



# Companies Act 1985

## 1985 CHAPTER 6

### PART XXIII

#### OVERSEA COMPANIES

#### CHAPTER I

##### REGISTRATION, ETC

#### **691 Documents to be delivered to registrar**

- (1) When a company incorporated outside Great Britain establishes a place of business in Great Britain, it shall within one month of doing so deliver to the registrar of companies for registration—
  - (a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the company's constitution, and, if the instrument is not written in the English language, a certified translation of it; and
  - (b) a return in the prescribed form containing—
    - (i) a list of the company's directors and secretary, containing the particulars specified in the next subsection,
    - (ii) a list of the names and addresses of some one or more persons resident in Great Britain authorised to accept on the company's behalf service of process and any notices required to be served on it,
    - (iii) a list of the documents delivered in compliance with paragraph (a) of this subsection, and
    - (iv) a statutory declaration (made by a director or secretary of the company or by any person whose name and address are given in the list required by sub-paragraph (ii)), stating the date on which the company's place of business in Great Britain was established.
- (2) The list referred to in subsection (1)(b)(i) shall contain the following particulars—

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- (a) with respect to each director—
  - (i) in the case of an individual, his present Christian name and surname and any former Christian name or surname, his usual residential address, his nationality and his business occupation (if any), or, if he has no business occupation but holds other directorships, particulars of any of them,
  - (ii) in the case of a corporation, its corporate name and registered or principal office ;
- (b) with respect to the secretary (or, where there are joint secretaries, with respect to each of them)—
  - (i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address.
  - (ii) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office.

Where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in paragraph (b).

Section 289(2) applies for the purposes of the construction of references above to present and former Christian names and surnames.

## **692 Registration of altered particulars**

- (1) If any alteration is made in—
  - (a) the charter, statutes, or memorandum and articles of an overseas company or any such instrument as is mentioned above, or
  - (b) the directors or secretary of an overseas company or the particulars contained in the list of the directors and secretary, or
  - (c) the names or addresses of the persons authorised to accept service on behalf of an overseas company,
 the company shall, within the time specified below, deliver to the registrar of companies for registration a return containing the prescribed particulars of the alteration.
- (2) If any change is made in the corporate name of an overseas company, the company shall, within the time specified below, deliver to the registrar of companies for registration a return containing the prescribed particulars of the change.
- (3) The time for delivery of the returns required by subsections (1) and (2) is—
  - (a) in the case of an alteration to which subsection (1)(c) applies, 21 days after the making of the alteration, and
  - (b) otherwise, 21 days after the date on which notice of the alteration or change in question could have been received in Great Britain in due course of post (if despatched with due diligence).

## **693 Obligation to state name and other particulars**

Every overseas company shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in Great Britain, state the country in which the company is incorporated,

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- (b) conspicuously exhibit on every place where it carries on business in Great Britain the company's name and the country in which it is incorporated,
- (c) cause the company's name and the country in which it is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company, and
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as above mentioned and in all bill-heads, letter paper, notices and other official publications of the company in Great Britain, and to be affixed on every place where it carries on its business.

#### **694 Regulation of overseas companies in respect of their names**

- (1) If it appears to the Secretary of State that the corporate name of an overseas company is a name by which the company, had it been formed under this Act, would on the relevant date (defined below in subsection (3)) have been precluded from being registered by section 26 either—
  - (a) because it falls within subsection (1) of that section, or
  - (b) if it falls within subsection (2) of that section, because the Secretary of State would not approve the company's being registered with that name,the Secretary of State may serve a notice on the company, stating why the name would not have been registered.
- (2) If the corporate name of an overseas company is in the Secretary of State's opinion too like a name appearing on the relevant date in the index of names kept by the registrar of companies under section 714 or which should have appeared in that index on that date, or is the same as a name which should have so appeared, the Secretary of State may serve a notice on the company specifying the name in the index which the company's name is too like or which is the same as the company's name.
- (3) No notice shall be served on a company under subsection (1) or (2) later than 12 months after the relevant date, being the date on which the company has complied with—
  - (a) section 691 in this Part, or
  - (b) if there has been a change in the company's corporate name, section 692(2).
- (4) An overseas company on which a notice is served under subsection (1) or (2)—
  - (a) may deliver to the registrar of companies for registration a statement in the prescribed form specifying a name approved by the Secretary of State other than its corporate name under which it proposes to carry on business in Great Britain, and
  - (b) may, after that name has been registered, at any time deliver to the registrar for registration a statement in the prescribed form specifying a name approved by the Secretary of State (other than its corporate name) in substitution for the name previously registered.
- (5) The name by which an overseas company is for the time being registered under subsection (4) is, for all purposes of the law applying in Great Britain (including this Act and the Business Names Act 1985), deemed to be the company's corporate name; but—

