

*Draft Order laid before Parliament under sections 1046(8), 1051(5), 1053(6), 1290, 1292(4) and 1294(6) of the Companies Act 2006, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2009 No. 0000**

**COMPANIES**

**The Overseas Companies Regulations 2009**

*Made* - - - - *0000*

*Coming into force* - - *1st October 2009*

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The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1046(1), (2) and (4) to (6), 1047(1), 1049(1) to (3), 1050(3) to (5), 1051(1) to (3), 1053(2) to (5), 1054(1) and (2), 1055, 1056, 1058(1) to (3), 1078(5), 1105(1) and (2), 1140(2), 1292 (1) and (4), and 1294 of the Companies Act 2006(a).

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(a) 2006 c.46.

In accordance with sections 1046(8), 1051(5), 1053(6), 1290, 1292(4) and 1294(6) of that Act, a draft of this instrument was laid before Parliament and approved by each House of Parliament.

## PART 1

### INTRODUCTION

#### **Citation and commencement**

- 1.—(1) These Regulations may be cited as the Overseas Companies Regulations 2009.
- (2) These Regulations come into force on 1st October 2009.

#### **Interpretation**

2. In these Regulations—

“accounting documents”—

- (a) in relation to an overseas company to which Chapter 2 of Part 5 applies (companies required to prepare and disclose accounts under parent law), has the meaning given by regulation 31(2), and
- (b) in relation to a credit or financial institution to which Chapter 2 of Part 6 applies (institutions required to prepare accounts under parent law), has the meaning given by regulation 44(2);

“certified copy” means a copy certified as a correct copy;

“constitution”, in relation to an overseas company, means the charter, statutes, memorandum and articles of association or other instrument constituting or defining the company’s constitution;

“credit or financial institution” means a credit or financial institution to which section 1050 of the Companies Act 2006 applies;

“disclosure”, in relation to a credit or financial institution to which Chapter 2 of Part 6 applies, has the meaning given by regulation 44(2);

“establishment” means—

- (a) a branch within the meaning of the Eleventh Company Law Directive (89/666/EEC)(a), or
- (b) a place of business that is not such a branch,

and “UK establishment” means an establishment in the United Kingdom;

“financial period”—

- (a) in relation to an overseas company to which Chapter 2 of Part 5 applies (companies required to prepare and disclose accounts under parent law), has the meaning given by regulation 31(2), and
- (b) in relation to a credit or financial institution to which Chapter 2 of Part 6 applies (institutions required to prepare accounts under parent law), has the meaning given by regulation 44(2);

“First Company Law Directive” means the First Council Directive on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the

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(a) OJ L 395, 30.12.1989, p. 36.

Treaty, with a view to making such safeguards equivalent throughout the Community (68/151/EEC)(a);

“former name”, in the case of an individual, means a name by which the individual was formerly known for business purposes;

“name”, in the case of an individual, means the person’s Christian name (or other forename) and surname, except that in the case of—

(a) a peer, or

(b) an individual usually known by a title,

the title may be stated instead of the individual’s Christian name (or other forename) and surname or in addition to either or both of them; and

“parent law”—

(a) in relation to an overseas company to which Chapter 2 of Part 5 applies (companies required to prepare and disclose accounts under parent law), has the meaning given by regulation 31(2), and

(b) in relation to a credit or financial institution to which Chapter 2 of Part 6 applies (institutions required to prepare accounts under parent law), has the meaning given by regulation 44(2).

## 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

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(a) OJ L 65, 14.3.1968, p. 8. The Directive has been amended on a number of occasions, but the only amendments relevant to the United Kingdom are those made by Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 (OJ L 221, 4.9.2003, p. 13).

(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.

## **PART 3**

### **ALTERATION IN REGISTERED PARTICULARS**

#### **Application of Part**

**12.** This Part applies to an overseas company that—

- (a) has complied with Part 2 (initial registration of particulars) in respect of one or more UK establishments, and
- (b) has not subsequently given notice under regulation 77 (notice of closure of UK establishment) in respect of all those establishments.

#### **Return of alteration in registered particulars**

**13.**—(1) If an alteration is made in any of the particulars delivered under—

- (a) regulation 6 (particulars of the company), or
- (b) regulation 7 (particulars of the establishment),

the company must deliver to the registrar a return containing details of the alteration.

(2) Where a company has more than one UK establishment a return is required in respect of each UK establishment to which the alteration relates; but a return giving the registered numbers of more than one UK establishment is treated as a return in respect of each of them.

(3) An alteration in any of the particulars specified in regulation 6 (particulars of the company) is treated as relating to every UK establishment of the company.

- (4) The details required of the alteration are—
  - (a) the particular that has been altered,
  - (b) details of the particular as altered, and
  - (c) the date on which the alteration was made.
- (5) The return must also state—
  - (a) the company's name,
  - (b) the company's registered number, and
  - (c) the name (if different from the company's name) and registered number of each UK establishment to which the return relates.
- (6) The period allowed for delivery of the return is—
  - (a) in the case of an alteration of any of the particulars specified in regulation 6 (particulars of the company), 21 days after the date on which notice of the alteration in question could have been received in the United Kingdom in due course of post (if despatched with due diligence);
  - (b) in the case of an alteration of any of the particulars specified in regulation 7 (particulars of the establishment), 21 days after the alteration is made.

#### **Return of alteration in company's constitution**

**14.**—(1) If any alteration is made in the company's constitution the company must deliver to the registrar a return stating—

- (a) that an alteration has been made to the company's constitution, and
- (b) the date on which the alteration was made.

(2) The return must be accompanied by a certified copy of the constitution as altered.

(3) Where a company has more than one UK establishment a return is required in respect of each UK establishment to which the alteration relates; but a return giving the registered numbers of more than one UK establishment is treated as a return in respect of each of them.

(4) An alteration in the company's constitution is treated as relating to a UK establishment only if a copy of the constitution is included in the material registered in respect of that establishment.

(5) The return must also state—

- (a) the company's name,
- (b) the company's registered number, and
- (c) the name (if different from the company's name) and registered number of each UK establishment to which the return relates.

(6) The period allowed for delivery of the return is 21 days after the date on which notice of the alteration in question could have been received in the United Kingdom in due course of post (if despatched with due diligence).

#### **Return of alteration as regards filing of certified copy of constitution**

**15.**—(1) This regulation applies where—

- (a) the company's return under Part 2 in respect of an establishment states that a certified copy of the company's constitution has been delivered in respect of another UK establishment, and
- (b) that statement ceases to be true.

(2) The company must deliver to the registrar a further return in respect of the first-mentioned establishment—

- (a) stating that the previous statement has ceased to be true, and
- (b) either—

- (i) accompanied by a certified copy of the company's constitution, or
- (ii) stating that a copy of the company's constitution is included in the material delivered in respect of another UK establishment (giving the registered number of that establishment).

(3) Where the company has more than one UK establishment a return giving the registered numbers of more than one UK establishment is treated as a return in respect of each of them.

(4) The return must also state—

- (a) the company's name,
- (b) the company's registered number, and
- (c) the name (if different from the company's name) and registered number of each UK establishment to which the return relates.

(5) The period allowed for delivery of the return 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 the United Kingdom in due course of post (if despatched with due diligence).

(6) Where, after a company has made a return under this regulation, the statement mentioned in paragraph (2)(b)(ii) ceases to be true, paragraphs (2) to (5) (and this paragraph) apply again.

