

inside this issue:

Companies Act – Parts are in force NOW
A brief HIP update
Other forthcoming Companies Act changes
Getting closer to clients
International corner –
US Limited Liability Company
Maltese trading and holding Companies
Austrian Agency structure
Company FAQs
An update on Trade Mark legislation
Search and WIN!

Stanley Davis

journal

Issue 7 • June 2008

Companies Act 2006 – Parts are in force NOW

A milestone was reached on 1 October 2007 when some key clauses of the Companies Act 2006 came into force and 6 April 2008 has brought in some more significant changes.

With a few changes to come in October 2008 and then the final batch in October 2009, the piecemeal implementation of the Companies Act 2006 has led to a lot of uncertainty and confusion.

Industry groups such as the Chambers of Commerce and the Federation of Small Business are concerned that many of their members are still unaware of the changes and how they need

to prepare over the next eighteen months. The larger companies may well be prepared – or as prepared as they can be – but many small and medium sized companies may remain in the dark.

As registration agent and Company Secretary for many hundreds of companies, Stanley Davis is here to help. As part of our support we can advise if your memorandum and articles are up to date. Contact our Formations Team for further details.



1 Which sections will affect my company?

All sections in force could have an impact on your company but there are some important areas that will affect the majority of small private companies:

1. Notice periods – the notice period for extraordinary general meetings is now fixed at 14 days and for annual general meetings, 21 days.
2. Written resolutions – these can now be passed by members holding the required number of shares to reach the required majority rather than by signature of all members.
3. Annual general meetings. A private company need no longer hold an AGM.
4. Accounting reference periods. For accounting periods starting on or after 6 April 2008 the filing period has been reduced by one month so it is now nine months for private and six for public companies.
5. A private company does not need a secretary from 6 April 2008 onwards.
6. Rules for execution of documents have changed.

2 Why do I need to review my Articles of Association?

You will only need to review your articles if you wish to take advantage of the new Act. Here are some typical scenarios:

- You want to dispense with holding an AGM: you need to check whether your articles do not specifically say that you must hold an AGM in which case you must no matter what the Act

says. Exception to the rule: if you had already passed an elective resolution under the 1985 Act to dispense with AGMs this will still apply even if your articles say you must hold one!

- You are a not for profit company and you want to make sure that you hold an AGM each year: your articles may well stipulate that you must hold an AGM but on the other hand they may not so you must check and update if necessary.
- You want to dispense with having a company secretary. Do your articles say that a secretary must be appointed or do they refer to certain acts needing to be done by the secretary? If so they may need attention. One particular point to look at is the company seal. If the company has a sole director then, under standard provisions, it can't be affixed without a secretary or a second director. It is possible to affix a seal with a single signature if the articles permit it.

3 Do I need a company secretary any more?

This is a question that needs to be asked on a case by case basis.

It is important to separate the office of secretary from the functions that the secretary usually carries out. There are a whole range of activities that someone will still have to do and without a secretary the burden will either fall on the directors or their professional advisors.

It is tempting to see the potential cost savings (the secretary's salary) but an analysis needs to be carried out to ensure that the absence of a company secretary does indeed lead to reduced costs.

Continued on page 2



Continued from page 1

Companies Act 2006

4 Which parts of the new Act are already in force?

In detail the following sections have been implemented:

Exercise of members' rights (145–153)

A company's directors (154–259)

Sections 155 – 59, 175 – 177, 180(1), (2)(in part), & (4)(b), and 181(2) & (3), 182 – 187, 240 – 247: 1 Oct 2008

Sections 162 – 167: 1 Oct 2009

Derivative claims and proceedings by members (260–269)

Company secretaries (270–280)

Section 270(3)(b)(ii), 275 – 279: 1 Oct 2009

Resolutions and meetings (281–361)

Sections 308, 309, 333: 20 Jan 2007

Sections 327(2)(c) & 330(6)(c) are not commencing for the time being

Control of political donations and expenditure (362–379)

Provisions relating to independent election candidates: 1 Oct 2008

Part 14 comes into force in Northern Ireland on 1 Nov 2007, except for provisions relating to independent election candidates.

