

SCHEDULE 2

Amendments of Part XXIII of the 1986 Order

Part I

Registration, etc.

Preliminary

1. Chapter I of Part XXIII shall be amended as mentioned in paragraphs 2 to 13.

Registration

2. Before Article 641 there shall be inserted—

“Branch registration under the Eleventh Company Law Directive (89/666/EEC)

640A.—(1) This Article applies to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar, and
- (b) has a branch in Northern Ireland.

(2) Schedule 20A (branch registration under the Eleventh Company Law Directive (89/666/EEC) shall have effect in relation to any company to which this Article applies.

Scope of Articles 641 and 642

640B. Articles 641 and 642 shall not apply to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar, and
- (b) has a branch in the United Kingdom.”.

3. After Schedule 20 there shall be inserted—

“SCHEDULE 20A

Article 640A

Branch Registration under the Eleventh Company Law Directive (89/666/EEC)

Duty to Register

1.—(1) A company shall, within one month of having opened a branch in Northern Ireland, deliver to the registrar for registration a return in the prescribed form containing—

- (a) such particulars about the company as are specified in paragraph 2,
- (b) such particulars about the branch as are specified in paragraph 3, and
- (c) if the company is one to which Article 648AA(1) applies, such particulars in relation to the registration of documents under Schedule 20D(2) as are specified in paragraph 4.

(2) The return shall, except where sub-paragraph (3) applies, be accompanied by the documents specified in paragraph 5 and, if the company is one to which Part I of Schedule 20D applies, the documents specified in paragraph 6.

(3) This sub-paragraph applies where—

(1) Article 648AA is inserted into the 1986 Order by paragraph 15 of Schedule 2

(2) Schedule 20D is inserted into the 1986 Order by paragraph 17 of Schedule 2

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- (a) at the time the return is delivered, the company has another branch in the United Kingdom.
- (b) the return contains a statement to the effect that the documents specified in paragraph 5, and, if the company is one to which Part I of Schedule 20D applies, paragraph 6, are included in the material registered in respect of the other branch, and
- (c) the return states where the other branch is registered and what is its registered number.

(4) In sub-paragraph (1), the reference to having opened a branch in Northern Ireland includes a reference to a branch having become situated there on ceasing to be situated elsewhere.

(5) If at the date on which the company opens the branch in Northern Ireland the company is subject to any proceedings referred to in Article 6520(1) (winding up) or 652P(1) (insolvency proceedings etc)(3), the company shall deliver a return under Article 6520(1) or (as the case maybe) 652P(1) within one month of that date.

If on or before that date a person has been appointed to be liquidator of the company and continues in that office at that date, Article 6520(3) and (4) (liquidator to make return within 14 days of appointment) shall have effect as if it required a return to be made under that Article within one month of the date of the branch being opened.

Particulars required

2.—(1) The particulars referred to in paragraph 1(1)(a) are—

- (a) the corporate name of the company,
- (b) its legal form,
- (c) if it is registered in the country of its incorporation, the identity of the register in which it is registered and the number with which it is so registered,
- (d) a list of its directors and secretary, containing—
 - (i) with respect to each director, the particulars specified in sub-paragraph (3), and
 - (ii) with respect to the secretary (or where there are joint secretaries, with respect to each of them) the particulars specified in sub-paragraph (4).
- (e) the extent of the powers of the directors to represent the company in dealings with third parties and in legal proceedings, together with a statement as to whether they may act alone or must act jointly and, if jointly, the name of any other person concerned, and
- (f) whether the company is an institution to which Article 648A (or the equivalent provision in Great Britain) applies.

(2) In the case of a company which is not incorporated in a Member State, those particulars also include—

- (a) the law under which the company is incorporated.
- (b) (in the case of a company to which either paragraphs 2 and 3 of Part I of Schedule 20C or Schedule 20D applies) the period for which the company is required by the law under which it is incorporated to prepare accounts, together with the period allowed for the preparation and public disclosure of accounts for such a period, and
- (c) unless disclosed by the documents specified in paragraph 5—
 - (i) the address of its principal place of business in its country of incorporation,
 - (ii) its objects, and
 - (iii) the amount of its issued share capital.

