

December 2006

## Companies House Newsletter

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### **Companies Registry Workshop – an update**

Companies House hosted a Companies Registry Workshop at the Finance Centre Department's conference room on Thursday 16 and Friday 17 November 2006. The workshop was attended by the Registrars from the Company Registries in the UK, Ireland, Jersey, Guernsey and Gibraltar.

During the course of the workshop the Registrars had the opportunity to discuss recent EU and international developments, which will not only affect Companies House but will also have an impact on those providing company incorporation and management services.

The amendments to the First Company Law Directive, which deals with the electronic filing of company documents, was top of the agenda as this will have important and far-reaching implications for all EU Registries over the coming years.



There was also an update from the Registrar of the Irish Companies Registry on the European Business Registry and the Brite project. For those not conversant with these terms, the EBR is the organisation which will facilitate the exchange of public information held on EU Company Registries across borders so that the public has easier access to company information.

The Brite project is funded by the EU Commission and has been tasked with evaluating key EU corporate policy issues, which include the transfer of registered seat (redomiciliation) under the proposed new 14th Company Law Directive and the issue of branch disclosure under the existing 11th Company Law Directive. This Directive has already been implemented in most EU states including Gibraltar.

Delegates from UK Companies House discussed the new Companies House Bill, which was recently given Royal Assent. The new Companies Act has taken more than ten years to put in place and represents a major overhaul of the existing company legislation in the UK. The new law will be implemented over the next two years and will introduce many changes, which aim to put small businesses first.

### **FATF – The Misuse of Corporate Vehicles**

On 13 October 2006 FATF published a document examining the misuse of corporate vehicles and examined a series of case examples including:

- Multi-jurisdictional structures of corporate entities and trusts
- Specialised financial intermediaries/professionals
- Nominees
- Shell companies

This publication is a very interesting source of information. For further information and to obtain a copy of the document visit the FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org)

### **Returned documents**

The return of documents filed at Companies House because the document contains errors on the face of the document continues to concern us and no doubt is a principle cause of frustration to those involved in the company management industry. What is surprising is the number of documents returned despite the fact that most documents are filed by professionals or agents who are licensed to provide company incorporation and management services.



Companies House receives requests for approximately 300 refunds per month for documents that were returned because the document contains a mistake. This represents a return rate of 2%-3% of the total number of documents filed each month. Dealing with the return of documents involves a disproportionate amount of work for Companies House staff. There is currently no charge for this work to cover the expense involved. After a careful review of our internal procedures management has made a decision to implement a charge of £5 per document for each application for a refund submitted to companies House. This charge will be implemented from 1 January 2007. As a consequence I would hope to see that both the number of documents returned and the applications for refunds is reduced significantly.

During the course of our internal review I have spoken to the staff at Companies House and discussed the common problems that seem to arise. I have highlighted some of the main problems below. I should say that what surprises me is the number of documents that have to be returned because the document contains an obvious mistake that would probably have been corrected if the document was checked before it was filed at Companies House.

Therefore as a matter of good practice for each and every document filed at Companies House please check the following:

1. That the document is dated.
2. That any date stated in the document is correct.
3. That the document is signed by a director/secretary/liquidator as appropriate.
4. That the name of the signatory is clearly stated i.e. Fred Bloggs for and on behalf of ABC Limited in its capacity as director of the Company.

If the industry carries out these checks I would think that there would be an immediate 50% reduction in the number of returned documents. I think that most of you are familiar with staff at Companies House. However it may still be useful to set out the usual responsibilities of individual members of staff.

Nadine	Annual Accounts All share capital documentation except late filings of Return of Allotments
Robert	Restorations Late filing of Return of Allotments Annual Returns (although this is a shared responsibility) Certificates of Good Standing

Tracy	Company profiles Substitutions
Jose	Incorporations Change of name Business names Striking offs
Kevin	Mortgages/Charges Satisfactions Liquidations
Nick	Trademarks and Patents Redomiciliation PLCs Limited Partnerships Part X registrations Part XII registrations

I do not propose to set an exhaustive list of all the problems we see. However after spending time with each member of staff it would appear that there are some common problem areas, which should be addressed. Please bear in mind that I am highlighting the problem areas contained in the 3% of returned documents.

*Share capital*

The documents filed dealing with share capital contain incorrect terminology i.e. consolidation is used instead of sub division and there is often missing documentation. For example the resolution authorising the increase in authorised share capital is not filed. There still seems to be a problem with the stamp duty. Please remember that stamp duty of £10 is payable on the Statement of Nominal Share Capital on the incorporation of a company. There is also stamp duty of £10 payable on any increase in the authorised share capital. The duty is payable on the Statement of Increase of Nominal Capital. If a document has not been correctly stamped by Land Property Services it will be returned.

Please note that there is a Circular on Share Capital on our website that deals with most of the usual changes to the share capital of a company.

*Annual Accounts*

Accounts are usually returned for minor but important mistakes such as the failure to date or sign the accounts. Remember that 2 directors need to sign the accounts unless the company has a sole director.