Accounts and reports (380–474)

Section 417: 1 Oct 2007

Section 463: 20 Jan 2007 for reports and statements first sent to members and others after that date

Audit (475–539)

Sections 485 to 488: 1 Oct 2007

Debentures (738–754)

Private and public companies (755–767)

Certification and transfer of securities (768–790)

Information about interests in a company's shares (791–828)

Sections 811(4), 812, 814: 6 Apr 2008

Distributions (829–853)

Arrangements and reconstructions (895–901)

Mergers and divisions of public companies (902–941)

Takeovers etc (942–992)

Fraudulent trading (993)

Protection of members against unfair prejudice (994–999)

Company investigations: amendments (1035–1039)

Companies: minor amendments (1175–1181)

Section 1175 (only for Part 1 of Schedule 9): 1 Apr 2008

Sections 1180, 1181: 1 Oct 2009

Statutory auditors (1209–1264)

A brief HIP update



Extension to HIPs temporary provisions announced

Housing Minister Rt Hon Caroline Flint MP announced on 8 May 2008 the extension of the temporary provisions for first day marketing and leasehold requirements in the HIP Regulations from 1 June to 31 December 2008.

First day marketing

The temporary first day marketing provision was

introduced after working with industry in order to help smooth the implementation of HIPs and allows a property to be marketed where the HIP has been commissioned and paid for, or arrangement for payment been made, and the documents are expected to arrive within 28 days.

The order laid will extend the temporary provision from 1 June to 31 December 2008.

Leasehold information

The temporary provision requiring HIPs to include the lease only, and to 'authorise' other leasehold documents was introduced in response to concerns about delays and additional costs in obtaining leasehold information.

The order laid will amend the HIPs Regulations, extending the temporary provision for leasehold requirements until 31 December 2008. In the interim, Ted Beardsall has been asked to convene a working group of industry representatives to develop the options identified in his assessment

The Minister's announcement also includes:

- Developing a new set of standards with industry on what consumers should expect from property professionals in the home buying and selling process; further building on the quality of information in the packs

- Work with the industry to ensure that agents and HIP providers understand and act on the requirement to prepare the HIP as soon as the EPC is produced, so that it is available to potential buyers early in the process

- Develop in partnership with the property professionals, the means for capturing consumer friendly information for inclusion within the HIP, such as property fixtures and fittings, access and boundaries. This will draw on the lessons learnt from our Area Trials.



Other forthcoming Companies Act changes

In addition to the Act itself, there is secondary legislation that is being implemented under the Companies Act 2006.

One such rule that provides clarification relates to The Companies (Company and Business Names) (Miscellaneous Provisions) Regulations 2007 coming into effect on 1 October 2008. This details the characters that may be used in a company name (including letters, numbers and symbols).

It also sets out when a company may exclude the word 'limited' from its name and provides a limit of 160 characters.

Child Directors

Any person under 16 on 1 October 2008 will automatically cease to be a director.

Corporate Directors

Every company must have a 'natural person' on the board from 1 October 2008 so sole corporate directors will no longer be allowed BUT if, on 8 November 2006, the company only had corporate directors then the company will not have to appoint a natural person until 1 October 2010.



Getting closer to clients

It has been a busy time at Stanley Davis; acquiring new companies, growing our HIPs division and recruiting.

We are delighted to now draw a breath and focus on our real priority: our clients.

Through our core divisions, we are involved in hosting some large networking events which have been very successful and attract many professionals, advisers and decision-makers. These large events are typically held in Leeds and Nottingham, and organised by our search division, York Place.

In London, we have hosted some intimate and exclusive private lunches at the Garrick Club in London's West End. These are superb events and enable us to get to know new clients better and to thank long-standing clients for their continued support. We would like to open these up to a wider audience next year, and starting to build the list now.

If you're interested in attending any of the events, please let us know by emailing marketing@stanleydavis.co.uk. Please let us know if you're interested in events in Leeds, Nottingham or London.

International Corner US Limited Liability Company (US LLC)

The US Limited Liability Company (US LLC) is a hybrid entity that offers the advantage of being a separate legal entity from its members and the member's personal liability being limited to the amount invested in the LLC. A minimum of one member (shareholder) must be appointed and this can be a physical person or a corporate entity based anywhere in the world (offshore based members can be used). A minimum of one manager (director) must be appointed and this can be a physical person or a corporate entity based anywhere in the world (offshore based managers can be used). A registered office must be maintained in the state of formation at the office of a professional registered agent. Furthermore there are generally no minimum capital requirements and no capital duty is payable.

