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### **Companies House Late Filing Penalties**

The late filing penalties in respect of Company and LLP accounts for years beginning on and after 6 April 2008 have been increased by Statutory Instrument 2008/497 "The Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008".

If the filing takes place before 1 February 2009 the penalties are:

<b>Late Filing by:</b>	<b>Public Company</b>	<b>Private Company</b>
3 months or less	£ 500	£100
More than 3 months, but not more than 6 months	£1,000	£250
More than 6 months	£2,000	£500

Whether a company is a Public or a Private Company depends on its status on the last day of the accounting period.

These penalties will increase significantly if the filing takes place on or after 1 February 2009 to:

<b>Late Filing by:</b>	<b>Public Company</b>	<b>Private Company</b>
1 month or less	£ 750	£150
More than 1 month, but not more than 3 months	£1,500	£375
More than 3 months, but not more than 6 months	£3,000	£750
More than 6 months	£7,500	£1,500

The above penalties are doubled if the accounts were filed late in the previous financial year.

It also needs to be borne in mind that under the Companies Act 2006 the filing periods for accounts are reduced by 1 month to 9 months for Private Companies and 6 months for PLCs.

Also, for accounting periods commencing on or after 6 April 2008:

- Medium sized groups will have to prepare group accounts (i.e. the exemption will only apply to small groups). Consequently consideration needs to be given now to comparative information
- Medium-sized abbreviated accounts will have to include disclosure of turnover

For accounting periods beginning before 6 April 2008, the late filing penalties are also amended where the filing takes place on or after 1 February 2009 to those in the above table. Therefore, for a private company with a year of 31 December 2007 filing its accounts on 31 January 2009 (i.e. 3 months late) the penalty would be £100. Filing on 1 February 2009 would result in a penalty of £750.

The same penalties as those for Private Companies apply to LLPs.

**Company Size Criteria and Audit Exemption Criteria**

SI 2008/393 “The Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008” have increased the size criteria and audit exemption limits for private companies for accounting periods beginning on or after 6 April 2008. For the avoidance of doubt, the new criteria will not apply to 31 March 2009 year-ends unless the 31 March 2008 year-end is extended.

The new limits are:

	Small		Medium-Sized	
	Company	Group	Company	Group
Turnover	£6.5m <i>(previously £5.6m)</i>	£6.5m net or £7.8m gross <i>(previously £5.6m net or £6.72m gross)</i>	£25.9m <i>(previously £22.8m)</i>	£25.9m net or £31.1m gross <i>(previously £22.8m net or £27.36m gross)</i>
Total Assets	£3.26m <i>(previously £2.8m)</i>	£3.26m net or £3.9m gross <i>(previously £2.8m net or £3.26m gross)</i>	£12.9m <i>(previously £11.4m)</i>	£12.9m net or £15.5m gross <i>(previously £11.4m net or £13.68m gross)</i>

The audit exemption criteria for companies are increased to turnover less than £6.5m and total assets less than £3.26m, and for groups to turnover less than £6.5m net (or £7.8m gross) and total assets less than £3.26m net (or £3.9m gross).

**Signing Of Audit Reports**

SI 2008/393 also contains new rules for signing audit reports. Auditors’ reports in respect of accounts for accounting periods beginning on or after 6 April 2008 must state the name of the person who signed the report as senior statutory auditor as well as the name of the firm, and be signed in the name of the firm.

The new criminal offences for auditors of knowingly or recklessly causing an auditors’ report to include any matter that is misleading or deceptive in a material particular or omitting statements required by the Act from the auditors report will also apply for audits for financial years commencing on or after 6 April 2008.

**Disclosure of Off-balance sheet Arrangements**

Finally, SI 2008/393 also contains provisions relating to off-balance sheet Arrangements of Medium-sized and Large Companies. Certain disclosures are required about such a company’s off-balance sheet arrangements in the notes to the accounts. Medium-sized companies do not have to disclose the financial impact of off-balance sheet arrangements, but do have to give the other disclosures.

**AGM’s**

There has been confusion over whether private companies who had passed an elective resolution to dispense with the requirement to hold an AGM, but had not amended their Articles to remove the need to hold an AGM, would have to reinstate AGMs following the repeal of elective resolutions by the Companies Act 2006 on 1 October 2007.

The 5<sup>th</sup> Commencement Order (SI2007/3495) has amended the legislation to ensure that companies who had elected to dispense with AGMs before 1 October 2007 would not have to hold AGMs after that date regardless of the wording in their Articles.

Private Companies who did not have an elective election in force before 1 October 2007 will have to amend their Articles if they now want to dispense with holding AGMs. Private Companies who were incorporated on or after 1 October 2007 should not have a requirement to hold an AGM in their Articles.

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### **Directors Duties**

The Institute of Chartered Secretaries & Administrators has published useful guidance on the new duties of directors under the Companies Act 2006 in comparison to the previous common law duties. The guidance also covers the practical implications for directors. The "ICSA Guidance on Directors General Duties" can be downloaded from Guidance Notes section of [www.icsa.org.uk](http://www.icsa.org.uk)

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### **Updated Money Laundering Guidance for Auditors**

The APB has issued an update to Practice Note 12 (Revised), 'Money Laundering – Interim guidance for auditors in the United Kingdom' which replaces the version issued in January 2007. The APB plans to publish Practice Note 12 (Revised) in final form once approval under the Proceeds of Crime Act 2002 has been received from HM Treasury.

