



Minutes of the Glasgow Focus Group Wednesday 10th June 2009

Attended-

Customers:

| | |
|------------------|--------------------------------------|
| Ann Mackay | French Duncan LLP |
| Catherine Stead | The Weir Group plc |
| Fiona Gray | Miller Samuel LLP |
| Gail Manley | Henderson Loggie |
| Gail Weir | Harper Macleod LLP |
| Gavin Young | Johnston Carmichael |
| Jeremy Kemp | French Duncan LLP |
| Leanne Kean | Harper Macleod LLP |
| Louise Broadbent | MacMillan Craig |
| Pauline Roe | Andersons LLP |
| Steven Carr | Certax Accounting (Renfrewshire) Ltd |
| Tallat Haq | MackLamm Limited |

Companies House:

| | |
|---------------|---------------------------|
| Ian Smith | Customer Services Manager |
| Marsha Purdie | Customer Care Manager |

1.0 Welcome and Introductions

- 1.1 Ian welcomed the new members to the meeting and introduced Marsha and apologised that Dorothy Blair, Registrar of Companies for Scotland was unable to join the meeting. He brought to members attention the 'we moved house' notice advising that Companies House Edinburgh had moved offices.

He added that the move was because the lease at Castle Terrace had expired, and that the office had moved about 10 minutes away from where the office old office was. The offices are now located in the Fountainbridge area. A redirect was in place for any mail that is sent to our old address, and notices had been circulated, and placed on the website regarding the office move in more detail.

Existing phone numbers, DX and LP numbers remain unchanged, and an out of office hour's letterbox facility is available at the new office at:

Companies House
4th Floor, Edinburgh Quay 2
139 Fountainbridge
Edinburgh
EH3 9FF

The move took place over the bank holiday weekend of 25th May 2009, and the new office had been open for business as usual on Tuesday 26th May 2009.

2.0 Operations Workload Figures & Policy Update

2.1 Ian updated the group on the workload figures for Scotland & England/Wales as follows:

March 2009 figures:

Incorporations: -14% Scotland, -12% England/Wales

Mortgage: -25% Scotland, -33% England/Wales

Electronic/WebFiling:

91% of incorporations

90% of annual returns

Around 45% of all e-enabled other documents

Almost 50% of all documents filed electronically

April 2008 figures:

Incorporations: - 16.4%, -9.9% England/Wales

Mortgage: -56.1%, 23.8 England/Wales

Electronic/WebFiling:

91.9% of incorporations

90% annual returns

Over 53% of all documents filed electronically

There had been more incorporations May 2009 compared to May 2008.

2.2 Ian advised the group that for those who currently incorporate companies, the TAG service would be switched off from 1st October 2009, and that all presenters, should they wish to continue to electronically incorporate, would have to convert to the new XML facility. If customers have any queries or issues, they should contact Marsha Purdie or Marie Connors, mconnors@companieshouse.gov.uk as they would need to reserve testing time slots, and obtain copies of the new service schemas.

2.3 As of 6th April 2008, private companies had the option to choose to have a company secretary or not. At the last meeting in October, 26% of new companies were incorporated with no secretary. This figure has risen to 58% of new companies with no secretary, although we have not seen the same number of resignations from existing companies and secretaries.

2.4 Community Interest Companies (CIC's) – there are now around 2840 CIC's registered, around 4% of which are registered in Scotland.

2.5 Ian advised members that meetings continue between BERR and the European Commission for a Public Consultation on The European Private Company (SPE's).

The idea of the SPE is to make it easier for European SME's to conduct cross-border business by providing them with a uniform, European legal form. The SPE will be able to operate across borders and transfer its registered office address around Europe without having to change its country of registration.

As yet, there was no date for implementation, as it is still being debated by all the Euro members. Further information available from the European Commission website, link http://ec.europa.eu/internal_market/company/epc/index_en.htm

2.6 Ian explained that as part of the reform of the 4th and 7th Accounting Directives, the European Commission had issued a proposal on micro entities, on 25th February 2009. Micro - entities are small companies which could be exempted from the need to file accounts at Companies House. To qualify companies would need to satisfy 2 of the 3 following criteria:

- less than 10 employees (average during the financial year)
- balance sheet total of less than 500,000 euros
- turnover less than 1 million euros

There had been some disagreement resulting from the consultation, and plans for this had gone 'back to the drawing board'. Therefore the earliest implementation would be 2011. Further details of future plans could be found on the European Commissions website.