(3) Articles 6520 and 652P are inserted into the 1986 Order by paragraph 18 of Schedule 2

- (3) The particulars referred to in sub-paragraph (1)(d)(i) are—
- (a) in the case of an individual—
 - (i) his name,
 - (ii) any former name,
 - (iii) his usual residential address,
 - (iv) his nationality,
 - (v) his business occupation (if any),
 - (vi) particulars of any other directorships held by him, and
 - (vii) his date of birth;
 - (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

- (4) The particulars referred to in sub-paragraph (1)(d)(ii) are—
- (a) in the case of an individual, his name, any former name and his usual residential address;
 - (b) in the case of a corporation or 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 required by head (a).

- (5) In sub-paragraphs 3(a) and 4(a)—
- (a) “name” means a person’s forename and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his forename and surname, or in addition to either or both of them; and
 - (b) the reference to a former name does not include—
 - (i) in the case of a peer, or an individual normally known by a title, the name by which he was known previous to the adoption of or succession to the title;
 - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more;
 - (iii) in the case of a married woman, the name by which she was known previous to the marriage.

- (6) Where—
- (a) at the time a return is delivered under paragraph 1(1) the company has another branch in Northern Ireland; and
 - (b) the company has delivered the particulars required by sub-paragraphs (1)(b) to (f) and (2) to (5) to the registrar with respect to that branch (or to the extent it is required to do so by virtue of Schedule 20B to this Order) and has no outstanding obligation to make a return to the registrar in respect of that branch under paragraph 7 in relation to any alteration to those particulars,

the company may adopt the particulars so delivered as particulars which the registrar is to treat as having been filed by the return by referring in the return to the fact that the particulars have been filed in respect of that other branch and giving the number with which the other branch is registered.

3. The particulars referred to in paragraph 1(1)(b) are—
- (a) the address of the branch,
 - (b) the date on which it was opened,

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- (c) the business carried on at it,
 - (d) if different from the name of the company, the name in which that business is carried on,
 - (e) a list of the names and addresses of all persons resident in Northern Ireland authorised to accept on the company's behalf service of process in respect of the business of the branch and of any notices required to be served on the company in respect of the business of the branch.
 - (f) a list of the names and usual residential addresses of all persons authorised to represent the company as permanent representatives of the company for the business of the branch.
 - (g) the extent of the authority of any person falling within sub-paragraph (f), including whether that person is authorised to act alone or jointly, and
 - (h) if a person falling within sub-paragraph (f) is not authorised to act alone, the name of any person with whom he is authorised to act.
4. The particulars referred to in paragraph 1(1)(c) are—
- (a) whether it is intended to register documents under paragraph 2(2) or, as the case may be, 10(1) of Schedule 20D in respect of the branch or in respect of some other branch in the United Kingdom, and
 - (b) if it is, where that other branch is registered and what is its registered number.

Documents required

5. The first documents referred to in paragraph 1(2) are—
- (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
 - (b) if any of the documents mentioned in sub-paragraph (a) is not written in the English language, a translation of it into English certified in the prescribed manner to be a correct translation.
- 6.—(1) The second documents referred to in paragraph 1(2) are—
- (a) copies of the latest accounting documents prepared in relation to a financial period of the company to have been publicly disclosed in accordance with the law of the country in which it is incorporated before the end of the period allowed for compliance with paragraph 1 in respect of the branch or, if earlier, the date on which the company complies with paragraph 1 in respect of the branch, and
 - (b) if any of the documents mentioned in head (a) is not written in the English language, a translation of it into English certified in the prescribed manner to be a correct translation.
- (2) In sub-paragraph (1)(a) "financial period" and "accounting documents" shall be construed in accordance with paragraph 6 of Schedule 20D.