### **Return of alteration of manner of compliance with accounting requirements**

16.—(1) This regulation applies where—

- (a) the company's return under Part 2 in respect of a UK establishment states an intention as to whether accounting documents, or accounts, are to be filed in accordance with the provisions of that Part in respect of that establishment or in respect of another UK establishment, and
- (b) that intention changes.

(2) The company must deliver to the registrar a further return in respect of the first-mentioned establishment stating—

- (a) that the intention has changed, and
- (b) either—
  - (i) that it is intended to file accounting documents, or accounts, in respect of the establishment to which the return relates, or
  - (ii) that it is intended to file accounting documents, or accounts, in respect of another UK establishment (giving the registered number of that establishment).

(3) Where the company has more than one UK establishment a return giving the registered numbers of more than one UK establishment is treated as a return in respect of each of them.

(4) The return must also state—

- (a) the company's name,
- (b) the company's registered number, and
- (c) the name (if different from the company's name) and registered number of each UK establishment to which the return relates.

(5) The period allowed for delivery of the return is 21 days after the date on which notice of the fact that the intention stated in the earlier return has changed could have been received in the United Kingdom in due course of post (if despatched with due diligence).

(6) Where, after a company has made a return under this regulation, the intention stated in accordance with paragraph (2)(b)(i) or (ii) changes again, paragraphs (2) to (5) (and this paragraph) apply again.

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

17.—(1) If a company fails to comply with any of the requirements of this Part within the period allowed, 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.

## **PART 4**

### **USUAL RESIDENTIAL ADDRESSES: PROTECTION FROM DISCLOSURE**

#### **Application and interpretation of Part**

18.—(1) This Part applies to an overseas company that has one or more UK establishments in respect of which it has registered particulars under Part 2.

(2) In this Part—

“credit reference agency” means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose;

“director” means a director of a company who is an individual and whose particulars have been delivered to the registrar under regulation 6(1)(d)(i);

“limited liability partnership” means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000(a) or Limited Liability Partnerships Act (Northern Ireland) 2002(b);

“permanent representative” means a permanent representative of a company whose particulars have been delivered to the registrar under regulation 7(1)(f);

“police force” means a police force within the meaning of section 101(1) of the Police Act 1996(c) (interpretation), section 50 of the Police (Scotland) Act 1967(d) (meaning of police area, etc) or section 1 of the Police (Northern Ireland) Act 2000(e) (name of the police in Northern Ireland); and

“specified public authority” means a public authority specified in Schedule 1.

#### **Protected information**

19.—(1) This Part makes provision for protecting, in the case of a director or permanent representative of a company to which this Part applies—

- (a) information as to their usual residential address;
- (b) the information that their service address is their usual residential address.

(2) That information is referred to in this Part as “protected information”.

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(a) 2000 c.12.  
(b) 2002 c.12 (N.I.).  
(c) 1996 c.16.  
(d) 1967 c.77.  
(e) 2000 c.32.

(3) Information does not cease to be protected information on the person ceasing to be a director or permanent representative and references in this Part to a director or permanent representative include, to that extent, a person who was formerly a director or permanent representative.

**Protected information: restriction on use or disclosure by company**

**20.**—(1) A company to which this Part applies must not use or disclose protected information about a director or permanent representative, except—

- (a) for communicating with the individual concerned,
- (b) in order to comply with any requirement in these Regulations as to particulars to be sent to the registrar, or
- (c) in accordance with regulation 26 (disclosure under court order).

(2) Paragraph (1) does not prohibit the use or disclosure of protected information with the consent of the director or permanent representative.

**Protected information: restriction on use or disclosure by registrar**

**21.**—(1) The registrar must omit protected information from the material on the register that is available for inspection where—

- (a) it is contained in a document delivered to the registrar in which such information is required to be stated, and
- (b) in the case of a document having more than one part, it is contained in a part of the document in which such information is required to be stated.

(2) The registrar is not obliged—

- (a) to check other documents or (as the case may be) other parts of the document to ensure the absence of protected information, or
- (b) to omit from the material that is available for public inspection anything registered before 1st October 2009.

(3) The registrar must not use or disclose protected information except—

- (a) as permitted by regulations 22 to 24 (permitted use or disclosure by registrar), or
- (b) in accordance with regulation 26 (disclosure under court order).

**Permitted use of protected information by the registrar: communication**

**22.** The registrar may use protected information for communicating with the director or permanent representative.

**Permitted disclosure by the registrar: disclosure to specified public authority**

**23.**—(1) The registrar may disclose protected information to a specified public authority where the conditions set out in Part 1 of Schedule 2 are satisfied.

(2) A specified public authority must deliver to the registrar such information or evidence as the registrar may direct for the purpose of enabling the registrar to determine in accordance with these Regulations whether to disclose protected information.

(3) The registrar may require such information or evidence to be verified in such manner as the registrar may direct.

(4) The specified public authority must inform the registrar immediately of any change in respect of any statement delivered to the registrar pursuant to Schedule 2 or information or evidence provided for the purpose of enabling the registrar to determine whether to disclose protected information.

### **Permitted disclosure by the registrar: disclosure to credit reference agency**

**24.**—(1) Subject to regulation 25, the registrar may disclose protected information to a credit reference agency where the conditions set out in Part 2 of Schedule 2 are satisfied.

(2) The registrar may rely on a statement delivered by a credit reference agency under paragraph 10 of Schedule 2 as sufficient evidence of the matters stated in it.

(3) Notwithstanding paragraph (2), a credit reference agency shall deliver to the registrar such information or evidence in addition to the statement required by paragraph 10 of Schedule 2 as the registrar may direct for the purpose of enabling the registrar to determine in accordance with these Regulations whether to disclose protected information.

(4) The registrar may require such information or evidence to be verified in such manner as the registrar may direct.

(5) The credit reference agency must inform the registrar immediately of any change in respect of any statement delivered to the registrar pursuant to Schedule 2 or information or evidence provided for the purpose of enabling the registrar to determine whether to disclose protected information.

### **Application to prevent disclosure to credit reference agency**

**25.**—(1) An application may be made to the registrar to prevent the disclosure to a credit reference agency of protected information relating to a director or permanent representative (an “application for higher protection”).

(2) An application for higher protection shall be made and determined in accordance with the provisions of Schedule 3.

(3) The registrar shall refrain from disclosing to a credit reference agency protected information relating to—

- (a) an individual in respect of whom a successful application for higher protection has been made, or
- (b) an individual in respect of whom an application for higher protection has been made where—
  - (i) the registrar has not made a determination, or
  - (ii) the registrar has made a determination rejecting the application and an appeal against that determination has been brought but has not been determined;
- (c) an individual in relation to whom an order was in force under section 723B of the Companies Act 1985<sup>(a)</sup> (confidentiality orders) immediately before 1st October 2009 and who, by virtue of paragraph 21 of Schedule 8 (transitional provisions and savings: individuals with a confidentiality order) is to be treated as having made a successful application for higher protection.

### **Disclosure under court order**

**26.**—(1) The court may make an order for the disclosure of protected information by the company or by the registrar if—

- (a) there is evidence that service of documents at a service address other than the director or permanent representative’s usual residential address is not effective to bring them to the notice of that individual, or
- (b) it is necessary or expedient for the information to be provided in connection with the enforcement of an order or decree of the court,

and the court is otherwise satisfied that it is appropriate to make the order.

(2) An order for disclosure by the registrar is to be made only if the company—

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(a) 1985 c.6. Section 723B was inserted by section 45 of the Criminal Justice and Police Act 2001 (c.16).

- (a) does not have the director or permanent representative's usual residential address,
- (b) no longer has a UK establishment and has given notice of that fact under regulation 77, or
- (c) has been dissolved.