3.0 Companies Act 2006

3.1 1st October 2008 implementations

- **Objection to Company Names – Sections 69 to 74**

From October 2008 new rules will apply, these will allow complaints to be made where a company has been registered with the intention of extracting money from the complainant or to prevent him from registering a name in which he has goodwill – “Opportunistic registration”

All objections about opportunistic registration should be sent to the new and independent Company Names Adjudicator, Raul Columbo, based at the UK Intellectual Property Office. More information about the Company Names Tribunal and the cost associated with this service is available at www.ipo.gov.uk/cna. The adjudicator has already been referred several cases, and has ruled on a case relating to a company called 'Coke Cola Limited'. He had issued a directive for them to change their name, and when the company did not voluntarily change its name, he used his powers to change the name, which is not Companies House will continue to be responsible for “too like” and “same as” objections.

- **Corporate directors and underage directors – Sections 155 to 159**

From 1st October 2008 every company will have to have at least one director who is a natural person, but there will be a grace period until October 2010 for any company that had only corporate directors on the day the Companies Act received Royal Assent i.e. 8th November 2006.

The Act also introduces a minimum age for a director of 16 years old, this will come into force on 1st October 2008. Existing underage directorships will cease, with no notification to the Registrar required.

- **Share capital reduction through the solvency statement route – Sections 641 to 644**

As an alternative to passing a special resolution and obtaining court approval, private companies have the option of reducing the amount of their share capital by special resolution supported by a solvency statement made by the directors. The resolution

and solvency statement, a memorandum of capital, showing the alteration in the company's share capital and an additional director's statement will have to be submitted to Companies House.

Companies House cannot give advice on the content of the solvency statement required by section 643 of the CA 2006. The statement must be produced by the company for its members and the content is governed by s643.

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060046_en.pdf

The form of the solvency statement is governed by regulations – The Companies (Reduction of Share Capital) Order 2008

http://www.opsi.gov.uk/si/si2008/uksi_20081915_en_1

If customers require further information on, examples of companies who have reduced their capital via this method can be provided. A Same Day service trial was introduced in Edinburgh and London, and this continues. A charge for this service will be introduced from October 2009.

- **Annual Returns with a made up date on or after 1st October 2008.**

Sections 116 – 119 of the Companies Act 2006 were brought into force in October 2007 which allowed companies to restrict access to their register of members. Annual returns made up to a date on or after 1st October 2008 will contain reduced information on the company's shareholders, and Companies House will cease to produce and issue the pre-printed shuttle annual return

The information provided on the annual return will depend on whether or not the company has any of its shares admitted to trading on a regulated market (traded company). Private and non-traded public companies are only required to provide names of shareholders, not addresses. Traded public companies are required to provide names and addresses for those shareholders holding at least 5% or more of any share class.

As the annual return is placed on the public record it means that it must not include any information about shareholders that is not required by statute. Companies House ceased to produce and issue the pre-printed shuttle annual return.

3.2 **1st October 2009 implementations**

- **Directors Service Addresses**

From 1st October 2009 every director must provide Companies House with both their usual residential address, and for each directorship, a service address. The service address will be on the public record and the residential address will be protected information. A director may choose to use his residential address as his service address, in which case the fact that the two addresses are the same will not be apparent from the public record.

If the service address is abused, the Registrar will have the powers to place the residential address on the public record in its place.

Designated "Competent Authorities" will be able to have access to a directors residential address on application such as the Police, SOCCA, MI5, MI6.

Credit reference agencies will have access for the purpose of vetting applications for credit and associated work and to meet the obligations in the Money Laundering Regulations. Stringent procedures will be in place, and agencies cannot share information between different companies in their groups. Strict ongoing checks will

be in place to ensure that the data is safeguarded. Vulnerable directors will be able to apply to the Registrar for their addresses not to be provided to credit reference agencies.