A US LLC can be taxed either as a partnership, a company or as a disregarded entity. If it chooses to be taxed as a partnership/disregarded entity, it will have the benefit of flow-through taxation for the purpose of US federal and state taxation. Therefore provided that the LLC has only non-US resident members, conducts its business outside of the US and has only non-US source income, it will not be liable to tax in the US and there will be no requirement to file accounts or tax returns in the US.

The US LLC is therefore a cost effective vehicle with an onshore image and provides an interesting alternative to the use of offshore companies for clients conducting international business with no US connections.



Austrian Agency structure

An Austrian limited Company (Agent) can enter into an agency agreement with an offshore Company (Principal) to trade in its name but on behalf of the principal.

An interesting use of the structure can be where the Austrian Company buys goods for Euro 100,000 using its name but on behalf of the offshore company. The Austrian Company then resells for Euro 200,000 and retains a commission calculated as a percentage of the profits. There is not a minimum commission to be received by the Austrian company, but it is advisable that the commission should be sufficient to cover the costs of the Austrian company and leave a profit in the company.

In most cases a VAT registration number and a tax registration number can be obtained within two to three weeks from the date when the application documents are submitted to the tax authorities.

A minimum of one shareholder is required for registering a limited Company (GmbH) and the shareholder can be an individual or a legal entity resident anywhere in the world. However, if the only shareholder of the Austrian GmbH is a non resident corporation, a certificate of good standing for the corporate shareholder should be provided and the individual signing on behalf of the non resident company should be able to provide proof that he is entitled to do so. All these documents are required in original with an authenticated translation.

A minimum of one director is required and contrary to the practise of many other countries, Austria does not accept a corporate entity to be appointed as a director of a GmbH company. The minimum required share capital of an Austrian GmbH is Euro 35,000, of which at least Euro 17,500 has to be paid. The Austrian company is required to prepare and file accounts and tax returns.

Maltese trading and holding Companies

Malta's entry into the EU and direct access to regulators complement its unique tax system and make Malta an attractive location in which to conduct business.

As from January 2007 Malta has introduced a new imputation tax system so that both resident and non-resident shareholders are entitled to the same tax refunds in respect of the underlying tax on distributed company profits.

Tax refunds

A tax refund is available on the distribution of profits derived from all sources (subject to the immovable property exception). Resident shareholders are subject to tax on dividends with a tax refund of 35% while non-residents are not subject to tax in Malta. The company income tax rate of 35% has been retained, and the tax refund available with respect to the distribution of profits is $\frac{2}{3}$ ths of the 35% underlying income tax rate that is payable by the distributing company. Therefore, after the tax refund, the Malta tax burden on dividends received by shareholders of Maltese companies will be 5%.

A 100% tax refund in the case of dividends and capital gains derived from participating holdings has

been retained. The $\frac{2}{3}$ ths tax refund rate will be reduced to $\frac{1}{3}$ ths in those cases when the distributed profits were derived from passive interests or royalties which were subject to a foreign tax rate that is less than 5%. Interest income and royalties are considered to be of a passive nature when they are not in essence derived from a trade or business. Similar restrictions apply to the 100% tax refund rate and the participation exemption.

The minimum number of shareholders for a limited company is normally two; however a "single member company" may also be registered, subject to the satisfaction of certain requirements. A minimum of one director is required and does not have to be resident in Malta. The director details are publicly available. Non-resident directors have to provide letters of references and various declarations. We can provide resident nominee director services should the director wish to protect their identity. A company secretary is required. The company secretary has to be a holder of a Maltese passport and resident in Malta. Non-resident secretaries are not permissible.

Audited accounts and the tax return must be filed annually with the relevant tax authorities and the Malta Financial Services.

Contact our International Tax Consultant, Emilio Scintu, by telephoning **020 7554 2223** or visiting www.stanleydavis.co.uk



COMPANY FAQs:

Forward planning – Directors’ residential addresses – October 2009

Q. Will directors of a company still have to disclose their residential address to Companies House?

Currently all directors have to provide the Registrar of Companies with a residential address. In future, all directors will be required to provide a usual residential address and a service address. The two addresses will be used as follows, the service address will be placed on the public record; whilst the residential address will be classed as protected information and won't appear on the public record. A director may however choose for his residential address to also be used as a service address which will mean that both addresses are regarded as protected information.