(3) The order may be made on the application of a liquidator, creditor or member of the company, or any other person appearing to the court to have a sufficient interest.

(4) The order must specify the persons to whom, and purposes for which, disclosure is authorised.

**Circumstances in which registrar may put address on the public record**

**27.**—(1) The registrar may put a director's or permanent representative's usual residential address on the public record if—

- (a) communications sent by the registrar to that individual and requiring a response within a specified period of time remain unanswered, or
- (b) there is evidence that service of documents at a service address provided in place of their usual residential address is not effective to bring them to the notice of the director or permanent representative.

(2) The registrar must give notice of the proposal—

- (a) to the director or permanent representative, and
- (b) to the company.

(3) The notice must—

- (a) state the grounds on which it is proposed to put the director's or permanent representative's usual residential address on the public record, and
- (b) specify a period within which representations may be made before that is done.

(4) The notice must be sent to the director or permanent representative at their usual residential address, unless it appears to the registrar that service at that address may be ineffective to bring it to their notice, in which case it may be sent to any service address provided in place of that address.

(5) The registrar must take account of any representations received within the specified period.

(6) What is meant by putting the address on the public record is explained in regulation 28.

**Putting the address on the public record**

**28.**—(1) The registrar, on deciding in accordance with regulation 27 that a director's or permanent representative's usual residential address is to be put on the public record, shall proceed as if a return containing altered particulars had been given under Part 3—

- (a) stating that address as the director's or permanent representative's service address, and
- (b) stating that their usual residential address is the same as their service address.

(2) The registrar must give notice of having done so—

- (a) to the director or permanent representative, and
- (b) to the company.

(3) If the company has been notified by the director or permanent representative of a more recent address as their usual residential address, it must notify the registrar in accordance with regulation 13 (return of alteration in registered particulars).

(4) A director or permanent representative whose usual residential address has been put on the public record by the registrar under this regulation may not register a service address other than their usual residential address for a period of five years from the date of the registrar's decision.

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

- 29.**—(1) If a company fails to comply with regulation 28(3) 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 5 on the standard scale, and
  - (b) for continued contravention, a daily default fine not exceeding one tenth of level 5 on the standard scale.

## **PART 5**

### **DELIVERY OF ACCOUNTING DOCUMENTS: GENERAL**

#### **CHAPTER 1**

##### **Introductory provisions**

### **Application of Part**

**30.** This Part applies to every overseas company that has an establishment in the United Kingdom and is not—

- (a) a credit or financial institution (as to which, see Part 6), or
- (b) a company whose constitution does not limit the liability of its members.

#### **CHAPTER 2**

##### **Companies required to prepare and disclose accounts under parent law**

### **Application and interpretation of Chapter**

- 31.**—(1) This Chapter applies to an overseas company to which this Part applies that—
- (a) is required by its parent law to prepare, have audited and disclose accounts, or
  - (b) is incorporated in an EEA State and is required by its parent law to prepare and disclose accounts, but is not required by its parent law to have its accounts audited or deliver its accounts.
- (2) In relation to a company to which this Chapter applies—
- “accounting documents”, in relation to a financial period of the company, means—
- (a) the accounts of the company for the period, including if it has one or more subsidiaries, any consolidated accounts of the group,
  - (b) any annual report of the directors for the period,
  - (c) any report of the auditors on the accounts mentioned in sub-paragraph (a), and
  - (d) any report of the auditors on the report mentioned in sub-paragraph (b),
- and for this purpose “subsidiaries” and “consolidated group accounts” have the meaning given to them by the company’s parent law;
- “financial period” means a period for which the company is required or permitted by its parent law to prepare accounts;
- “parent law”, in relation to a company, means the law of the country in which the company is incorporated;
- and references to disclose or disclosure are to public disclosure.

### **Duty to file copies of accounting documents disclosed under parent law**

**32.**—(1) The directors of a company to which this Chapter applies must deliver to the registrar a copy of all the accounting documents prepared in relation to a financial period of the company that are disclosed in accordance with its parent law.

(2) Where the company's parent law permits it to discharge its obligation with respect to the disclosure of accounting documents by disclosing documents in a modified form, the directors may discharge their obligation under paragraph (1) by delivering a copy of documents modified as permitted by that law.

(3) Where the company is incorporated in an EEA State—

- (a) the directors are not required to deliver copies of accounting documents under paragraph (1) if the company's parent law does not require it to deliver accounting documents, and
- (b) the directors may discharge their obligation under paragraph (1) by delivering the accounting documents without an auditor's report if the company's parent law does not require it to have its accounts audited.

(4) This regulation does not apply in relation to copies of accounting documents disclosed under the company's parent law before—

- (a) the date on which the company first delivered a return under Part 2 (initial registration of particulars) in respect of a UK establishment, or
- (b) if earlier, the last day of the period allowed for delivery of a return under that Part in respect of its first UK establishment.

(5) The directors required by this regulation to deliver copies of accounting documents must deliver them in respect of each UK establishment that the company has at the end of the financial period to which the documents relate, subject as follows.

(6) Paragraph (5) does not require the delivery of copies of accounting documents in respect of an establishment if—

- (a) a return in respect of that establishment has stated the intention to file copies of accounting documents in respect of another UK establishment (giving the registered number of that establishment), and
- (b) copies of the accounting documents are delivered in respect of that establishment before the end of the period allowed for doing so.

### **Statement of details of parent law and other information**

**33.**—(1) The accounting documents delivered to the registrar under regulation 32 must be accompanied by a statement containing the following information.

(2) The information required is—

- (a) the legislation under which the accounts have been prepared and, if applicable, audited,
- (b) whether those accounts have been prepared in accordance with a set of generally accepted accounting principles and, if so, the name of the organisation or other body which issued those principles,
- (c) whether the accounts have been audited,
- (d) if they have been audited—
  - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
  - (ii) if so, the name of the organisation or other body which issued those standards, and
- (e) if they have not been audited, whether the company is not required to have its accounts audited.

### **Period allowed for filing copies of accounting documents**

34. The period allowed for delivery, in relation to a copy of a document required to be delivered under regulation 32, is three months from the date on which the document is required to be disclosed in accordance with the company's parent law.

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

35.—(1) If any of the requirements of this Chapter (other than that in regulation 33) are not complied with in relation to a company's accounting documents before the end of the period allowed for delivering copies of those documents, every person who immediately before the end of that period was a director of the company commits an offence.

(2) It is a defence for a person charged with such an offence to prove that they took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

## **CHAPTER 3**

### **Companies not required to prepare and disclose accounts under parent law**

#### **Application of Chapter**

36. This Chapter applies to an overseas company to which this Part applies that is not a company to which Chapter 2 of this Part applies.

#### **A company's financial year**

37. Sections 390 to 392 of the Companies Act 2006 apply in relation to a company to which this Chapter applies, modified so that they read as follows—

##### **“390 A company's financial year**

- (1) A company's financial year is determined as follows.
- (2) Its first financial year—
  - (a) begins with the first day of its first accounting reference period, and
  - (b) ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.
- (3) Subsequent financial years—
  - (a) begin with the day immediately following the end of the company's previous financial year, and
  - (b) end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

##### **391 Accounting reference periods and accounting reference date**

- (1) A company's accounting reference periods are determined according to its accounting reference date in each calendar year.
- (2) The accounting reference date of a company is the last day of the month in which the anniversary of its becoming a relevant overseas company falls.