Link to draft regulations:

http://www.opsi.gov.uk/si/si2009/uksi_20090214_en_1

- Confidentiality orders will cease on implementation of the Act on 1st October 2009. Only directors whose confidentiality order expires before 1st October will need to renew their order. Those who have an unexpired confidentiality order on the 1st October 2009 will be treated as if they had made a successful application under s243.

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.

- **Treatment of Company Name**

The rules on 'same as' will be stricter. For example, we will disregard a number of matters if they appear at the end of the name and they are preceded by a full stop including "GB", "services" and "com". The Company and Business Names (Miscellaneous Provisions) Regulations 2008 can be found at: <http://www.berr.gov.uk/files/file45531.doc>

You may register a name that is the same as another in the registrar's index if the company belongs to or is to belong to the same group as the company already on the register and a written consent from the existing company is provided.

- **Penalties on Articles**

Where a company amends its articles of association, a copy of the amended articles must be sent to Companies House within 15 days. Failure to comply is a criminal offence. The Companies Act 2006 introduces a new civil penalty of £200 for failure to comply. The penalty will only trigger if a company receives notice from the Registrar requiring it to deliver a copy of its amended articles and it does not comply within 28 days.

The company would remain liable to criminal proceedings in addition to the £200 civil penalty.

The rules were not as clear under 1985 Act hence a policy decision was made to accept the resolutions without the documents. The 2006 Act has been written to make the policy clear from October 2009.

- **Northern Ireland**

When the Companies Act 2006 is fully commenced in October 2009 it will provide for a single company law regime applying to the whole of the United Kingdom. As a consequence, Companies Registry NI will integrate fully with Companies House GB on 1st October 2009.

- **Single Alternative Inspection Location (SAIL)**

The Companies Act 2006 introduces changes to the arrangements for inspecting a company's registers. Depending on the nature and situation of the company it may be obliged to keep up to 13 possible registers. These registers must either be held at the Registered Office Address (ROA), or at a Single Alternative Inspection Location (SAIL).

Companies must notify Companies House when they initially set up a SAIL address or if the SAIL address is moved. Once the SAIL address is set up the company can move some or all registers to the SAIL address by notifying Companies House.

- **Slavenburg Charges**

From 1st October 2009 Companies House will no longer be accepting Slavenburg charges, **created on or after 1 October 2009**, as they relate to unregistered overseas companies. The Companies Act 2006 specifies that only overseas companies registered in the UK need to register a charge over UK property.

- **Voluntary Dissolution**

From 1st October 2009 voluntary dissolution will be extended to public limited companies, they will be eligible to apply under Section 1003 of the Companies Act 2006.

- **Forms**

There are in the region of 200 forms required by the Act, some are revised versions of existing forms and some are completely new. There will be changes to all Companies House forms if only to remove the number, which at present refers to the relevant section on the 1985 Act.

As members are aware we have been working on the top 10 most commonly filed forms and Marsha had sent members draft copies of the Top 10. A booklet on the naming/numbering principles of the proposed new forms is available on request, and had previously been circulated to members.

It is important to stress that although these are still in a "draft" status, that the content of the forms, in terms of the data and the sequence in which it is set, is based on the legal requirements and business systems that record the information. Regrettably therefore, these are not subject to change.

What we can do however, is to look at the guidance /checklist aspects and consider your comments in respect of any improvements in these areas.

Although we want to make them widely available to customers as soon as is possible, there is the danger with making them available too early that companies may use these to file information prior to October 2009.

The transitional arrangements, policies and procedures, are currently being worked on, and these, along with our internal procedures will be published on the website from around July 2009.

Ian confirmed that as a general principal:

- Old Event - 1985 Act Form
- New Event - 2006 Act Form

Ian assured customers confirmed that we continue to work closely with the software package providers.

3.3 Ian reminded the group that the new late filing penalties had come into effect on **1st February 2009**.

Section 441 of the Companies Act 2006 requires all companies to deliver annual accounts to the Registrar of Companies by the due date. Section 453 specifies that a

civil administration penalty shall be payable if the accounts are delivered late, and provides for the Secretary of State to specify the level of this penalty through regulations.

