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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Overseas Companies Regulations 2009**

**PART 2**

**INITIAL REGISTRATION OF PARTICULARS**

**Application and interpretation of Part**

- 3.**—(1) This Part applies to an overseas company that opens a UK establishment.
- (2) In this Part—
- “director” includes shadow director; and
  - “secretary” includes any person occupying the position of secretary by whatever name called.

**Duty to deliver return and documents**

- 4.**—(1) The company must within one month of having opened a UK establishment—
- (a) deliver to the registrar a return complying with the requirements of this Part, and
  - (b) deliver with the return the documents required by this Part.
- (2) These requirements apply each time a company opens an establishment in the United Kingdom.

**Particulars to be included in return**

- 5.**—(1) The return must contain—
- (a) the particulars specified in regulation 6 (particulars of the company), and
  - (b) the particulars specified in regulation 7 (particulars of the establishment).
- (2) If at the time the return is delivered the company—
- (a) has another UK establishment,
  - (b) has delivered a return in respect of that establishment containing the particulars specified in regulation 6, and
  - (c) has no outstanding obligation under Part 3 in respect of an alteration to those particulars,
- the company may instead state in the return that those particulars are included in the particulars delivered in respect of another UK establishment (giving the registered number of that establishment).

**Particulars of the company**

- 6.**—(1) The particulars of the company to be included in the return are—
- (a) the company’s name,
  - (b) the company’s 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 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 paragraph (4),
  - (e) the extent of the powers of the directors or secretary 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 a credit or financial institution.
- (2) In the case of a company that is not incorporated in an EEA State, the particulars of the company to be included in the return must also include—
- (a) the law under which the company is incorporated,
  - (b) in the case of a company to which Chapter 2 of Part 5 or Chapter 2 of Part 6 applies (requirement to prepare and disclose accounts under parent law), the period for which the company is required by its parent law to prepare accounts, together with the period allowed for the preparation and public disclosure (if any) of accounts for such a period,
  - (c) unless disclosed by the company's constitution (see regulation 8)—
    - (i) the address of its principal place of business in its country of incorporation or, if applicable, its registered office,
    - (ii) its objects, and
    - (iii) the amount of its issued share capital.
- (3) The particulars referred to in paragraph (1)(d)(i) (directors) are—
- (a) in the case of an individual—
    - (i) name,
    - (ii) any former name,
    - (iii) a service address,
    - (iv) usual residential address,
    - (v) the country or state in which the individual is usually resident,
    - (vi) nationality,
    - (vii) business occupation (if any), and
    - (viii) date of birth;
  - (b) in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—
    - (i) corporate or firm name,
    - (ii) registered or principal office,
    - (iii) in the case of an EEA company to which the First Company Law Directive applies, particulars of—
      - (aa) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
      - (bb) the registration number in that register,
    - (iv) in any other case, particulars of—

- (aa) the legal form of the company or firm and the law by which it is governed, and
  - (bb) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.
- (4) The particulars referred to in paragraph (1)(d)(ii) (secretary) are—
  - (a) in the case of an individual—
    - (i) name,
    - (ii) any former name, and
    - (iii) a service address;
  - (b) in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—
    - (i) corporate or firm name,
    - (ii) registered or principal office,
    - (iii) in the case of an EEA company to which the First Company Law Directive applies, particulars of—
      - (aa) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
      - (bb) the registration number in that register,
    - (iv) in any other case, particulars of—
      - (aa) the legal form of the company or firm and the law by which it is governed, and
      - (bb) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

But if all the partners in a firm are joint secretaries of the company it is sufficient to state the particulars that would be required if the firm were a legal person and the firm had been appointed secretary.

- (5) For the purposes of paragraphs (3)(a)(ii) and (4)(a)(ii), where a person is or was formerly known by more than one former name, each of them must be stated.
- (6) It is not necessary to include in the return particulars of a former name in the following cases—
  - (a) in the case of a peer or an individual normally known by a title, where the name is one by which the person was known previous to the adoption of or succession to the title,
  - (b) in the case of any person, where the former name—
    - (i) was changed or disused before the person attained the age of 16 years, or
    - (ii) has been changed or disused for 20 years or more.
- (7) For the purposes of paragraph (3)(a)(iv) if the person's usual residential address is the same as the person's service address the return need only contain a statement to that effect.

### **Particulars of the establishment**

- 7.—(1) The particulars of the establishment to be included in the return are—
  - (a) address of the establishment,
  - (b) date on which it was opened,
  - (c) business carried on at it,
  - (d) name of the establishment if different from the name of the company,

- (e) name and service address of every person resident in the United Kingdom authorised to accept service of documents on behalf of the company in respect of the establishment, or a statement that there is no such person,
  - (f) a list of every person authorised to represent the company as a permanent representative of the company in respect of the establishment, containing the following particulars with respect to each such person—
    - (i) name,
    - (ii) any former name,
    - (iii) service address, and
    - (iv) usual residential address,
  - (g) 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 they are authorised to act.
- (2) For the purpose of paragraph (1)(f)(iv) if the person’s usual residential address is the same as the person’s service address the return need only contain a statement to that effect.

#### **Documents to be delivered with the return: copy of company’s constitution**

- 8.—(1) A certified copy of the company’s constitution must be delivered to the registrar with the return.
- (2) If at the time the return is delivered the company—
- (a) has another UK establishment,
  - (b) has delivered a certified copy of the company’s constitution with a return relating to that establishment, and
  - (c) has no outstanding obligation under Part 3 in respect of an alteration to its constitution,
- the company may instead state in the return that a certified copy of the company’s constitution has been delivered in respect of another UK establishment (giving the registered number of that establishment).

#### **Documents to be delivered with the return: copies of accounting documents**

- 9.—(1) If the company is one to which Chapter 2 of Part 5 applies (companies required to prepare and disclose accounts under parent law), copies of the company’s latest accounting documents must be delivered to the registrar with the return.
- (2) The company’s latest accounting documents means the accounting documents, prepared for a financial period of the company, last disclosed in accordance with its parent law before the end of the period allowed for delivery of the return or, if earlier, the date on which the company delivers the return.
- (3) If at the time the return is delivered the company—
- (a) has another UK establishment, and
  - (b) has delivered the documents required by paragraph (1) in connection with a return relating to that establishment,
- the company may instead state in the return that the documents are included in the material delivered in respect of another UK establishment (giving the registered number of that establishment).

### **Statement as to future manner of compliance with accounting requirements**

**10.**—(1) If the company is one to which Part 5 applies (delivery of accounting documents: general), the return must state—

- (a) in the case of a company to which Chapter 2 of that Part applies (companies required to file copies of accounting documents disclosed under parent law), whether it is intended to file copies of accounting documents in accordance with the provisions of that Chapter in respect of the establishment to which the return relates or in respect of another UK establishment;
- (b) in the case of a company to which Chapter 3 of that Part applies (companies required to file accounts under UK law), whether it is intended to file accounts in accordance with the provisions of that Chapter in respect of the establishment to which the return relates or in respect of another UK establishment.

(2) If the return states that it is intended to file copies of accounting documents, or accounts, in respect of another UK establishment, it must give the registered number of that establishment.

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

**11.**—(1) If a company fails to comply with any of the requirements of this Part, an offence is committed by—

- (a) the company, and
- (b) every officer or agent of the company who knowingly and wilfully authorises or permits the default.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to—

- (a) a fine not exceeding level 3 on the standard scale, and
- (b) for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.