



Companies Act 1948

1948 CHAPTER 38

PART X

COMPANIES INCORPORATED OUTSIDE GREAT BRITAIN

Provisions as to Establishment of Place of Business in Great Britain

406 Application of ss.407 to 414

The next eight following sections shall apply to all overseas companies, that is to say, companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of business within Great Britain, and companies incorporated outside Great Britain which have, before the commencement of this Act, established a place of business within Great Britain and continue to have an established place of business within Great Britain at the commencement of this Act.

407 Documents, &c, to be delivered to registrar by overseas companies carrying on business in Great Britain

- (1) Oversea companies which, after the commencement of this Act, establish a place of business within Great Britain shall, within one month of the establishment of the place of business, 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 constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
 - (b) a list of the directors and secretary of the company containing the particulars mentioned in the next following subsection;
 - (c) the names and addresses of some one or more persons resident in Great Britain authorised to accept on behalf of the company service of process and any notices required to be served on the company.

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- (2) The list referred to in paragraph (b) of the foregoing subsection shall contain the following particulars, that is to say,—
- (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 any other directorship or directorships, particulars of that directorship or of some one of those directorships; and,
 - (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; and
 - (ii) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office:

Provided that, 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) of this subsection. Paragraphs (b), (c) and (d) of subsection (9) of section two hundred of this Act shall apply for the purpose of the construction of references in this subsection to present and former Christian names and surnames as they apply for the purpose of the construction of such references in that section.

- (3) Oversea companies, other than those mentioned in subsection (1) of this section, shall, if at the commencement of this Act they have not delivered to the registrar—
- (a) in the case of a company mentioned in subsection (1) or (2) of section three hundred and forty-four of the Companies Act, 1929, the documents and particulars specified in subsection (1) of that section;
 - (b) in the case of a company not so mentioned, the documents and particulars specified in paragraphs (a), (b) and (c) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

continue subject to the obligation to deliver those documents and particulars in accordance with the said Act of 1929 or the said Acts of 1908 and 1917, as the case may be.

408 Power of overseas company to hold lands

Where an overseas company has delivered to the registrar of companies—

- (a) in the case of a company to which subsection (1) of the last foregoing section applies, the documents and particulars therein mentioned ;
- (b) in the case of a company mentioned in subsection (1) or (2) of section three hundred and forty-four of the Companies Act, 1929, the documents and particulars specified in subsection (1) of that section;
- (c) in the case of any other company, the documents and particulars specified in paragraphs (a), (b) and (c) of subsection (1) of section two hundred and

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seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

it shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act:

Provided that nothing in this section shall affect the power of a company to hold lands by virtue of registration in Northern Ireland.

409 Return to be delivered to registrar by overseas company where documents, &c., altered

If any alteration is made in—

- (a) the charter, statutes, or memorandum and articles of an overseas company or any such instrument as aforesaid; 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 prescribed time, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

410 Accounts of overseas company

- (1) Every overseas company shall, in every calendar year, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form, and containing such particulars and including such documents, as under the provisions of this Act (subject, however, to any prescribed exceptions) it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the registrar of companies:

Provided that a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company, need not comply with the foregoing provisions of this subsection if there is delivered to the registrar a certificate signed by a director and by the secretary of the company that, had section one hundred and twenty-nine of, and the Seventh Schedule to, this Act extended to Northern Ireland it would at the date of the certificate have been an exempt private company.

- (2) If any such document as is mentioned in the foregoing subsection is not written in the English language, there shall be annexed to it a certified translation thereof.

411 Obligation to state name of overseas company, whether limited, and country where incorporated

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; and
- (b) conspicuously exhibit on every place where it carries on business in Great Britain the name of the company and the country in which the company is incorporated; and

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- (c) cause the name of the company and of the country in which the company 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 aforesaid 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.

412 Service on overseas company

Any process or notice required to be served on an overseas company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under the foregoing provisions of this Part of this Act and left at or sent by post to the address which has been so delivered: Provided that—

- (a) where any such 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 behalf of the company, 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.

413 Office where documents to be filed

- (1) Any document, which any overseas company is required to deliver to the registrar of companies, shall be delivered to the registrar at the registration office in England or Scotland according as the company has established a place of business in England or Scotland, and if it has established or establishes a place of business both in England and in Scotland, the document shall be delivered at the registration office both in England and in Scotland, and references to the registrar of companies in this Part of this Act shall be construed accordingly.
- (2) If any overseas company ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of the 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 shall cease.