To increase the effectiveness of the late filing penalties, when section 453 comes into force Companies House changed the current schedule of late filing penalties. In parallel, the Government will amend section 242A of the 1985 Act so that these changes also apply to accounts prepared under the 1985 Act but delivered late on or after 1st February 2009.

Changes introduced:

- All penalties increased to take account of inflation between 1992 and 2007
- A faster rate of increase in penalties for companies who file more than one month late.
- A doubling of the penalty for any company which files late having also filed late in the previous year.

The new table of penalties is as follows:

| How late are the accounts delivered | Penalty – Private Company | Penalty - PLC |
|---|---------------------------|---------------|
| Not more than one month | £ 150 | £750 |
| More than one month but not more than three months | £375 | £1500 |
| More than three months but not more than six months | £750 | £3000 |
| More than six months | £1500 | £7500 |

Along with the penalty implementations, a small change in the pursuit process had also been introduced. Companies House had been criticised by customers in the past for not identifying and removing defunct companies. Therefore changes in the pursuit programme had been geared to remedy this problem. Reminder letters are now being sent out more quickly than before.

Ian explained the pursuit process as follows:

When a company goes into default for either accounts or an annual return, the Registrar (Companies House) treats this as a sign that the company may no longer be in business or operation. Companies House then sends a letter to the registered office address stating that the company is in default and asks whether the company is in business or operation. This is permitted under section 652(1) of the Companies Act 1985 and section 1000(1) of the Companies Act 2006. If there is no response to that letter, after one month Companies House sends a letter to the company and each director at their home addresses with a dissolution warning. If there remains no response from the company after another forty days, a notice is placed in the Edinburgh Gazette warning that the company will be struck off in three months time. At this point another letter is sent to the registered office address. If there is no response, the company is struck off and dissolved three months later and a second notice is placed in the Edinburgh Gazette.

If at any stage the company contacts us, the question becomes whether the directors should be prosecuted. If the company complies, then any prosecution or dissolution action ceases. It is not our intention to strike off any active companies, which is why we take the extra step of actively writing to the directors.

The higher compliance rates for accounts are mainly due to the increased late filing penalties, but the new compliance regime is certainly a contributing factor. Over 89% of accounts are now being filed on time, and 98% of accounts are now filed.

The benefits of this are a more up-to-date register of corporate information, which should aid transparency for UK business and the public, helping them make informed decisions in a difficult economic climate.

4.0 Current Services and Development Plans

- 4.1 Ian confirmed that the guidance booklets were being revised and updated. There would be fewer guidance booklets, but they would cover wider subjects. The main booklets will be:

- Birth of a company
- Life of a company (event driven)
- Life of a company (annual filing requirements)
- Removal of a company
- Registrars Powers
- LLP booklets

- 4.2 All internal procedures and examination policies would be published on the Companies House Website from October 2009.

- 4.3 Ian reminded the group that the New Act introduced and defined several new Registrars Powers.

He explained that the 1985 Act had not clearly defined what the Registrar could accept or reject and the policy therefore polices had been developed to define this. The 2006 Act however, spells this out quite clearly. Common sense applies ie. where the correct information has been sent in on the correct form, and the correct fee accompanies the document.

At present CH receives a large quantity of documents that change officers particulars or resign a director, however, CH has never received the appointment so these are rejected. Under the new Act, these documents will be marked as inconsistent, the company pursued for the outstanding information and ultimately the company record annotated/flagged to highlight the inconsistency to anyone searching the company records

Removal, Rectification, Replacement (The Three Rs)

Replacement:

The registrar will be able to accept a replacement document if it is properly deliver, and the original that it is replacing contained extra information that was not required. The replacement must be delivered by the person who filed the original.

Rectification:

Ian explained that it was not currently possible to remove a document from the Register. However, from October the Registrar would have the power to remove any excessive documentation and documents, which are replaced by amending submissions.

