
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose various registration and filing requirements on companies incorporated outside the United Kingdom (“overseas companies”) that open an establishment, whether a place of business or a branch, in the United Kingdom (a “UK establishment”). They replace Part 23 of, and Schedules 21A to 21D to, the Companies Act 1985 (“the 1985 Act”) (and the equivalent Northern Ireland provisions) which, amongst other things, implemented—

- (a) the Eleventh Company Law Directive (89/666/EEC), and
- (b) the Council Directive on the obligations of branches established in a Member State of credit and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (the Bank Branches Directive) (89/117/EEC).

Part 2 (regulations 3 to 11) requires an overseas company to register certain particulars and documents with the registrar of companies within one month of opening a UK establishment.

Part 3 (regulations 12 to 17) requires an overseas company to file details of any alterations to the particulars or documents registered under Part 2.

An overseas company is required (Part 4) to register particulars about the usual residential address of its directors and permanent representatives. Part 4 (regulations 18 to 29) and Schedules 1 to 3 implement section 1055 of the Companies Act 2006 (“the Act”), which requires provision to be made corresponding to that made by sections 240 to 246 of the Act (directors’ residential addresses: protection from disclosure). Those provisions prescribe the circumstances in which information about a director’s residential address can be used by a company and the registrar and disclosed to third parties by the registrar. Part 4 also contains provisions corresponding to provisions made by regulations under section 243(3) to (6) of the Act in the Companies (Disclosure of Address) Regulations 2009 (S.I. 2009/214).

Part 5 concerns the delivery of accounting documents to the registrar by limited overseas companies that are not credit or financial institutions.

Chapter 2 (regulations 31 to 35) applies where the parent law of an overseas company requires the preparation and disclosure of accounts. In those cases the company must deliver to the registrar such accounts and accompanying reports (including any audit and directors’ reports) that it files under its parent law. In certain circumstances specified in regulation 32, where an overseas company has more than one UK establishment it is not necessary for that company to file accounts in respect of each of its UK establishments. Regulation 33 also requires the company to notify the registrar of the legislation and accounting principles under which the accounts have been prepared.

Chapter 3 (regulations 36 to 42), together with Schedules 4 and 5, applies where the parent law of an overseas company does not require accounts to be prepared and disclosed. It applies to such companies, with modifications, certain provisions of Part 15 (accounting documents) of the Act. The Regulations set out the provisions of Part 15 that are applied as modified. There are three main obligations—

- (a) to prepare accounts in accordance with parent law, international accounting standards or Schedule 4 (or, if the company is a parent company, Schedule 5) to these Regulations,
- (b) to identify the set of accounting principles on which accounts have been prepared,
- (c) to file those accounts with the registrar.

Part 6 (regulations 43 to 57), together with Schedules 6 and 7, concerns the delivery of accounting documents to the registrar by overseas credit or financial institutions. The structure mirrors Part 5 in that different provision is made for institutions required by parent law to prepare accounts and those not so required.

Part 7 (regulations 58 to 67) requires overseas companies carrying on business in the UK to make certain trading disclosures.

Under Part 8 (regulations 68 to 74) an overseas company with a UK establishment is required to notify the registrar if it is being wound up (regulation 69) or subject to insolvency proceedings (regulation 71) and the liquidator of such a company is likewise subject to filing obligations (regulation 70). Furthermore, an overseas company with a UK establishment must notify the registrar if a judicial factor is appointed (regulation 73).

Part 9 (regulations 75 to 77) contains miscellaneous provisions concerning service of documents (regulation 75), documents subject to Directive disclosure requirements (regulation 76), the duty to give notice of ceasing to have a registrable presence (regulation 77).

Part 10 (regulations 78 to 80) contain supplementary provisions: regulation 78 concerns the documents which may be drawn up and delivered to the registrar in a language other than English, on condition that they are accompanied by a certified translation into English. Those documents include the constitution and accounting documents delivered under these Regulations; revocation of the Overseas Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992 (S.I. 1992/3179) which amended Part 23 of the 1985 Act so as to implement the two Directives mentioned in the first paragraph of this note (regulation 79); and transitional provisions and savings (regulation 80).

An Impact Assessment in respect of these Regulations has been produced and copies are available from the Company Law and Governance Directorate, Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London, SW1H 0ET or on <http://www.berr.gov.uk/bbf/co-act-2006/>.