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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Overseas Companies Regulations 2009**

**PART 7**

**TRADING DISCLOSURES**

**Application and interpretation of Part**

- 58.**—(1) This Part applies to an overseas company that carries on business in the United Kingdom.
- (2) In this Part—
- (a) a reference to any type of document is a reference to a document of that type in hard copy, electronic or any other form;
  - (b) in relation to a company, a reference to “its websites” includes a reference to any part of a website relating to that company which that company has caused or authorised to appear.

**Legibility of displays and disclosures**

**59.** Any display or disclosure of information required by this Part must be in characters that can be read with the naked eye.

**Requirement to display name etc at business location**

- 60.**—(1) A company to which this Part applies must display the company’s name and country of incorporation—
- (a) at every location in the United Kingdom at which it carries on business, and
  - (b) at the service address of every person resident in the United Kingdom authorised to accept service of documents on behalf of the company.
- (2) Paragraph (1)(a) does not apply to a location—
- (a) that is primarily used for living accommodation;
  - (b) at which business is carried on by a company of which every director or permanent representative who is an individual is entitled to higher protection from disclosure of their residential address; or
  - (c) at which business is carried on by a company in respect of which a liquidator, administrator or administrative receiver has been appointed if the location is also a place of business of the liquidator, administrator or administrative receiver.
- (3) The reference in paragraph (2)(b) to an individual who is entitled to higher protection from disclosure of their residential address is to an individual in respect of whom the registrar is prohibited from disclosing protected information to a credit reference agency.

### **Manner of display of name etc**

**61.**—(1) The following requirements apply where a company is required by regulation 60 to display its name and country of incorporation at a location in the United Kingdom.

(2) A company must display its name and country of incorporation in such a way so that they may be easily seen by any visitor to the location.

(3) The company's name and country of incorporation must be displayed continuously.

But, if the place of business is shared by six or more companies, this requirement is treated as met if the company's name and country of incorporation are displayed for at least fifteen continuous seconds at least once in every three minutes.

### **Company's name to appear on communications**

**62.** A company to which this Part applies must state the company's name on all—

- (a) its business letters, notices and other official publications;
- (b) its bills of exchange, promissory notes, endorsements and order forms;
- (c) cheques purporting to be signed by or on behalf of the company;
- (d) orders for money, goods or services purporting to be signed by or on behalf of the company;
- (e) its bills of parcels, invoices and other demands for payments, receipts, and letters of credit;
- (f) its applications for licences to carry on a trade or activity;
- (g) other forms of its business correspondence and documentation; and
- (h) its websites,

that are used in carrying on the activities of its business in the United Kingdom.

### **Particulars to appear in business letters, order forms and websites**

**63.**—(1) An overseas company that has a UK establishment in respect of which it has registered particulars under Part 2 must state the particulars required by paragraph (2) on all—

- (a) its business letters,
- (b) its order forms, and
- (c) its websites,

that are used in carrying on the activities of a UK establishment of the company.

(2) The particulars are—

- (a) where the establishment is registered, and
- (b) its registered number.

(3) An overseas company which is not incorporated in an EEA State must state the particulars required by paragraph (4) on all—

- (a) its business letters,
- (b) its order forms, and
- (c) its websites,

that are used in carrying on business in the United Kingdom.

(4) The particulars are—

- (a) the company's country of incorporation,

- (b) the identity of the registry, if any, in which the company is registered in its country of incorporation,
  - (c) if applicable, the number with which the company is registered in that registry,
  - (d) the location of its head office,
  - (e) the legal form of the company,
  - (f) if the liability of the members of the company is limited, the fact that it is a limited company, and
  - (g) if applicable, the fact that the company is being wound up, or is subject to other insolvency proceedings or an arrangement or composition or any analogous proceedings.
- (5) If, in the case of an overseas company which is not incorporated in an EEA State having a share capital, there is reference to the amount of share capital on—
- (a) its business letters,
  - (b) its order forms, or
  - (c) its websites,

the reference must be to paid up share capital.

- (6) Paragraph (4)(g) does not apply to a company required to make disclosures under—
- (a) section 39(1) or 188(a) of, or paragraph 16(1) of Schedule A1 or paragraph 45 of Schedule B1 to, the Insolvency Act 1986(1), or
  - (b) Article 49(1) or 159(1) of, or paragraph 27(1) of Schedule A1 or paragraph 46 of Schedule B1 to, the Insolvency (Northern Ireland) Order 1989(2).

#### **Disclosure of names of directors**

**64.**—(1) Where a business letter of a company to which this Part applies includes the name of any director of the company, other than in the text or as a signatory, the letter must disclose the name of every director of the company.

(2) In the case of a body corporate, or a firm that is a legal person under the law by which it is governed, its corporate or firm name must be given.

#### **Disclosures relating to address for service**

**65.**—(1) A company shall disclose the address of any person resident in the United Kingdom authorised to accept service of documents on behalf of the company to any person it deals with in the course of business who makes a written request to the company for that information.

(2) The company shall send a written response to that person within five working days of the receipt of that request.

#### **Civil consequences of failure to make a required disclosure**

**66.**—(1) This regulation applies to any legal proceedings brought by a company to which this Part applies to enforce a right arising out of a contract made in the course of a business in respect

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(1) 1986 c.45. Schedule A1 was inserted by the Insolvency Act 2000 (c.39), section 1 and Schedule 1 and Schedule B1 was inserted by the Enterprise Act 2002 (c.40), section 248(2) and Schedule 16. Sections 39(1) and 188(a), paragraph 16(1) of Schedule A1 and paragraph 45 of Schedule B1 were amended by the Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897).

(2) S.I. 1989/2405 (N.I. 19). Schedule A1 was inserted by the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6)), Article 3 and Schedule 1 and Schedule B1 was inserted by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), Article 3(2) and Schedule 1. Articles 49(1) and 159(1), paragraph 27(1) of Schedule A1 and paragraph 46 of Schedule B1 were amended by the Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897).

of which, at the time the contract was made, there was a failure to comply with the requirements of this Part.

(2) The proceedings must be dismissed if it is shown that the defendant (in Scotland, the defender)

- (a) has a claim against the claimant (pursuer) arising out of the contract and has been unable to pursue that claim by reason of the latter's failure to comply with the requirements of this Part, or
- (b) has suffered some financial loss in connection with the contract by reason of the claimant's (pursuer's) failure to comply with those requirements,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(3) This regulation does not affect the right of any person to enforce such rights as the person may have against another in any proceedings brought by the other.

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

**67.**—(1) Where a company fails, without reasonable excuse, to comply with any requirement of this Part, an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in 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.

(3) For the purposes of this regulation a shadow director is to be treated as an officer of the company.