consistent search service turnaround. Our property team are also happy to receive your calls and appreciate that not every request can be input into a system e.g. incomplete addresses, poor plan, general queries or additional information required. Stanley Davis has a human point of reference for its clients and the ability to interchange outside a system. We also charge less than NLIS, an important element given the range of costs suffered by any purchaser of a property and further we do not ask for payment until the searches are delivered.

NLIS is a system devised by Government. Stanley Davis is the solution combining systems with experience and a people approach to the conveyancing market place.

Contact sue.yew@stanleydavis.co.uk for information about our property search service.