The name of the director should be clearly stated. In the case of a corporate director it would be preferable if the name of the signatory is stated.

#### *Annual Returns*

There are two problems that we see repeated. Annual Returns that are not dated and Annual Returns that are dated with a future date. In both cases the Annual Returns will be returned.

Please note that Companies House does not accept any future dated documents. Those documents with a future date that have been accepted have been accepted because the error was not picked up when submitted to the cashier.

Changes to occupations and addresses of directors and shareholders appear without an appropriate comment in the remarks box and important details are omitted such as leaving the occupation box blank. In both cases the Annual Return form will be returned.

#### *Certificate of Good Standing*

We have increasingly seen an undesirable practice developing whereby Certificates of Good Standing are requested when the company manager is aware that the company in question is not up to date with its filing requirements in the expectation that Companies House staff will list all the problems that are outstanding or need to be remedied.

I should make the important point that it is not the responsibility of Companies House to carry out this type of work for the industry. Companies House does not have the time or resources to check files on this basis. We will not intentionally withhold information from companies or their managers so if we see that the reason that the company is not in good standing because its accounts have not been filed we will do our best to inform you. Indeed we will do our best to identify any problems that exist. However in some instances there may be other problems on the file that we have not seen and in some cases where the statutory file is complex we will recommend that the company or its advisers review the statutory file to ensure that all the problems are identified.

The first point to make is that if a company in question is not in good standing the company or its managers or profession advisers should request a company search and if the problem(s) are not immediately apparent a review/audit of the statutory file should be carried out.



We have also seen a growing practice that when a company is not in good standing a refund of the fee paid is requested. However in most cases most of the due diligence that needs to be carried out by Companies House staff has already been carried out. Consequently the fee paid for a Certificate of Good Standing will be non refundable with effect from 1 January 2007.

However as a concession if the company is not in good standing a period of 14 days will be allowed so that steps may be taken by the company or its managers to remedy the position. If the status of the company is made good within the 14 day period the Certificate will be issued by Companies House and no additional fee will be payable for the Certificate.

Staff at Companies House will continue to be helpful and give guidance where possible but please note that such help is given without any responsibility on our part.

I should however issue an obvious caveat. In any case where a company is involved in a transaction its professional advisers should carry out appropriate due diligence enquiries. In most cases this will include an inspection of the statutory file held by Companies House and a review of the statutory books and registers maintained at the registered office of the company. These enquiries will usually form the basis for an opinion relied on by those parties involved in the transaction.

### *Mortgages*

Most problems are seen in the Prescribed Particulars, which are not dated or signed. Remember that the details inserted are short particulars of the property charged although we understand that there can be problems when the transaction involved is high value and complex. We also find that the mortgagee and mortgagor are incorrectly named.

### *Satisfactions*

For every satisfaction three documents are filed being the Statutory Declaration verifying the details contained in the Memorandum of Satisfaction together with a supporting letter or release usually from a bank confirming the discharge of the indebtedness.

Most mistakes are contained in the Memorandum by inserting the incorrect date of registration of the Mortgage or Charge at Companies House. As a practical step whenever releasing a registered mortgage always requests a mortgage profile from Companies House and check the relevant details.



### **Important changes to the way Companies House operates**

Following a review of Companies House internal procedures the following changes will be implemented with immediate effect from 1 January 2007.

1. A charge of £5 per document will be imposed in respect of any application for a refund.
2. Any application for a refund must be made to Companies House in writing within 60 days of the receipt date of the document. The fee paid is non refundable in the case of refund applications made 60 days after the issue of the receipt.
3. If a document is submitted to Companies House (in time) and stamped but subsequently returned because the document contains a mistake Companies House will accept a corrected version of the document if it is returned to Companies House within 30 days of the receipt date.
4. The fee paid for a Certificate of Good Standing is non refundable regardless of the status of the Company. However as a concession if the company is not in good standing a period of 14 days will be allowed so that steps may be taken by the company or its managers to remedy the position. If the status of the company is made good within the 14 day period the Certificate will be issued by Companies House and no additional fee will be payable for the Certificate.
5. The urgent fee for a Certificate of Good Standing will be increased to £30.

### **Reminder – Return of Allotment forms**

Please note the policy guidance in our last Newsletter on Return of Allotment forms.

**Remember that with effect from 1 January 2007 where the wording in a Return of Allotment form has been amended or deleted and therefore deviates from the prescribed statutory wording it will be returned.**

### **Christmas and New Year**

Companies House will be closed to the public as from Noon on Friday 22 December of 2006 and will open to the public on Tuesday 2 January 2007 at 10.00am.



## **Annual Returns**

All Annual Returns for Companies House for the calendar year 2006 must be lodged with Companies House by 3pm on Wednesday 31 January 2007. Filing of any Annual Returns for 2006 after 31 January 2007 will carry a statutory penalty.

**For more information please contact Chris Keightley-Pugh at Companies House.**

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