414 Penalties

If any overseas company fails to comply with any of the foregoing provisions of this Part of this Act the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

415 Interpretation of ss. 407 to 414

For the purposes of the foregoing provisions of this Part of this Act:—

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the expression " certified " means certified in the prescribed manner to be a true copy or a correct translation;

the expression " director " in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

the expression " place of business " includes a share transfer or share registration office;

the expression " prospectus " has the same meaning as when used in relation to a company incorporated under this Act;

the expression " secretary " includes any person occupying the position of secretary by whatever name called.

416 Special provisions as to delivery of documents by companies incorporated in Channel Islands or Isle of Man

Where a company incorporated in the Channel Islands or the Isle of Man—

- (a) after the commencement of this Act establishes a place of business in England or Scotland; or
- (b) has before the commencement of this Act established and at the commencement of this Act continues to have a place of business in England or Scotland;

all the provisions of this Act requiring documents to be forwarded or delivered to, or filed with, the registrar of companies (other than provisions requiring the payment of a fee in respect of the registration of a company) shall apply to the company in like manner as if it were a company registered in England or Scotland, as the case may be, and if the company establishes places of business both in England and in Scotland the said provisions shall so apply as if the company were registered both in England and in Scotland.

Prospectuses

417 Dating of prospectus and particulars to be contained therein

- (1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the Company has or has not established, or when formed will or will not establish, a place of business in Great Britain unless the prospectus is dated and—

- (a) contains particulars with respect to the following matters:—
 - (i) the instrument constituting or defining the constitution of the company;
 - (ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
 - (iii) an address in Great Britain where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
 - (iv) the date on which and the country in which, the company was incorporated;

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- (v) whether the company has established a place of business in Great Britain, and, if so, the address of its principal office in Great Britain;
 - (b) subject to the provisions of this section, states the matters specified in Part I of the Fourth Schedule to this Act and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule: Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (a) of this subsection shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Fourth Schedule for the purposes of this subsection, paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.
- (2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (a) or (b) of the foregoing subsection, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
- (3) It shall not be lawful for any person to issue to any person in Great Britain a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) of this section unless the form is issued with a prospectus which complies with this Part of this Act and the issue whereof in Great Britain does not contravene the provisions of section four hundred and nineteen of this Act:

Provided that this subsection shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

- (4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1) of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—
- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
 - (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
 - (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

- (5) This section—
- (a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and
 - (b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in

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all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange;

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

- (6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

418 Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses

- (1) Where—

- (a) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain; and
- (b) application is made to a prescribed stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;

there may on the request of the applicant be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fourth Schedule to this Act would be unduly burdensome.

- (2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then—

- (a) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Fourth Schedule to this Act; and
- (b) except in so far as it requires a prospectus to be dated, the last foregoing section shall not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

419 Provisions as to expert's consent, and allotment

- (1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain,—

- (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
- (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections fifty and fifty-one of this Act so far as applicable.

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- (2) In this section the expression " expert " includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

420 Registration of prospectus

- (1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, unless before the issue, circulation or distribution of the prospectus in Great Britain, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the registrar of companies, and the prospectus states on the face of it that a copy as been so delivered, and there is endorsed on or attached to the copy—
- (a) any consent to the issue of the prospectus required by the last foregoing section;
 - (b) a copy of any contract required by paragraph 14 of the Fourth Schedule to this Act to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section four hundred and eighteen of this Act to comply with the requirements of that Schedule, a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application under that section to the stock exchange in question, a copy or, as the case may be, a memorandum of that contract; and
 - (c) where the persons making any report required by Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.
- (2) The references in paragraph (b) of the foregoing subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

421 Penalty for contravention of four foregoing sections

Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of the four last foregoing sections shall be liable to a fine not exceeding five hundred pounds.

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422 Civil liability for mis-statements in prospectus

Section forty-three of this Act shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, with the substitution, for references to section forty of this Act, of references to section four hundred and nineteen thereof.

423 Interpretation of provisions as to prospectuses

- (1) Where any document by which any shares in or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section forty-five of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purpose of this Part of this Act, a prospectus issued by the company.
- (2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part of this Act.
- (3) In this Part of this Act the expressions " prospectus ", " shares " and " debentures " have the same meanings as when used in relation to a company incorporated under this Act.