- (3) A company's first accounting reference period is the period of more than six months, but not more than eighteen months, beginning with the date of its becoming a relevant overseas company and ending with its accounting reference date.
- (4) Its subsequent accounting reference periods are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.
- (5) This section has effect subject to the provisions of section 392.

### **392 Alteration of accounting reference date**

- (1) A company may by notice given to the registrar specify a new accounting reference date having effect in relation to—
  - (a) the company's current accounting reference period and subsequent periods, or
  - (b) the company's previous accounting reference period and subsequent periods.

A company's "previous accounting reference period" means the one immediately preceding its current accounting reference period.

- (2) The notice must state whether the current or previous accounting reference period—
  - (a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or
  - (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.
- (3) A notice under this section may not be given in respect of a previous accounting reference period if the period for filing accounts for the financial year determined by reference to that accounting reference period has already expired.
- (4) An accounting reference period may not be extended so as to exceed eighteen months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.

This does not apply where the company is in administration under Part 2 of the Insolvency Act 1986 (c.45) or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).”.

### **Duty to prepare accounts**

**38.** Sections 394 to 397, 399, and 402 to 406 of the Companies Act 2006 apply in relation to a company to which this Chapter applies, modified so that they read as follows—

#### **“394 Duty to prepare individual accounts**

Subject to section 399 (duty to prepare group accounts), the directors of a company must prepare accounts for the company for each of its financial years.

Those accounts are referred to as the company's "individual accounts”.

#### **395 Individual accounts: applicable accounting framework**

- (1) A company's annual accounts may be prepared in accordance with—
  - (a) its parent law ("parent law individual accounts"),
  - (b) international accounting standards ("IAS individual accounts"), or
  - (c) section 396 ("overseas companies individual accounts”).

- (2) A company may only prepare parent law individual accounts if the content of such accounts includes that required by section 396.

**396 Overseas companies individual accounts**

- (1) Overseas companies individual accounts must comprise—
  - (a) a balance sheet as at the last day of the financial year, and
  - (b) a profit and loss account.
- (2) The accounts must comply with the provisions in Schedule 4 to the Overseas Companies Regulations as to—
  - (a) the content of the balance sheet and the profit and loss account, and
  - (b) additional information to be provided by way of notes to the accounts.

**397 IAS individual accounts, parent law individual accounts and overseas company individual accounts**

- (1) Where the directors of a company prepare IAS individual accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with international accounting standards,
  - (b) whether the accounts have been audited, and
  - (c) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (2) Where the directors of a company prepare parent law individual accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with the company's parent law,
  - (b) the legislation under which the accounts have been prepared,
  - (c) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (d) whether the accounts have been audited, and
  - (e) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (3) Where the directors of a company prepare overseas company individual accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with section 396,
  - (b) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (c) whether the accounts have been audited, and
  - (d) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and

- (ii) if so, the name of the organisation or other body which issued those standards.

### **399 Duty to prepare group accounts**

If at the end of a financial year a company is a parent company the directors must, instead of preparing individual accounts for the year, prepare group accounts for the year.

### **402 Exemption from duty to prepare group accounts**

A parent company is exempt from the requirement to prepare group accounts where—

- (a) it has prepared accounts under section 395(1)(a) and its parent law does not require consolidated accounts;
- (b) it has prepared accounts under section 395(1)(b) and in accordance with the international accounting standards it is not required to prepare consolidated accounts;
- (c) it has prepared accounts under section 395(1)(c) and if under section 405 all of the company's subsidiary undertakings could be excluded from the consolidation.

### **402A Holding company accounts to be regarded as group accounts**

Where a company, being a parent company, is required by section 399 to prepare group accounts, and that company is itself the subsidiary of another company ("the holding company"), the group accounts of the holding company are deemed to satisfy the requirements of section 399 to prepare group accounts.

### **403 Group accounts: applicable accounting framework**

- (1) The group accounts of an overseas company may be prepared in accordance with—
  - (a) its parent law ("parent law group accounts"),
  - (b) international accounting standards ("IAS group accounts"), or
  - (c) section 404 ("overseas companies group accounts").
- (2) A company may only prepare parent law group accounts if the content of such accounts includes that required by section 404.

### **404 Overseas companies group accounts**

- (1) Overseas companies group accounts must comprise—
  - (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and
  - (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.
- (2) The accounts must comply with the provisions of Schedule 5 to the Overseas Companies Regulations as to—
  - (a) the content of the consolidated balance sheet and consolidated profit and loss account, and
  - (b) additional information to be provided by way of notes to the accounts.

**405 Overseas companies group accounts: subsidiary undertakings included in the consolidation**

- (1) Where a parent company prepares overseas companies group accounts, all the subsidiary undertakings of the company must be included in the consolidation, subject to the following exceptions.
- (2) A subsidiary undertaking may be excluded from the consolidation if its inclusion is not material (but two or more undertakings may be excluded only if they are not material taken together).
- (3) A subsidiary undertaking may be excluded from consolidation where—
  - (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or
  - (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or
  - (c) the interest of the parent company is held exclusively with a view to subsequent resale.
- (4) The reference in subsection (3)(a) to the rights of the parent company and the reference in subsection (3)(c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of the definition of “parent undertaking” (see section 1162) in the absence of which it would not be the parent company.

**406 IAS group accounts, parent law group accounts and overseas company group accounts**

- (1) Where the directors of a company prepare IAS group accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with international accounting standards,
  - (b) whether the accounts have been audited, and
  - (c) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (2) Where the directors of a company prepare parent law group accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with the company’s parent law,
  - (b) the legislation under which the accounts have been prepared,
  - (c) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (d) whether the accounts have been audited, and
  - (e) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.

- (3) Where the directors of a company prepare overseas company group accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with section 404,
  - (b) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (c) whether the accounts have been audited, and
  - (d) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.”.

### **Approval and signing of accounts**

39. Section 414 of the Companies Act 2006 applies in relation to a company to which this Chapter applies, modified so that it reads as follows—

#### **“414 Approval and signing of accounts**

- (1) A company’s annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.
- (2) The signature must be on the company’s balance sheet.
- (3) If annual accounts are approved that do not comply with the requirements of Part 15 as applied (with modifications) by Part 5 of the Overseas Companies Regulations, every director of the company who—
  - (a) knew that they did not comply, or was reckless as to whether they complied, and
  - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved,commits an offence.
- (4) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

### **Duty to file accounts**

40. Sections 441 and 442 of the Companies Act 2006 apply in relation to a company to which this Chapter applies, modified so that they read as follows—

#### **“441 Duty to file accounts with the registrar**

- (1) The directors of a company must deliver to the registrar for each financial year a copy of the company’s annual accounts and such other reports as are required to be prepared.
- (2) The copy of the balance sheet delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (3) The directors required by this section to deliver accounts must deliver them in respect of each UK establishment that it has at the end of that year, subject as follows.
- (4) Subsection (3) does not require the delivery of accounts in respect of an establishment if—

- (a) a return under the Overseas Companies Regulations in respect of that establishment has stated the intention to file accounts in respect of another UK establishment (giving the registered number of that establishment), and
- (b) the accounts are delivered in respect of that establishment before the end of the period allowed for doing so.

#### **442 Period allowed for filing accounts**

- (1) This section specifies the period allowed for directors of a company to comply with their obligation under section 441 to deliver accounts for a financial year to the registrar.  
This is referred to in sections 392 and 451 as the “period for filing” those accounts.
- (2) The period is thirteen months after the end of the relevant accounting reference period.  
This is subject to the following provisions of this section.
- (3) If the relevant accounting reference period is the company’s first and is a period of more than twelve months, the period allowed is thirteen months from the first anniversary of the company becoming a relevant overseas company.
- (4) If the relevant accounting reference period is treated as shortened by virtue of a notice given under section 392, the period is—
  - (a) that applicable in accordance with the above provisions, or
  - (b) three months from the date of the notice under that section,whichever last expires.
- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice.
- (6) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.”.