Alterations

- 7.—(1) If, after a company has delivered a return under paragraph (1), any alteration is made in —
- (a) its charter, statutes or memorandum and articles (or other instrument constituting or defining its constitution), or
 - (b) any of the particulars referred to in paragraph 1(1).

the company shall, within the time specified in sub-paragraph (2), deliver to the registrar for registration a return in the prescribed form containing the prescribed particulars of the alteration.

In the case of an alteration to any of the documents referred to in head (a), the return shall be accompanied by a certified copy of the document as altered, together with, if the document is not written in the English language, a translation of it into English certified in the prescribed manner to be a correct translation.

- (2) The time for the delivery of the return required by sub-paragraph (1) is—
- (a) in the case of an alteration in any of the particulars specified in paragraph 3, 21 days after the alteration is made; or
 - (b) in the case of any other alteration, 21 days after the date on which notice of the alteration in question could have been received in Northern Ireland in due course of post (if despatched with due diligence).
- (3) Where—
- (a) a company has more than one branch in Northern Ireland, and
 - (b) an alteration relates to more than one of those branches,

sub-paragraph (1) shall have effect to require the company to deliver a return in respect of each of the branches to which the alteration relates.

- (4) For the purposes of sub-paragraph (3)—
- (a) an alteration in any of the particulars specified in paragraph 2 shall be treated as relating to every branch of the company (though where the company has more than one branch in Northern Ireland a return in respect of an alteration in any of those particulars which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given), but
 - (b) an alteration in the company's charter or memorandum and articles (or other instrument constituting or defining its constitution) shall only be treated as relating to a branch if the document altered is included in the material registered in respect of it.

8.—(1) Sub-paragraph (2) applies where—

- (a) a company's return under paragraph 1(1) includes a statement to the effect mentioned in paragraph 1(3)(b), and
- (b) the statement ceases to be true so far as concerns the documents specified in paragraph 5.

(2) The company shall, within the time specified in sub-paragraph (3), deliver to the registrar for registration in respect of the branch to which the return relates—

- (a) the documents specified in paragraph 5, or
- (b) a return in the prescribed form—
 - (i) containing a statement to the effect that those documents are included in the material which is registered in respect of another branch of the company in the United Kingdom, and
 - (ii) stating where the other branch is registered and what is its registered number.

(3) The time for complying with sub-paragraph (2) is 21 days after the date on which notice of the fact that the statement in the earlier return has ceased to be true could have been received in Northern Ireland in due course of post (if despatched with due diligence).

(4) Sub-paragraph (2) shall also apply where, after a company has made a return under sub-paragraph (2)(b), the statement to the effect mentioned in sub-paragraph (2)(b)(i) ceases to be true.

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(5) For the purposes of sub-paragraph (2)(b), where the company has more than one branch in Northern Ireland a return which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given.”.

4. After Article 642 there shall be inserted—

“Change in registration regime

642A.—(1) Where a company ceases to be a company to which Article 640A applies and, immediately after ceasing to be such a company—

- (a) continues to have in Northern Ireland a place of business which it had immediately before ceasing to be such a company, and
- (b) does not have a branch in Great Britain,

it shall be treated for the purposes of Article 641 as having established the place of business on the date when it ceased to be a company to which Article 640A applies.

(2) Where a limited company incorporated outside the United Kingdom and Gibraltar—

- (a) ceases to have a branch in Great Britain, and
- (b) both immediately before and immediately after ceasing to do so, has a place of business, but not a branch, in Northern Ireland,

it shall be treated for the purposes of Article 641 as having established the place of business on the date when it ceased to have a branch in Great Britain.

(3) Schedule 20B (transitional provisions in relation to change in registration regime) shall have effect.”.

5. After Schedule A there shall be inserted—

“SCHEDULE 20B

Article 642A(3)

Change in Registration Regime: Transitional Provisions

1.—(1) This paragraph applies where a company which becomes a company to which Article 640A applies was, immediately before becoming such a company (referred to in this paragraph as the relevant time), a company to which Article 641 applies.