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- (a) this does not affect references to the corporate name in this section, or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and
  - (b) any legal proceedings that might have been continued or commenced against the company by its corporate name or its name previously registered under this section may be continued or commenced against it by its name for the time being so registered.
- (6) An overseas company on which a notice is served under subsection (1) or (2) shall not at any time after the expiration of 2 months from the service of that notice (or such longer period as may be specified in that notice) carry on business in Great Britain under its corporate name.
- Nothing in this subsection, or in section 697(2) (which imposes penalties for its contravention) invalidates any transaction entered into by the company.
- (7) The Secretary of State may withdraw a notice served under subsection (1) or (2) at any time before the end of the period mentioned in subsection (6); and that subsection does not apply to a company served with a notice which has been withdrawn.

#### **695 Service of documents on overseas company**

- (1) Any process or notice required to be served on an overseas company is sufficiently served if addressed to any person whose name has been delivered to the registrar under preceding sections in this Part and left at or sent by post to the address which has been so delivered.
- (2) However—
- (a) where such a company makes default in delivering to the registrar the name and address of a person resident in Great Britain who is authorised to accept on behalf of the company service of process or notices, or
  - (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on the company's behalf, or for any reason cannot be served,
- a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Great Britain.

#### **696 Office where documents to be filed**

- (1) Any document which an overseas company is required to deliver to the registrar of companies shall be delivered to the registrar at the registration office in England and Wales or Scotland, according to where the company has established a place of business.
- (2) If the company has established a place of business both in England and Wales and in Scotland, the document shall be delivered at the registration office both in England and Wales and in Scotland.
- (3) References in this Part to the registrar of companies are to be construed in accordance with the above subsections.
- (4) If an overseas company ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of that fact to the registrar of companies for that part; and

as from the date on which notice is so given the obligation of the company to deliver any document to the registrar ceases.

### **697 Penalties for non-compliance**

- (1) If an overseas company fails to comply with any of sections 691 to 693 and 696, the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, is liable to a fine and, in the case of a continuing offence, to a daily default fine for continued contravention.
- (2) If an overseas company contravenes section 694(6), the company and every officer or agent of it who knowingly and wilfully authorises or permits the contravention is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

### **698 Definitions for this Chapter**

For purposes of this Chapter—

- " certified " means certified in the prescribed manner to be a true copy or a correct translation ;
- " director ", in relation to an overseas company, includes shadow director; and
- " secretary" includes any person occupying the position of secretary by whatever name called.

### **699 Channel Islands and Isle of Man companies**

- (1) With the exceptions specified in subsection (3) below, the provisions of this Act requiring documents to be forwarded or delivered to or filed with the registrar of companies and applying to companies formed and registered under Part I apply also (if they would not otherwise) to an overseas company incorporated in the Channel Islands or the Isle of Man.
- (2) Those provisions apply to such a company—
  - (a) if it has established a place of business in England and Wales, as if it were registered in England and Wales,
  - (b) if it has established a place of business in Scotland, as if it were registered in Scotland, and
  - (c) if it has established a place of business both in England and Wales and in Scotland, as if it were registered in both England and Wales and Scotland,with such modifications as may be necessary and, in particular, apply in a similar way to documents relating to things done outside Great Britain as if they had been done in Great Britain.
- (3) The exceptions are—
  - section 6(1) (resolution altering company's objects),
  - section 18 (alteration of memorandum or articles by statute or statutory instrument),
  - section 241(3) (directors' duty to file accounts),
  - section 288(2) (notice to registrar of change of directors or secretary), and

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section 380 (copies of certain resolutions and agreements to be sent to registrar within 15 days), so far as applicable to a resolution altering a company's memorandum or articles.