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

41. Section 451 of the Companies Act 2006 applies in relation to a company to which this Chapter applies, modified so that it reads as follows—

##### **“451 Default in filing accounts: offences**

- (1) If the requirements of section 441 (duty to file accounts) are not complied with in relation to a company’s accounts for a financial year before the end of the period for filing those accounts, every person who immediately before the end of that period was a director of the company commits an offence.
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.
- (3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.”.

## Supplementary provisions

42. Sections 471, 472 and 474 of the Companies Act 2006 apply in relation to a company to which this Chapter applies, modified so that they read as follows—

### “471 Meaning of “annual accounts”

In this Part a company’s “annual accounts”, in relation to a financial year, means the company’s individual accounts for that year (see section 394) or, if applicable, the company’s group accounts for that year (see section 399).

### 472 Notes to the accounts

- (1) Information required by this Part to be given in notes to a company’s annual accounts may be contained in the accounts or in a separate document annexed to the accounts.
- (2) References in this Part to a company’s annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts.

### 474 Minor definitions

In this Part—

“balance sheet” includes a statement of financial position or other equivalent financial statement;

“group” means a parent undertaking and its subsidiary undertakings;

“IAS Regulation” means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19th July 2002 on the application of international accounting standards<sup>(a)</sup>;

“international accounting standards” means the international accounting standards, within the meaning of Article 2 of the IAS Regulation;

“Overseas Companies Regulations” means the Overseas Companies Regulations 2009 (S.I. 2009/[ ]);

“profit and loss account” includes an income statement or other equivalent financial statement;

“relevant overseas company” means a company to which Chapter 3 of Part 5 of the Overseas Companies Regulations applies,

and references to “this Part” are to be read as references to those sections of Part 15 of the Companies Act 2006 as applied (with modification) by the Overseas Companies Regulations and include Schedules 4 and 5 to those Regulations.”.

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(a) OJ L 243, 11.9.2002, p. 1.

**PART 6**  
**DELIVERY OF ACCOUNTING DOCUMENTS: CREDIT OR FINANCIAL**  
**INSTITUTIONS**

**CHAPTER 1**

Introductory provisions

**Application and interpretation of Part**

**43.**—(1) This Part applies to every credit or financial institution that has a branch in the United Kingdom.

(2) In this Part “branch” means a place of business that forms a legally dependent part of the institution and conducts directly all or some of the operations inherent in its business.

**CHAPTER 2**

Institutions required to prepare accounts under parent law

**Application and interpretation of Chapter**

**44.**—(1) This Chapter applies to a credit or financial institution to which this Part applies that—

- (a) is required by its parent law to prepare and have audited accounts; or
- (b) is incorporated in an EEA State, and is required by its parent law to prepare and disclose accounts, but is not required by its parent law to have its accounts audited or deliver its accounts.

(2) In relation to an institution to which this Chapter applies—

“accounting documents” in relation to a financial period of the institution, means—

- (a) the accounts of the institution for the period, including, if it has one or more subsidiaries, any consolidated accounts of its group,
- (b) any annual report of the directors for the period,
- (c) any report of the auditors on the accounts mentioned in sub-paragraph (a),
- (d) any report of the auditors on the report mentioned in sub-paragraph (b),

and for this purpose “subsidiaries” and “consolidated group accounts” have the meaning given to them by the institution’s parent law;

“director”, in the case of an institution which does not have directors, means persons occupying equivalent offices;

“disclosure” means public disclosure, except where an institution is not required under its parent law, any enactment having effect for the United Kingdom or its constitution to publicly disclose its accounts, in which case it means disclosure of the accounts to the persons for whose information they have been prepared;

“financial period” means a period for which the institution is required or permitted by its parent law to prepare accounts;

“parent law” means the law of the country in which the institution has its head office; and in the case of an institution which does not have directors, references to “directors” shall include the persons occupying equivalent offices.

**Initial filing of copies of accounting documents**

**45.** A credit or financial institution must within one month of becoming an institution to which this Chapter applies deliver to the registrar copies of the latest accounting documents of the institution prepared in accordance with its parent law to have been disclosed before the end of the period allowed for compliance with this regulation, or, if earlier, the date of compliance with it.

### **Filing of copies of subsequent accounting documents**

**46.—**(1) A credit or financial institution to which this Chapter applies must deliver to the registrar copies of all the accounting documents of the institution prepared in accordance with its parent law that are disclosed on or after the end of the period allowed for compliance with regulation 45, or, if earlier, the date on which it complies with that paragraph.

(2) The period allowed for delivery, in relation to a copy of a document required to be delivered under paragraph (1), is three months from the date on which the document is required to be disclosed in accordance with the institution's parent law.

### **Statement of details of parent law and other information**

**47.—**(1) The copies of accounting documents delivered to the registrar under regulation 45 or 46 must be accompanied by a statement containing the following information.

(2) The information required is—

- (a) the legislation under which the accounts have been prepared and, if applicable, audited,
- (b) whether those accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
- (c) whether the accounts have been audited,
- (d) if they have been audited—
  - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
  - (ii) if so, the name of the organisation or other body which issued those standards, and
- (e) if they have not been audited, whether the institution is not required to have its accounts audited.

### **Supplementary provisions as to obligation to file copies of accounting documents**

**48.—**(1) The following provisions apply in relation to the obligations imposed by regulation 45 or 46.

(2) Where the institution is incorporated or otherwise formed in an EEA State—

- (a) it is not required to deliver copies of accounting documents if its parent law does not require it to deliver accounting documents, and
- (b) it may discharge its obligation by delivering accounting documents without an auditor's report if its parent law does not require it to have its accounts audited.

(3) Where the institution's parent law permits it to discharge an obligation with respect to the disclosure of accounting documents by disclosing documents in a modified form, it may discharge its obligation under regulations 45 and 46 by delivering copies of documents modified as permitted by that law.

### **Exception where documents available for inspection**

**49.—**(1) Neither regulation 45 nor regulation 46 requires an institution to deliver copies of accounting documents if at the end of the period allowed for compliance with those regulations—

- (a) it is not required by its parent law to register them,
- (b) they are made available for inspection at each branch of the institution in the United Kingdom, and
- (c) copies of them are available on request at a cost not exceeding the cost of supplying them.

(2) Where—

- (a) by virtue of paragraph (1) an institution is not required to deliver documents under regulation 45 or 46, and

(b) any of the conditions specified in paragraph (1) ceases to be met, the institution must deliver the documents to the registrar for registration within seven days of the condition ceasing to be met.

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

**50.**—(1) If any of the requirements of this Chapter are not complied with before the end of the period allowed for delivery of copies of accounting documents, an offence is committed by every person who immediately before the end of that period was a director of the institution.

(2) It is a defence for a person charged with such an offence to prove that they took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

## **CHAPTER 3**

### **Institutions not required to prepare accounts under parent law**

#### **Application of Chapter**

**51.** This Chapter applies to a credit or financial institution to which this Part applies that is not one to which Chapter 2 of this Part applies.