The guidance in Practice Note 12 (Revised) has been updated to reflect the implementation of the Money Laundering Regulations 2007 and a recent update to the Proceeds of Crime Act 2002, both of which have come into force since the last version of the guidance was issued.

The revisions have been covered in previous Factsheets.

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### **ASB issues Amendment to FRS 20 'Share-based Payment – Vesting Conditions and Cancellations'**

The ASB has issued an amendment to FRS 20 (IFRS 2) 'Share-based Payment – Vesting Conditions and Cancellations'. The amendment clarifies the treatment of certain cancellations of options granted to employees.

The ASB is making these changes to FRS 20 to keep it in line with the international standard. The amendment will apply for accounting periods beginning on or after 1 January 2009, with earlier application permitted.

Under FRS 20 and IFRS 2, where share options are granted to employees, the value of the option (at the grant date) is treated as an expense over the period in which services are received from the employees in exchange for the options – normally the period until the options can be exercised. Where an option is unable to be exercised because vesting conditions are not met (for example, if a performance target is not met, or the employee leaves the employment) the cost of the options is reversed. However, if the employer cancels the options, the full value of the options is charged to the profit and loss account.

The ASB has now issued an amendment which clarifies that, where options are cancelled by the employee (other than on leaving employment), such cancellations should be treated in the same way as cancellations by the employer.

### **Employing Illegal Staff**

As part of fundamental changes to the UK's immigration regime, new penalties for employing staff without the correct permission to work here came into effect from 29 February 2008.

Companies that employ illegal staff face fines of up to £10,000 per illegal employee and directors or staff within the company who knowingly employ 'illegal staff' face prosecution and a maximum jail sentence of 2 years.

The Government is also about to implement a five tier points based system replacing more than 80 existing immigration categories.

All employers should familiarise themselves with Tier 2 of the new system, although Tier 1 will also provide some assistance (Tier 1 is for highly skilled migrants who are able to come to the UK to do any kind of work).

Tier 2 replaces the existing work permit scheme with a sponsorship system. Employers must apply for a licence and, if granted, they will be able to issue certificates of sponsorship. An organisation that does not obtain sponsorship status will not be able to bring Tier 2 migrants into the UK.

To make Tier 2 applications, the employer must confirm that the prospective employee:

- works in a "shortage occupation" as defined by the Migration Advisory Committee; or
- qualifies as an intra-company transferee, employed by the company for at least six months; or
- will fill a role which has been advertised in the resident labour market with no suitable candidates found; or
- is paid above a particular salary, yet to be announced.

Additional requirements are likely to be introduced for some or all of these criteria, comprising an English language qualification and payment at the market rate for the role.

It is likely that employers will be able to join the Home Office's Sponsorship Register between the end of February 2008 and the implementation of the Sponsor Management System in October 2008. It is not known how long the application process will take but employers should register as soon as possible because failure to register before the system goes live will severely disrupt an organisation's ability to employ migrant workers or transfer staff from overseas operations to the UK.

Registration is only part of the picture. Under the new system, companies must also:

- keep accurate records of visa expiry dates;
- notify the Border and Immigration Agency of changes regarding employment (including the unauthorised absence or departure of an employee);
- collect and assess evidence to ensure that each prospective employee meets the Tier 2 criteria, including salary level;
- confirm that each employee continues to have permission to work in the UK every 12 months;
- keep accurate records about the employee (this will involve introducing new employment conditions and policies to ensure compliance and these must reflect data protection and privacy principles).

Companies who fail to fulfil the duties described above face removal from the Sponsorship Register. This will prevent the issue of future certificates of sponsorship.

As a result of these changes all employers will have to data manage their employee population to comply with two varying illegal working regimes:

- employees who joined between 29 January 1997 and 29 February 2008 (the first population) should have been subject to documentary checks on recruitment, and these checks are sufficient for the duration of their employment.

- Employees joining from 29 February 2008 (the second population) will require a check at the beginning of employment and if they have a restriction on the length of time they can be in the UK, will have to be checked every 12 months thereafter until they can provide a document which makes it clear there is no time limit on their stay in the UK e.g. a residence permit conferring indefinite leave to remain or a British passport. Employers should therefore have clear records of these two populations, and take the opportunity now to audit the population between 27 January 1997 and 29 February 2008 for whom adequate documentary checks may not have taken place at the requisite time. Employers should also ensure stringent policies are in place to monitor any new starters post 29 February 2008 and where necessary on an annual basis. However, employer policies must avoid racial discrimination – any policy must be applied consistently to all new starters, and not apply solely to those in minority ethnic groups or those considered “foreign”.

There are issues with employees acquired under TUPE (following a takeover or merger). The new employer has a 28 day period of grace to undertake appropriate documentary checks and “regularise” any irregularities. Reliance can be placed on the previous employers procedures provided these were adequate.

It is important that all employers “get their house in order” and ensure that they have sufficient systems in place to become and remain a Sponsor. For employees joining on or after 29 February 2008 checks must take place prior to starting work and be repeated at least every 12 months for those with a limited leave to remain in the UK. A failure to carry out these annual checks resulting in employees not having a right to work could render the employer liable to prosecution.

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### **Status of Agency Workers**

The Court of Appeal confirmed that an agency supplied and contracted worker was not the employee of the end user. The judgement in the James v LB of Greenwich case emphasised that every case of this type will depend on its own facts, but the decision should be applicable to end users who do not hold direct contracts with their agency workers.

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