(2) The company need not include the particulars specified in paragraph 2(1)(d) of Schedule 20A in the first return to be delivered under paragraph 1(1) of that Schedule to the registrar if at the relevant time—

- (a) it had an established place of business in Northern Ireland,
- (b) it had complied with its obligations under Article 641(1)(b)(i)(4), and
- (c) it had no outstanding obligation to make a return to the registrar under paragraph (1) of Article 642, so far as concerns any alteration of the kind mentioned in paragraph (1) (b) of that Article,

and if it states in the return that the particulars have been previously filed in respect of a place of business of the company, giving the company’s registered number.

(3) The company shall not be required to deliver the documents mentioned in paragraph 5 of Schedule 20A with the first return to be delivered under paragraph 1(1) of that Schedule to the registrar if at the relevant time—

(4) Article 641 of the 1986 Order was amended by Article 78 of, and paragraph 6 of Schedule 5 to, the Companies (No. 2) Northern Ireland) Order 1990. (S.I. 1990/1504 (N.I. 10)).

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- (a) it had an established place of business in Northern Ireland,
- (b) it had delivered the documents mentioned in Article 641(1)(a) to the registrar, and
- (c) it had no outstanding obligation to make a return to the registrar under paragraph (1) of Article 642 so far as concerns any alteration in any of the documents mentioned in sub-paragraph (a) of that paragraph,

and if it states in the return that the documents have been previously filed in respect of a place of business of the company, giving the company's registered number.

2.—(1) This paragraph applies where a company which becomes a company to which Article 641 applies was, immediately before becoming such a company (referred to in this paragraph as the relevant time), a company to which Article 640A applies.

(2) The company shall not be required to deliver the documents mentioned in Article 641(1)(a) to the registrar if at the relevant time—

- (a) it had a branch in Northern Ireland,
- (b) the documents mentioned in paragraph 5 of Schedule 20A were included in the material registered in respect of the branch, and
- (c) it had no outstanding obligation to make a return to the registrar under paragraph 7 of that Schedule, so far as concerns any alteration in any of the documents mentioned in sub-paragraph (1)(a) of that paragraph,

and if it states in the return that the documents have previously been filed in respect of a branch of the company, giving the branch's registered number.

(3) The company need not include the particulars mentioned in Article 641(1)(b)(i) in the return to be delivered under Article 641(1)(b) to the registrar if at the relevant time—

- (a) it had a branch in Northern Ireland,
- (b) it had complied with its obligations under paragraph 1(1)(a) of Schedule 20A in respect of the branch, so far as the particulars required by paragraph 2(1)(d) of that Schedule are concerned, and
- (c) it had no outstanding obligation to make a return to the registrar under paragraph 7 of that Schedule, so far as concerns any alteration in any of the particulars required by paragraph 2(1)(d) of that Schedule,

and if it states in the return that the particulars have been previously filed in respect of a branch of the company, giving the branch's registered number.

(4) Where sub-paragraph (3) applies, the reference in Article 642(1)(b) to the list of the directors and secretary shall be construed as a reference to the list contained in the return under paragraph 1(1) of Schedule 20A with any alterations in respect of which a return under paragraph 7(1) of that Schedule has been made.”.

Duty to state name etc.

6. In Article 643 after paragraph (2) there shall be inserted—

“(3) Every company to which Article 640A applies shall, in the case of each branch of the company registered under paragraph 1 of Schedule 20A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the place of registration of the branch, and
- (b) the registered number of the branch.

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(4) Every company to which Article 640A applies, which is not incorporated in a Member State and which is required by the law of the country in which it is incorporated to be registered under paragraph 1 of Schedule 20A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the identity of the registry in which the company is registered in its country of incorporation, and
- (b) the number with which it is registered.