#### **An institution's financial year**

**52.** Sections 390 to 392 of the Companies Act 2006 apply in relation to an institution to which this Chapter applies, modified so that they read as follows—

##### **“390 An institution's financial year**

- (1) An institution's financial year is determined as follows.
- (2) Its first financial year—
  - (a) begins with the first day of its first accounting reference period, and
  - (b) ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.
- (3) Subsequent financial years—
  - (a) begin with the day immediately following the end of the institution's previous financial year, and
  - (b) end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

##### **391 Accounting reference periods and accounting reference date**

- (1) An institution's accounting reference periods are determined according to its accounting reference date in each calendar year.
- (2) The accounting reference date of an institution is the last day of the month in which the anniversary of its becoming a relevant overseas institution falls.
- (3) An institution's first accounting reference period is the period of more than six months, but not more than eighteen months, beginning with the date of its becoming a relevant overseas institution and ending with its accounting reference date.

- (4) Its subsequent accounting reference periods are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.
- (5) This section has effect subject to the provisions of section 392.

### **392 Alteration of accounting reference date**

- (1) An institution may by notice given to the registrar specify a new accounting reference date having effect in relation to—
  - (a) the institution’s current accounting reference period and subsequent periods, or
  - (b) the institution’s previous accounting reference period and subsequent periods.

An institution’s “previous accounting reference period” means the one immediately preceding its current accounting reference period.

- (2) The notice must state whether the current or previous accounting reference period—
  - (a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or
  - (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.

- (3) A notice under this section may not be given in respect of a previous accounting reference period if the period for filing accounts for the financial year determined by reference to that accounting reference period has already expired.

- (4) An accounting reference period may not be extended so as to exceed eighteen months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.

This does not apply where the institution is in administration under Part 2 of the Insolvency Act 1986 (c.45) or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).”.

### **Duty to prepare accounts**

**53.** Sections 394 to 397, 399, and 402 to 406 of the Companies Act 2006 apply in relation to an institution to which this Chapter applies, modified so that they read as follows—

#### **“394 Duty to prepare individual accounts**

Subject to section 399 (duty to prepare group accounts) the directors of an institution must prepare accounts for the institution for each of its financial years.

Those accounts are referred to as the institution’s “individual accounts”.

#### **395 Individual accounts: applicable accounting framework**

- (1) An institution’s annual accounts may be prepared in accordance with—
  - (a) its parent law (“parent law individual accounts”),
  - (b) international accounting standards (“IAS individual accounts”), or
  - (c) section 396 (“overseas institutions individual accounts”).
- (2) An institution may only prepare parent law individual accounts if the content of such accounts includes that required by section 396.

### **396 Overseas institutions individual accounts**

- (1) Overseas institutions individual accounts must comprise—
  - (a) a balance sheet as at the last day of the financial year, and
  - (b) a profit and loss account.
- (2) The accounts must comply with the provisions in Schedule 6 to the Overseas Companies Regulations as to—
  - (a) the content of the balance sheet and the profit and loss account, and
  - (b) additional information to be provided by way of notes to the accounts.

### **397 IAS individual accounts, parent law individual accounts and overseas institutions individual accounts**

- (1) Where the directors of an institution prepare IAS individual accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with international accounting standards,
  - (b) whether the accounts have been audited, and
  - (c) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (2) Where the directors of an institution prepare parent law individual accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with the institution's parent law,
  - (b) the legislation under which the accounts have been prepared,
  - (c) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (d) whether the accounts have been audited, and
  - (e) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (3) Where the directors of an institution prepare overseas institutions individual accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with section 396,
  - (b) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (c) whether the accounts have been audited, and
  - (d) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.

### **399 Duty to prepare group accounts**

If at the end of a financial year an institution is a parent institution the directors must, instead of preparing individual accounts for the year, prepare group accounts for the year.

### **402 Exemption from duty to prepare group accounts**

A parent institution is exempt from the requirement to prepare group accounts where—

- (a) it has prepared accounts under section 395(1)(a) and its parent law does not require consolidated accounts;
- (b) it has prepared accounts under section 395(1)(b) and in accordance with the international accounting standards it is not required to prepare consolidated accounts;
- (c) it has prepared accounts under section 395(1)(c) and if under section 405 all of the institution's subsidiary undertakings could be excluded from consolidation.

### **402A Holding institution accounts to be regarded as group accounts**

Where an institution, being a parent institution, is required by section 399 to prepare group accounts, and that institution is itself the subsidiary of another institution ("the holding institution"), the group accounts of the holding institution may be deemed to satisfy the requirements of section 399 to prepare group accounts.

### **403 Group accounts: applicable accounting framework**

- (1) The group accounts of an institution may be prepared in accordance with—
  - (a) its parent law ("parent law group accounts"),
  - (b) international accounting standards ("IAS group accounts"), or
  - (c) section 404 ("overseas institutions group accounts").
- (2) An institution may only prepare parent law group accounts if the content of such accounts includes that required by section 404.

### **404 Overseas institutions group accounts**

- (1) Overseas institutions group accounts must comprise—
  - (a) a consolidated balance sheet dealing with the state of affairs of the parent institution and its subsidiary undertakings, and
  - (b) a consolidated profit and loss account dealing with the profit or loss of the parent institution and its subsidiary undertakings.
- (2) The accounts must comply with the provisions of Schedule 7 to the Overseas Companies Regulations as to—
  - (a) the content of the consolidated balance sheet and consolidated profit and loss account, and
  - (b) additional information to be provided by way of notes to the accounts.

### **405 Overseas institutions group accounts: subsidiary undertakings included in the consolidation**

- (1) Where a parent institution prepares overseas institutions group accounts, all the subsidiary undertakings of the institution must be included in the consolidation, subject to the following exceptions.

- (2) A subsidiary undertaking may be excluded from the consolidation if its inclusion is not material (but two or more undertakings may be excluded only if they are not material taken together).
- (3) A subsidiary undertaking may be excluded from consolidation where—
  - (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent institution over the assets or management of that undertaking, or
  - (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or
  - (c) the interest of the parent institution is held exclusively with a view to subsequent resale.
- (4) The reference in subsection (3)(a) to the rights of the parent institution and the reference in subsection (3)(c) to the interest of the parent institution are, respectively, to rights and interests held by or attributed to the institution for the purposes of the definition of “parent undertaking” (see section 1162) in the absence of which it would not be the parent institution.

**406 IAS group accounts, parent law group accounts and overseas institutions group accounts**

- (1) Where the directors of an institution prepare IAS group accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with international accounting standards,
  - (b) whether the accounts have been audited, and
  - (c) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (2) Where the directors of an institution prepare parent law group accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with the institution’s parent law,
  - (b) the legislation under which the accounts have been prepared,
  - (c) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (d) whether the accounts have been audited, and
  - (e) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (3) Where the directors of an institution prepare overseas institutions group accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with section 404,
  - (b) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (c) whether the accounts have been audited, and

- (d) if they have been audited—
  - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
  - (ii) if so, the name of the organisation or other body which issued those standards.”.

### **Approval and signing of accounts**

**54.** Section 414 of the Companies Act 2006 applies in relation to an institution to which this Chapter applies, modified so that it reads as follows—

#### **“414 Approval and signing of accounts**

- (1) An institution’s annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the institution.
- (2) The signature must be on the institution’s balance sheet.
- (3) If annual accounts are approved that do not comply with the requirements of Part 15 as applied (with modifications) by Part 6 of the Overseas Companies Regulations, every director of the institution who—
  - (a) knew that they did not comply, or was reckless as to whether they complied, and
  - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved,commits an offence.
- (4) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

### **Duty to file accounts**

**55.** Sections 441 and 442 of the Companies Act 2006 apply in relation to an institution to which this Chapter applies, modified so that they read as follows—

#### **“441 Duty to file accounts with the registrar**

- (1) The directors of an institution must deliver to the registrar for each financial year a copy of the institution’s annual accounts and such other reports as are required to be prepared.
- (2) The copy of the balance sheet delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.