If for example a document is filed fraudulently or factually inaccurate, then from October, certain categories of people (e.g. company, individual) can contact CH to say that a rectification request has been received and if there is no objection, the

record rectified, documents removed and the documents and record annotated accordingly. This rectification notice would form part of the transactional filing history and will let searchers know why it is there and under what power. Applications can be made by: The person who delivered the original, the company itself, the individual that the inaccuracy affects.

However, if at any time it becomes apparent that there is a dispute, the Registrar will not become involved in rectifying the register, and a Court Order would still be required in these cases.

In the cases where inaccurate documents or amended documents were registered the register would be annotated and document rescans would overwrite any images that needed to be removed.

Removal:

If the document contains unnecessary information, the Registrar on request will be able to remove it from the public record.

Ian confirmed that company records would be annotated and that the public records would clearly show why a change had been made. There would of course be an audit trail, and Bulk Image products and WebCheck and Companies House Direct would of course be updated.

The full policies and procedures on how these will all work are still being worked out, but will be published on the website and in the guidance booklet before the October 2009 implementation. Documents cannot be removed that have a legal effect eg. Registered office, mortgage, and incorporation.

4.4 14 day concession

Ian informed the members that Section 706 of the Companies Act 1985 requires companies to deliver documents in a legible form and allows 14 days from the date of any rejection letter to re-file them. There is no replacement in the Companies Act 2006 for this section and so it will cease to exist.

Consequently any accounts received on or after 1 October 2009 which have to be returned to a customer for amendment will no longer receive the extra statutory 14 days.

4.5 It is planned to introduce an eProof service in June via WebFiling. Although it was not possible to introduce via software prior to October it was a high priority to enable this as soon as possible, as it is planned for companies to sign up for Proof at incorporation, and opt-out to be the option rather than optional sign-up.

4.6 Ian advised the group that the next priority after October 2009 implementation was for electronic development to remove and reduce the current exceptions to filing information electronically. is for LLP forms. Companies House will continue to press for the electronic take up of other forms in particular the 288a and 225.

4.7 As continued development of our online services, Companies House will replace Companies House Direct and WebCheck with a more up to date online searching facility at some point over the next couple of years.

4.8 Ian advised the members that a small fees order will take place before October 2009, to cover fees for new services and products. A more radical fees order is planned for 2010, and will look at all Products, Services and Fees and these will be reviewed from a cost recovery perspective.

- 4.9 From 1st October 2008 Companies House ceased to provide the 'shuttle' annual return. Customers can now download a blank 363 from the website. Ian reminded customers that the WebFiling service contains an option to 'order email of current company information'; this provides a PDF of the company information held by Companies House. Reminder letters for annual returns continue to be issued, and there are now 3 different styles of letters depending on whether the company has filed electronically or not in the past. The authentication code would not automatically be included in the reminder if the companies have regularly filed online.
- 4.10 Ian confirmed that all services were now available on every Sunday, making 17/7 availability. It is still planned for services to be available 24/7 in future.
- 4.11 A direct link to report fraud had been added to the homepage on the CH Website. As a result reported fraud had increased, but on investigation most of these turn out to be disputes or mistakes where customers do not realise that they have agreed to be directors or act for companies. There has been no increase in actual fraud.
- 4.12 Ian apologised to affected customers for the recent performance of Companies House Direct, where customers may have been receiving 'System Busy' messages. He confirmed that this was not due to a capacity issue, and that a fix had been developed and implemented. He confirmed that this had now been resolved.
- 4.13 Ian provided an update on the Register of Floating Charges. He confirmed that this had recently been on hold due to other on-going legislative changes that had taken priority. Therefore, floating charges would continue to be registered at Companies House.
- 4.14 He also made members aware of the forthcoming OSCR consultation in Summer 2009 on Scottish Charitable Incorporated Organisations (SCIO's). It is likely that charitable organisations would be able to migrate from being registered with Companies House to become solely registered with OSCR. After the consultation, the earliest implementation of this would likely be 2011.

5.0 Customer Issues

- 5.1 The group discussed various implications of the new Registrars powers to rectify and replace documents on the record.
- 5.2 Several customers raised specific cases and examples where they have been having problems with Software and WebFiling for companies.

6.0 Date of Next Meeting

- 6.1 The next meeting would be held on 2nd December 2009.