(5) Every company to which Article 640A applies and which is not incorporated in a Member State shall, in the case of each branch of the company registered under paragraph 1 of Schedule 20A, cause the following particulars to be stated in legible character in all letter paper and order forms used in carrying on the business of the branch—

- (a) the legal form of the company,
- (b) the location of its head office,
- (c) if applicable, the fact that it is being wound up.”.

Regulation in respect of names

7.—(1) Article 644 shall be amended as follows.

(2) In paragraph (1), for “(defined in paragraph (3))” there shall be substituted “(determined in accordance with paragraphs (3A) and (3B))”.

(3) In paragraph (3), the words from “being the date” to the end are hereby repealed.

(4) After that paragraph there shall be inserted—

“(3A) For the purposes of paragraphs (1) to (3), the relevant date, in relation to a company, is the date on which it has complied with paragraph 1 of Schedule 20A or Article 641(1) or, if there is more than one such date, the first date on which it has complied with either of those provisions since becoming a Part XXIII company.

(3B) But where the company’s corporate name has changed since the date ascertained in accordance with paragraph (3A), the relevant date is the date on which the company has, in respect of the change or, if more than one, the latest change, complied with paragraph 7(1) of Schedule 20A or Article 642(2), as the case may be.”.

Service of documents

8. After Article 644 there shall be inserted—

“Service of documents: companies to which Article 640A applies

1.—(1) This Article applies to any company to which Article 640A applies.

(2) Any process or notice required to be served on a company to which this Article applies in respect of the carrying on of the business of a branch registered by it under paragraph 1 of Schedule 20A is sufficiently served if—

- (a) addressed to any person whose name has, in respect of the branch, been delivered to the registrar as a person falling within paragraph 3(e) of that Schedule, and
- (b) left at or sent by post to the address for that person which has been so delivered.

(3) Where—

- (a) a company to which this Article applies makes default, in respect of a branch, in delivering to the registrar the particulars mentioned in paragraph 3(e) of Schedule 20A, or
- (b) all the persons whose names have, in respect of a branch, been delivered to the registrar under paragraph 1 of that Schedule as persons falling within paragraph 3(e) are dead or have ceased to reside in Northern Ireland, 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 in respect of the carrying on of the business of the branch by leaving it at, or sending it by post to, any place of business established by the company in Northern Ireland.

(4) Where a company to which this Article applies has more than one branch in Northern Ireland, any notice or process required to be served on the company which is not required to be served in respect of the carrying on of the business of one branch rather than another shall be treated for the purposes of this Article as required to be served in respect of the carrying on of the business of each of its branches.”

9. In Article 645(1), after “Part XXIII company” there shall be inserted “to which Article 641 applies”.

Documents to be filed on cessation of business: companies to which Article 640A applies

10. After Article 645 there shall be inserted—

“Documents to be filed on cessation of business: companies to which Article 640A applies

645A. If a company to which Article 640A applies closes a branch in Northern Ireland, it shall forthwith give notice of that fact to the registrar; and from the date on which notice is so given it is no longer obliged to deliver documents to the registrar in respect of that branch.”

11. In Article 646, after “Part XXIII company” there shall be inserted “to which Article 641 applies”.

Penalties for non-compliance

12. In Article 647 the following is inserted as paragraph (3)—

“(3) If a Part XXIII company fails to comply with Article 645A or Schedule 20A, 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.”

Interpretation

13.—(1) Article 648 shall be amended as follows.

(2) The existing provision shall become paragraph (1) and the words “for this Chapter” shall be omitted from the heading.

(3) The following is inserted as paragraph (2):

“(2) For the purposes of this Part (except Article 648A and Schedule 20C):

- (a) where a branch comprises places of business in more than one part of the United Kingdom the branch shall be treated as being situated in that part of the United Kingdom where its principal place of business is situated; and

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- (b) “branch” means a branch within the meaning of the Council Directive concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (the Eleventh Company Law Directive, [89/666/EEC](#)).”.