#### **442 Period allowed for filing accounts**

- (1) This section specifies the period allowed for directors of an institution to comply with their obligation under section 441 to deliver accounts for a financial year to the registrar.  
This is referred to in sections 392 and 451 as the “period for filing” those accounts.
- (2) The period is thirteen months after the end of the relevant accounting reference period.  
This is subject to the following provisions of this section.

- (3) If the relevant accounting reference period is the institution's first and is a period of more than twelve months, the period allowed is thirteen months from the first anniversary of the institution becoming a relevant overseas institution.
- (4) If the relevant accounting reference period is treated as shortened by virtue of a notice given under section 392, the period is—
  - (a) that applicable in accordance with the above provisions, or
  - (b) three months from the date of the notice under that section,
 whichever last expires.
- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to an institution extend that period by such further period as may be specified in the notice.
- (6) In this section "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined."

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

**56.** Section 451 of the Companies Act 2006 applies in relation to an institution to which this Chapter applies, modified so that it reads as follows—

#### **"451 Default in filing accounts: offences**

- (1) If the requirements of section 441 (duty to file accounts) are not complied with in relation to an institution's accounts for a financial year before the end of the period for filing those accounts, every person who immediately before the end of that period was a director of the institution commits an offence.
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.
- (3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale."

### **Supplementary provisions**

**57.** Sections 471, 472 and 474 of the Companies Act 2006 apply in relation to an institution to which this Chapter applies, modified so that they read as follows—

#### **"471 Meaning of "annual accounts"**

In this Part an institution's "annual accounts", in relation to a financial year, means the institution's individual accounts for that year (see section 394) or, if applicable, the institution's group accounts for that year (see section 399).

#### **472 Notes to the accounts**

- (1) Information required by this Part to be given in notes to an institution's annual accounts may be contained in the accounts or in a separate document annexed to the accounts.

- (2) References in this Part to an institution’s annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts.

#### **474 Minor definitions**

In this Part—

“balance sheet” includes a statement of financial position or other equivalent financial statement;

“directors”, in the case of an institution which does not have directors, means persons occupying equivalent offices;

“group” means a parent institution and its subsidiary undertakings;

“IAS Regulation” means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19th July 2002 on the application of international accounting standards;

“international accounting standards” means the international accounting standards, within the meaning of Article 2 of the IAS Regulation;

“Overseas Companies Regulations” means the Overseas Companies Regulations 2009 (S.I. 2009/[ ]);

“parent institution” means an institution that is a parent undertaking (see section 1162 of and Schedule 7 to the Companies Act 2006);

“profit and loss account” includes an income statement or other equivalent financial statement;

“relevant overseas institution” means an institution to which Chapter 3 of Part 6 of the Overseas Companies Regulations applies;

and references to “this Part” are references to those sections of Part 15 of the Companies Act 2006 as applied (with or without modification) by the Overseas Companies Regulations and include Schedules 6 and 7 to those Regulations.”.

## **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(a), 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(b).

### **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.

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(a) 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).

(b) 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).

### **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 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.

## **PART 8**

### **RETURNS IN CASE OF WINDING UP ETC**

#### **Application of Part**

**68.** This Part applies to an overseas company that has one or more UK establishments.

#### **Return in case of winding up**

**69.**—(1) Where a company to which this Part applies is being wound up, it must deliver to the registrar a return containing the following particulars—

(a) the company's name;

- (b) whether the company is being wound up by an order of a court and if so, the name and address of the court and the date of the order;
- (c) if the company is not being so wound up, as a result of what action the winding up has commenced;
- (d) whether the winding up has been instigated by—
  - (i) the company's members,
  - (ii) the company's creditors, or
  - (iii) some other person (stating the person's identity); and
- (e) the date on which the winding up became or will become effective.

(2) The return must be delivered not later than—

- (a) if the winding up began before the company had a UK establishment, one month after the company first opens a UK establishment;
- (b) if the winding up begins when the company has a UK establishment, 14 days after the date on which the winding up begins.

(3) Where the company has more than one UK establishment the obligation to deliver a return under this regulation applies in respect of each of them, but a return giving the registered numbers of more than one UK establishment is regarded as a return in respect of each establishment whose number is given.

(4) No return is required under this regulation in respect of winding up under the Insolvency Act 1986(a) or the Insolvency (Northern Ireland) Order 1989(b).

#### Returns to be made by liquidator

**70.**—(1) A person appointed to be the liquidator of a company to which this Part applies must deliver to the registrar a return containing the following particulars—

- (a) their name and address,
- (b) date of the appointment, and
- (c) a description of such of the person's powers, if any, as are derived otherwise than from the general law or the company's constitution.

(2) The period allowed for delivery of the return required by paragraph (1) is—

- (a) if the liquidator was appointed before the company had a UK establishment (and continues in office at the date of the opening), one month after the company first opens a UK establishment;
- (b) if the liquidator is appointed when the company has a UK establishment, 14 days after the date of the appointment.

(3) The liquidator of a company to which this Part applies must—

- (a) on the termination of the winding up of the company, deliver a return to the registrar stating the name of the company and the date on which the winding up terminated;
- (b) on the company ceasing to be registered in circumstances where ceasing to be registered is an event of legal significance, deliver a return to the registrar stating the name of the company and the date on which it ceased to be registered.

(4) The period allowed for delivery of the return required by paragraph (3)(a) or (b) is 14 days from the date of the event.

(5) Where the company has more than one UK establishment the obligation to deliver a return under this regulation applies in respect of each of them, but a return giving the registered numbers

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(a) 1986 c.45. Section 117(7) (High Court and County Court jurisdiction) was amended by regulations 3 and 6 of the Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002 (S.I. 2002/1240).  
 (b) S.I. 1989/2405 (N.I. 19).

of more than one UK establishment is regarded as a return in respect of each establishment whose number is given.

(6) No return is required under this regulation in respect of a liquidator appointed under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989.

### **Return in case of insolvency proceedings etc (other than winding up)**

**71.**—(1) Where a company to which this Part applies becomes subject to insolvency proceedings or an arrangement or composition or any analogous proceedings (other than proceedings for winding up of the company), it must deliver to the registrar a return containing the following particulars—

- (a) the company's name;
- (b) whether the proceedings are by an order of a court and if so, the name and address of the court and the date of the order;
- (c) if the proceedings are not by an order of a court, as a result of what action the proceedings have been commenced;
- (d) whether the proceedings have been commenced by—
  - (i) the company's members,
  - (ii) the company's creditors, or
  - (iii) some other person (giving the person's identity);
- (e) the date on which the proceedings became or will become effective.

(2) The period allowed for delivery of the return required by paragraph (1) is—

- (a) if the company became subject to the proceedings before it had a UK establishment, one month after the company first opens a UK establishment;
- (b) if the company becomes subject to the proceedings when it has a UK establishment, 14 days from the date on which it becomes subject to the proceedings.

(3) Where a company to which this Part applies ceases to be subject to any of the proceedings referred to in paragraph (1) it must deliver to the registrar a return stating—

- (a) the company's name, and
- (b) the date on which it ceased to be subject to the proceedings.

(4) The period allowed for delivery of the return required by paragraph (3) is 14 days from the date on which it ceases to be subject to the proceedings.