## CHAPTER II

### DELIVERY OF ACCOUNTS

#### **700 Preparation and delivery of accounts by overseas companies**

- (1) Every overseas company shall in respect of each accounting reference period of the company prepare such accounts, made up by reference to such date or dates, and in such form, containing such particulars and having annexed to them such documents, as would have been required if it were a company formed and registered under this Act.
- (2) An overseas company shall, in respect of each accounting reference period of the company, deliver to the registrar of companies copies of the accounts and other documents required by subsection (1); and, if such an account or other document is in a language other than English, there shall be annexed to the copy so delivered a translation of it into English certified in the prescribed manner to be a correct translation.
- (3) If in relation to an accounting reference period the company's directors would be exempt under section 241(4) from compliance with subsection (3) of that section (independent company with unlimited liability), if the company were otherwise subject to that section, compliance with this section is not required in respect of that accounting reference period.
- (4) The Secretary of State may by order in a statutory instrument—
  - (a) modify the requirements referred to in subsection (1) for the purpose of their application to overseas companies,
  - (b) exempt an overseas company from those requirements or from such of them as may be specified in the order.
- (5) An order under subsection (4) may make different provision in relation to different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit; and a statutory instrument containing an order so made is subject to annulment in pursuance of a resolution of either House of Parliament

#### **701 Overseas company's accounting reference period and date**

- (1) An overseas company's accounting reference periods are determined according to its accounting reference date.
- (2) The company may give notice in the prescribed form to the registrar of companies specifying a date in the calendar year as being the date on which in each successive calendar year an accounting reference period of the company is to be treated as coming to an end; and the date specified in the notice is then the company's accounting reference date.
- (3) No such notice has effect unless it is given before the end of 6 months beginning with the date on which a place of business in Great Britain is or was established by the

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company ; and, failing such a notice, the company's accounting reference date is 31st March.

- (4) The company's first accounting reference period is such period ending with its accounting reference date as—
  - (a) begins or began on a date determined by the company, but not later than that on which a place of business is or was established in Great Britain, and
  - (b) is a period exceeding 6 months and not exceeding 18 months.
- (5) Each successive period of 12 months beginning after the end of the first accounting reference period and ending with the company's accounting reference date is also an accounting reference period of the company.
- (6) Subsections (2) to (5) are subject to section 225 of this Act, under which in certain circumstances a company's accounting reference period may be altered, and which applies to overseas companies as well as to companies subject to Part VII, but omitting subsections (6) and (7).

## **702 Period allowed for delivering accounts**

- (1) In the case of an overseas company, the period allowed for delivering accounts in relation to an accounting reference period is 13 months after the end of the period.
- (2) Where the company's first accounting reference period—
  - (a) begins or began on the date determined by the company for the purposes of section 701(4)(a) and
  - (b) is or was a period of more than 12 months,the period which would otherwise be allowed for delivering accounts in relation to that accounting reference period is treated as reduced by the number of days by which the accounting reference period is or was longer than 12 months.
- (3) But the period allowed in relation to a company's first accounting reference period is not by subsection (2) reduced to less than 3 months after the end of that accounting reference period.
- (4) In relation to an accounting reference period of an overseas company as respects which notice is given by the company under section 225 (as applied) and which by virtue of that section is treated as shortened in accordance with the notice, the period allowed for delivering accounts is—
  - (a) the period allowed in relation to that accounting reference period in accordance with the preceding subsections, or
  - (b) the period of 3 months beginning with the date of the notice,whichever of those periods last expires.
- (5) If for any special reason the Secretary of State thinks fit to do so, he may by notice in writing to an overseas company extend, by such further period as may be specified in the notice, the period which in accordance with the preceding subsections is the period allowed for delivering accounts in relation to any accounting reference period of the company.

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### **703 Penalty for non-compliance**

- (1) If in respect of an accounting reference period of an overseas company any of the requirements of section 700(2) is not complied with before the end of the period allowed for delivering accounts, the company and every officer or agent of it who knowingly and wilfully authorises or permits the default is, in respect of the company's failure to comply with the requirements in question, guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.
- (2) For purposes of any proceedings under this section with respect to a requirement to deliver a copy of a document to the registrar of companies, it is not a defence to prove that the document in question was not in fact prepared as required by section 700.