

SCHEDULE 2

AMENDMENTS OF PART XXIII OF THE PRINCIPAL ACT

PART I

REGISTRATION ETC.

Preliminary

1. Chapter I of Part XXIII shall be amended as mentioned in paragraphs 2 to 14 below.

Registration

2. Before section 691 there shall be inserted—

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

690A.—(1) This section applies to any limited company which—

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

(2) Schedule 21A to this Act (Branch registration under the Eleventh Company Law Directive (89/666/EEC)) shall have effect in relation to any company to which this section applies.

Scope of sections 691 and 692.

690B. Sections 691 and 692 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 21 there shall be inserted—

“SCHEDULE 21A

Section 690A.

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 a part of Great Britain, 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 section 699AA applies, such particulars in relation to the registration of documents under Schedule 21D as are specified in paragraph 4.

(2) The return shall, except where sub-paragraph (3) below applies, be accompanied by the documents specified in paragraph 5 and, if the company is one to which Part I of Schedule 21D applies, the documents specified in paragraph 6.

- (3) This sub-paragraph applies where—

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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 21D 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) above, the reference to having opened a branch in a part of Great Britain 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 Great Britain the company is subject to any proceedings referred to in section 703P(1) (winding up) or 703Q(1) (insolvency proceedings etc), the company shall deliver a return under section 703P(1) or (as the case may be) 703Q(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, section 703P(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 section 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) below, 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) below,
- (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 section 699A (or the equivalent provision in Northern Ireland) 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 21C or Schedule 21D 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) The particulars referred to in sub-paragraph (1)(d)(i) above 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) above 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 paragraph (a) above.

- (5) In sub-paragraphs (3)(a) and (4)(a) above—
- (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 the same part of Great Britain as the branch covered by the return; 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 21B to this Act) 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 Great Britain 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 paragraph (f) above, including whether that person is authorised to act alone or jointly, and
 - (h) if a person falling within paragraph (f) above 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 21D 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 paragraph (a) above 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 paragraph (a) above 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) above, “financial period” and “accounting documents” shall be construed in accordance with paragraph 6 of Schedule 21D.

Alterations

- 7.—(1) If, after a company has delivered a return under paragraph 1(1) above, 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 below, 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 in any of the documents referred to in paragraph (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) above 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 Great Britain in due course of post (if despatched with due diligence).
- (3) Where—
 - (a) a company has more than one branch in Great Britain, and
 - (b) an alteration relates to more than one of those branches,

sub-paragraph (1) above 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) above—
 - (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 a part of Great Britain 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, statutes 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) below 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 below, deliver to the registrar of companies 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) above 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 Great Britain in due course of post (if despatched with due diligence).

(4) Sub-paragraph (2) above shall also apply where, after a company has made a return under sub-paragraph (2)(b) above, 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 a part of Great Britain 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 section 692 there shall be inserted—

“Change in registration regime.

692A.—(1) Where a company ceases to be a company to which section 690A applies and, immediately after ceasing to be such a company—

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

it shall be treated for the purposes of section 691 as having established the place of business on the date when it ceased to be a company to which section 690A applies.

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

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

it shall be treated for the purposes of section 691 as having established the place of business on the date when it ceased to have a branch in Northern Ireland.

(3) Where a company—

- (a) becomes a company to which section 690A applies,
- (b) immediately after becoming such a company, has in a part of Great Britain an established place of business but no branch, and
- (c) immediately before becoming such a company, had an established place of business in that part,

sections 691 and 692 shall, in relation to that part, continue to apply to the company (notwithstanding section 690B) until such time as it gives notice to the registrar for that part that it is a company to which that section applies.

(4) Schedule 21B to this Act (transitional provisions in relation to change in registration regime) shall have effect.”

5. After Schedule 21A there shall be inserted—

“SCHEDULE 21B

Section 692A.

CHANGE IN REGISTRATION REGIME: TRANSITIONAL PROVISIONS

1.—(1) This paragraph applies where a company which becomes a company to which section 690A applies was, immediately before becoming such a company (referred to in this paragraph as the relevant time), a company to which section 691 applies.

(2) The company need not include the particulars specified in paragraph 2(1)(d) of Schedule 21A in the first return to be delivered under paragraph 1(1) of that Schedule to the registrar for a part of Great Britain if at the relevant time—

- (a) it had an established place of business in that part,
- (b) it had complied with its obligations under section 691(1)(b)(i), and

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- (c) it had no outstanding obligation to make a return to the registrar for that part under subsection (1) of section 692, so far as concerns any alteration of the kind mentioned in subsection (1)(b) of that section,

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

(3) The company shall not be required to deliver the documents mentioned in paragraph 5 of Schedule 21A with the first return to be delivered under paragraph 1(1) of that Schedule to the registrar for a part of Great Britain if at the relevant time—

- (a) it had an established place of business in that part,
- (b) it had delivered the documents mentioned in section 691(1)(a) to the registrar for that part, and
- (c) it had no outstanding obligation to make a return to that registrar under subsection (1) of section 692, so far as concerns any alteration in any of the documents mentioned in paragraph (a) of that subsection,

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

2.—(1) This paragraph applies where a company which becomes a company to which section 691 applies was, immediately before becoming such a company (referred to in this paragraph as the relevant time), a company to which section 690A applies.