The residential address will be held on a private register only available to predetermined organisations. This will be introduced from October 2009.

Q. Will credit reference agencies be able to access directors’ addresses?

Credit reference agencies will not be able to obtain the usual residential address of any director who is the beneficiary of a valid Confidentiality Order on 30 September 2009 or who has made a successful application to the Registrar on the grounds that he is:

- at serious risk of violence or intimidation as a result of the activities of a company of which he is a director;

- or has been, employed by the police or security services;
- providing, or has provided, goods or services to the police or security services.

Q. Will a payment be required for directors who wish to file a service address?

No. When service addresses are introduced they will be free.

Q. Who will be able to obtain a directors’ residential address from Companies House and why?

The following will be able to obtain director’s residential addresses:

- Specified public bodies for carrying out their public functions.
- Credit reference agencies for vetting applications for credit and associated work and to meet the obligations in the Money Laundering Regulations. Vulnerable directors will be able to apply to the Registrar for their addresses not to be provided to credit reference agencies.

Q. Does the legislation relating to service addresses allow a ban of up to 5 years if the address was found to be ineffective?

Yes, if the service address is ineffective the Registrar does have the power to ban the use of this address and place the usual residential address on the public register.



Q. If a company is in default; will any letter addressed to the directors go to the Service Address or residential address?

Letters will be sent to the service address.

Q. Will Companies House still register ‘Confidentiality Order’ for directors under severe threat, as well as the service address option?

Confidentiality Orders will cease on implementation of the Act on 1st October 2009. Section 243(5) will allow for Directors at risk to apply for their usual residential address not to be disclosed to credit reference agencies. All directors will be required to have a service address for the public record and provide their usual residential address which will only be provided to Public Authorities and credit reference agencies.

Q. As residential addresses are no longer required, will confidentiality orders need to be renewed?

Only directors whose confidentiality order expires before 1st October will need to renew their order. From 1st October 2009 if a director is at risk of harm they will be able to apply under Section 243(5) for their usual residential address not to be disclosed to credit reference agencies.

Extract taken from the Companies House website – questions and answers regarding the Companies Act 2006.



An update on Trade Mark legislation

From the 1 October 2007 the UK Intellectual Property Office (UK-IPO) has implemented a new system in relation to how it processes Trade Mark applications where there are similar existing Trade Marks on the register.

From the 1 October 2007 the UK Intellectual Property Office (UK-IPO) has implemented a new system in relation to how it processes Trade Mark applications where there are similar existing Trade Marks on the register.

It had been their practice to reject any application where they judged that there would be a likelihood of confusion with an existing mark pending a subsequent appeal by the applicant. This meant that many applications were being stopped before reaching the vital publication phase of the registration process. At publication marks are published in the Trade Marks Journal and owners of existing marks are given a 3 month period in which to object before the new mark can be registered. If a successful objection is made the application process will fail and there is no refund of the registration fee.

The new system, which has been the procedure throughout the rest of Europe for some time, means that after a Trade Mark has been examined at the UK-IPO an applicant will be supplied with a list of similar marks and asked whether they wish to proceed or abandon their application. If the applicant decides to proceed the mark is published in the Trade Marks Journal and owners of existing similar marks will simply be notified of the similarity and given the same three month period in which to object.

As objections through the European system have been seen to be a rare occurrence it should now be easier to register a Trade Mark.

If you are considering trade mark protection, please speak to our in-house expert who can guide you on the process of how to take advantage of this service offered by Stanley Davis. trademarks@stanleydavis.co.uk

Search and WIN!

How many company related words can you find in the box below?

See how many you can find and email the number of words you can find to lynda.spencer@stanleydavis.co.uk. All CORRECT answers will be entered into a prize draw to win a bottle of champagne. The draw will take place on 1 July 2008.

Words run in all directions. Answers will be emailed to you after the draw has taken place.

D	I	V	I	D	E	N	D	S	A
A	I	L	E	V	O	T	E	D	U
M	E	R	M	C	I	L	B	U	P
A	S	E	E	L	C	I	T	R	A
U	O	S	M	C	G	L	E	G	C
D	L	I	B	H	T	V	A	O	T
I	C	G	E	E	S	O	R	W	I
T	S	N	R	Q	U	O	R	U	M
O	I	Y	T	U	D	A	T	R	K
R	D	M	E	E	T	I	N	G	F

