

# O-511-15

## ORDER under the Companies Act 2006

### In the matter of application

### No.972 by Capita plc

### For a change of company name of registration

### No. SL016646

## **BACKGROUND**

- 1) The company name CAPITA MANAGEMENT CONSULTING LP (“the respondent”) has been registered since 7 May 2014 under number SL016646.
- 2) By an application filed on 19 June 2015, Capita Plc (“the applicant”) applied for a change of name of this company registration under the provisions of section 69(1) of the Companies Act 2006 (the Act).
- 3) On 29 July 2015, a copy of the application form was sent to the respondent and one month was allowed for it to file a notice of defence. On the 26 August 2015, the Company Names Tribunal (“the tribunal”) wrote to the parties again advising of its preliminary view that Limited Partnerships are not regulated by Sections 69 – 74 of the Companies Act. The respondent is a Limited Partnership and therefore the tribunal indicated that the application should be struck out. The parties were permitted until 16 September 2015 to request a hearing.
- 4) No response was received from the respondent. The applicant requested and was granted an extension of time until 30 September 2015. It did not request a hearing but, rather, on that day, it filed written submissions entitled “Grounds of Appeal”.
- 5) Under Rule 5(2) and Rule 5(7) of the Company names Adjudicator Rules 2008 (“the Rules”), the tribunal is required to issue written notice of its decision on the application made under section 69(2) of the Act and this follows below.

## **DECISION**

- 6) The following Sections of the Act are relevant:

### **1 Companies**

(1) In the Companies Acts, unless the context otherwise requires—  
“company” means a company formed and registered under this Act, that is—

(a) a company so formed and registered after the commencement of this Part, or

(b) a company that immediately before the commencement of this Part—

(i) was formed and registered under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), or

(ii) was an existing company for the purposes of that Act or that Order,

(which is to be treated on commencement as if formed and registered under this Act).

### **3 Limited and unlimited companies**

(1) A company is a “limited company” if the liability of its members is limited by its constitution. It may be limited by shares or limited by guarantee.

(2) If their liability is limited to the amount, if any, unpaid on the shares held by them, the company is “limited by shares”.

(3) If their liability is limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up, the company is “limited by guarantee”.

(4) If there is no limit on the liability of its members, the company is an “unlimited company”.

### **4 Private and public companies**

(1) A “private company” is any company that is not a public company.

(2) A “public company” is a company limited by shares or limited by guarantee and having a share capital—

(a) whose certificate of incorporation states that it is a public company, and

(b) in relation to which the requirements of this Act, or the former Companies Acts, as to registration or re-registration as a public company have been complied with on or after the relevant date.

(3) For the purposes of subsection (2)(b) the relevant date is—

(a) in relation to registration or re-registration in Great Britain, 22nd December 1980;

(b) in relation to registration or re-registration in Northern Ireland, 1st July 1983.

(4) For the two major differences between private and public companies, see Part 20.

## **5 Companies limited by guarantee and having share capital**

(1) A company cannot be formed as, or become, a company limited by guarantee with a share capital.

(2) Provision to this effect has been in force—

(a) in Great Britain since 22nd December 1980, and

(b) in Northern Ireland since 1st July 1983.

(3) Any provision in the constitution of a company limited by guarantee that purports to divide the company's undertaking into shares or interests is a provision for a share capital.

This applies whether or not the nominal value or number of the shares or interests is specified by the provision.

## **6 Community interest companies**

(1) In accordance with Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)—

(a) a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and

(b) a company limited by guarantee and having a share capital may become a community interest company.

(2) The other provisions of the Companies Acts have effect subject to that Part.

7) As the applicant points out in its written submissions, Section 1 of the Act defines what constitutes a “company” for the purposes of the Act and Sections 3 – 6 extend this to various types of companies. The role of the Company Names Tribunal is set out in Section 69 to Section 74 of the Act and these apply to companies as defined above. In addition, Limited Liability Partnerships (LLPs) are also covered by virtue of Section 15 of the Limited Liability Partnerships Act 2000 and Section 12 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009, the latter explicitly extending the provisions of Section 69 to Section 74 of the Act to LLPs (with appropriate modifications).

8) In contrast, Limited Partnerships are governed by the Partnership Act 1907, and there are no subsequent provisions extending the provisions contained in Section 69 to Section 74 of the Act to Limited Partnerships.

9) None of this is disputed by the applicant in its written submissions and at paragraph 7 of these submissions it concedes that Limited Partnerships are excluded from these provisions and at paragraph 12 it states:

“Whilst the remit of the Company Names Tribunal has been extended to action against LLP’s it has not been extended to action against legal partnerships. It is the somewhat paradoxical case that a Limited Partnership can **bring** an action against a limited company/LLP under section 67 of the Companies Act/LLP Rules [...] but an action cannot be **brought against** a Limited Partnership. This is a lacuna in the law, and one that leads to unintended miscarriages of justice. [...]”

10) Despite conceding that Limited Partnerships are not included under the jurisdiction of the Tribunal, it goes on to submit that “[t]he legal basis for the inclusion of Limited Partnerships to fall under the jurisdiction of the Company Name Tribunal is clear.” It identifies Section 1101 of the Act that gives the Secretary of State, what the applicant submits, is the necessary powers. This reads:

**1101 Power to amend enactments relating to bodies other than companies**

(1) The Secretary of State may by regulations amend the enactments relating to any description of body for the time being within section 1099(3) (bodies other than companies whose names are to be entered in the registrar’s index), so as to –

a) [...]

b) make provision in relation to such bodies corresponding to that made by-

section 66 (company name not to be the same as another in the index), and

sections 67 and 68 (power to direct change of company name in case of similarity to existing name).

11) The applicant points out that Section 1099(3) referred to in Section 1101 applies to Limited Partnerships registered in the United Kingdom.

12) It is not clear to us how Section 1101 relates to Sections 69 – 74 of the Act, but whatever the merits of an argument that the legislation requires amendment (an issue outside the remit of the tribunal), we must consider whether the preliminary view to strike out the application was correct. We find that it is. As the applicant has set out in its submissions, the provisions contained in Section 69 to 74 of the Act have not been extended to Limited Partnerships. This point is not contested by the applicant. In light of this, we confirm the preliminary view and the application for a change of the respondent’s name is struck out.

## **COSTS**

13) The respondent has taken no part in proceedings and has not incurred any costs. Further, the termination of proceedings has resulted from an intervention by the tribunal rather than the action of either of the parties. Accordingly, we consider it appropriate that no award of costs is made.

14) Any notice of appeal against this decision must be given within one month of the date of this order. Appeal is to the High Court in England, Wales and Northern Ireland and to the Court of Session in Scotland. The tribunal must be advised if an appeal is lodged.

Dated this 4th day of November 2015

Mark Bryant  
Company Names  
Adjudicator

Allan James  
Company Names  
Adjudicator

Judi Pike  
Company Names  
Adjudicator