(2) The company shall not be required to deliver the documents mentioned in section 691(1)(a) to the registrar for a part of Great Britain if at the relevant time—

- (a) it had a branch in that part,
- (b) the documents mentioned in paragraph 5 of Schedule 21A 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 for that part 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 been previously 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 section 691(1)(b)(i) in the return to be delivered under section 691(1)(b) to the registrar for a part of Great Britain if at the relevant time—

- (a) it had a branch in that part,
- (b) it had complied with its obligations under paragraph 1(1)(a) of Schedule 21A 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 for that part 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) above applies, the reference in section 692(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 21A with any alterations in respect of which a return under paragraph 7(1) of that Schedule has been made.”

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Duty to state name etc.

6. In section 693, the existing provision shall become subsection (1) and after that subsection there shall be inserted—

“(2) Every company to which section 690A applies shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, 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.

(3) Every company to which section 690A 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 shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, 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.

(4) Every company to which section 690A 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 21A, 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 legal form of the company,
- (b) the location of its head office, and
- (c) if applicable, the fact that it is being wound up.”

Regulation in respect of names

7.—(1) Section 694 shall be amended as follows.

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

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

(4) After that subsection there shall be inserted—

“(3A) For the purposes of subsections (1) to (3), the relevant date, in relation to a company, is the date on which it has complied with paragraph 1 of Schedule 21A or section 691(1) or, if there is more than one such date, the first date on which it has complied with that paragraph or that subsection since becoming an overseas company.

(3B) But where the company’s corporate name has changed since the date ascertained in accordance with subsection (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 21A or section 692(2), as the case may be.”

Service of documents

8. After section 694 there shall be inserted—

“Service of documents: companies to which section 690A applies.

694A.—(1) This section applies to any company to which section 690A applies.

(2) Any process or notice required to be served on a company to which this section applies in respect of the carrying on of the business of a branch registered by it under paragraph 1 of Schedule 21A 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 section applies makes default, in respect of a branch, in delivering to the registrar the particulars mentioned in paragraph 3(e) of Schedule 21A, or
- (b) all the persons whose names have, in respect of a branch, been delivered to the registrar as persons falling within paragraph 3(e) of that Schedule are dead or have ceased to reside in Great Britain, 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 Great Britain.

(4) Where a company to which this section applies has more than one branch in Great Britain, 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 section as required to be served in respect of the carrying on of the business of each of its branches.”

9. In section 695(1), after “oversea company” there shall be inserted “to which section 691 applies”.

Registrar to whom documents to be delivered

10. After section 695 there shall be inserted—

“Registrar to whom documents to be delivered: companies to which section 690A applies.

695A.—(1) References to the registrar, in relation to a company to which section 690A applies, (except references in Schedule 21C) shall be construed in accordance with the following provisions.

(2) The documents which a company is required to deliver to the registrar shall be delivered—

- (a) to the registrar for England and Wales, if required to be delivered in respect of a branch in England and Wales, and
- (b) to the registrar for Scotland, if required to be delivered in respect of a branch in Scotland.

(3) If a company closes a branch in a part of Great Britain, it shall forthwith give notice of that fact to the registrar for that part; and from the date on which notice is so given it is no longer obliged to deliver documents to that registrar in respect of that branch.

(4) In subsection (3) above, the reference to closing a branch in either part of Great Britain includes a reference to a branch ceasing to be situated in that part on becoming situated elsewhere.”

11. Section 696 shall be amended as follows:

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- (a) in subsection (1), after “oversea company” there shall be inserted “to which section 691 applies;”
- (b) in subsection (3), after “registrar of companies” there shall be inserted “, in relation to a company to which section 691 applies,”; and
- (c) in subsection (4), after “oversea company” there shall be inserted “to which section 691 applies”.

Penalties for non-compliance

12. In section 697, the following is inserted as subsection (3):

“(3) if an oversea company fails to comply with section 695A or Schedule 21A, 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) Section 698 shall be amended as follows.

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

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

“(2) For the purposes of this Part (except section 699A and Schedule 21C):

- (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
- (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](#))”.

Channel Islands and Isle of Man companies

14. In section 699(1), after “oversea company” there shall be inserted “to which section 691 applies”.