(5) Where the company has more than one UK establishment the obligation to deliver a return under this regulation applies in respect of each of them, but a return giving the registered numbers of more than one UK establishment is regarded as a return in respect of each establishment whose number is given.

(6) No return is required under this regulation in respect of—

- (a) a company's becoming or ceasing to be subject to a voluntary arrangement under Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989, or
- (b) a company's entering administration under Part 2 and Schedule B1 of that Act or becoming or ceasing to be subject to an administration order under Part 3 of that Order.

### **Penalties for non-compliance**

**72.**—(1) If a company fails to comply with regulation 69(1) or 71(1) or (3) within the period allowed for compliance, an offence is committed by—

- (a) the company, and
- (b) every person who immediately before the end of that period was a director of the company.

(2) A liquidator who fails to comply with regulation 70(1) or (3)(a) or (b) within the period allowed for compliance commits an offence.

(3) A person who takes all reasonable steps to secure compliance with the requirements concerned does not commit an offence under this regulation.

(4) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

#### **Notice of appointment of judicial factor**

**73.**—(1) Notice must be given to the registrar of the appointment in relation to a company to which this Part applies of a judicial factor (in Scotland).

(2) The notice must be given by the judicial factor.

(3) The notice must specify an address at which service of documents (including legal process) may be effected on the judicial factor.

(4) Notice of a change in the address for service may be given to the registrar by the judicial factor.

(5) A judicial factor who has notified the registrar of the appointment must also notify the registrar of the termination of the appointment.

#### **Offence of failure to give notice**

**74.**—(1) A judicial factor who fails to give notice of the appointment in accordance with regulation 73 within the period of 14 days after the appointment commits an offence.

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

- (a) a fine not exceeding level 5 on the standard scale, and
- (b) for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

## **PART 9**

### **MISCELLANEOUS PROVISIONS**

#### **Service of documents on director, secretary or permanent representative**

**75.** The positions specified for the purposes of section 1140(2)(b) of the Companies Act 2006 (overseas companies that have registered particulars: persons on whom document may be served at registered address) are—

- (a) director,
- (b) secretary, and
- (c) permanent representative.

#### **Documents subject to Directive disclosure requirements**

**76.** The particulars, returns and other documents specified for the purposes of section 1078(5) of the Companies Act 2006 (overseas companies: documents subject to Directive disclosure requirements) are—

- (a) any return or document delivered under Part 2 (initial registration of particulars);
- (b) any return or document delivered under Part 3 (alterations in registered particulars);
- (c) any document delivered under Part 5 (delivery of accounting documents: general);

- (d) any document delivered under Part 6 (delivery of accounting documents: credit or financial institutions);
- (e) any return delivered under regulation 69 (return in case of winding up) or 70 (returns to be made by liquidator);
- (f) any notice under regulation 77 (duty to give notice of closure of UK establishment).

**Duty to give notice of closure of UK establishment**

77.—(1) If an overseas company closes a UK establishment in respect of which it has registered particulars under Part 2, it must forthwith give notice of that fact to the registrar.

(2) From the date on which notice is given under paragraph (1) the company is no longer obliged to deliver documents to the registrar in respect of that establishment.

(3) If a company fails to comply with paragraph (1) an offence is committed by—

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

(4) A person guilty of an offence under this regulation 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.

## PART 10

### SUPPLEMENTARY PROVISIONS

**Documents that may be drawn up and delivered in a language other than English**

78.—(1) The following documents are specified for the purposes of section 1105(2)(d) of the Companies Act 2006 as documents that may be drawn up and delivered to the registrar in a language other than English, but which must, when delivered to the registrar, be accompanied by a certified translation into English.

(2) The documents are—

- (a) a certified copy of the constitution required to be delivered under regulation 8, 14 or 15 of these Regulations;
- (b) copies of accounting documents required to be delivered under regulation 9, 32, 45 or 46;
- (c) copies of accounts required to be delivered under section 441 as modified by regulations 40 and 55.

**Revocations**

79. The following Regulations are revoked—

- (a) the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992(a),
- (b) the Part XXIII Companies and Credit and Financial Institutions (Branch Disclosure) Regulations (Northern Ireland) 1993(b).

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(a) S.I. 1992/3179.

(b) S.R. (NI) 1993 No 198.

## Transitional provisions and savings

80. Schedule 8 contains transitional provisions and savings.

Date	<i>Name</i> Economic and Business Minister, Department for Business, Enterprise and Regulatory Reform
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## SCHEDULE 1

Regulation 18

### SPECIFIED PUBLIC AUTHORITIES

The Secretary of State;  
any Northern Ireland Department;  
the Scottish Ministers;  
the Welsh Ministers;  
the Treasury;  
the Commissioners for Her Majesty's Revenue and Customs;  
the Bank of England;  
the Director of Public Prosecutions;  
the Director of Public Prosecutions for Northern Ireland;  
the Serious Fraud Office;  
the Secret Intelligence Service;  
the Security Service;  
the Government Communications Headquarters;  
the Financial Services Authority;  
the Competition Commission;  
the Pensions Regulator;  
the Panel on Takeovers and Mergers;  
the Regulator of Community Interest Companies;  
the Registrar of Credit Unions for Northern Ireland;  
the Office of Fair Trading;  
the Office of the Information Commissioner;  
the Charity Commission;  
the Charity Commission for Northern Ireland;

the Office of the Scottish Charity Regulator;  
 the Postal Services Commission;  
 the Gas and Electricity Markets Authority;  
 the Northern Ireland Authority for Utility Regulation;  
 the Gambling Commission;  
 the Serious Organised Crime Agency;  
 the Health and Safety Executive;  
 the Health and Safety Executive for Northern Ireland;  
 the Food Standards Agency;  
 the Gangmasters Licensing Authority;  
 the Security Industry Authority;  
 a local authority within the meaning of section 54(2) of the Companies Act 2006;  
 an official receiver appointed under section 399 of the Insolvency Act 1986(a) (appointment, etc, of official receivers);  
 the Official Receiver for Northern Ireland;  
 the Crown Office and Procurator Fiscal Services;  
 a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(b) (meaning of “act as an insolvency practitioner”) or Article 3 of the Insolvency (Northern Ireland) Order 1989(c) (“act as an insolvency practitioner”);  
 an inspector appointed under Part 14 of the Companies Act 1985(d) (investigation of companies and their affairs: requisition of documents) or Part 15 of the Companies (Northern Ireland) Order 1986(e) or a person appointed under regulation 30 of the Open-Ended Investment Companies Regulations 2001(f) (power to investigate) or regulation 22 of the Open-Ended Investment Companies Regulations (Northern Ireland) 2004(g);  
 any person authorised to exercise powers under section 447 of the Companies Act 1985(h) (power to require documents and information), or section 84 of the Companies Act 1989(i) (exercise of powers by officers, etc) or Article 440 of the Companies (Northern Ireland) Order;  
 any person exercising functions conferred by Part 6 of the Financial Services and Markets Act 2000(j) (official listing) or the competent authority under that Part;  
 a person appointed to make a report under section 166 (reports by skilled persons) of the Financial Services and Markets Act 2000;

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(a) 1986 c.45. Section 399 was amended by section 269 of the Enterprise Act 2002 (c.40).  
 (b) Section 388 was amended by section 4 of the Insolvency Act 2000 (c.39) and by the Insolvency Act (Amendment) (No. 2) Regulations 2002 (S.I. 2002/1240).  
 (c) S.I. 1989/2405 (N.I. 9).  
 (d) 1985 c.6.  
 (e) S.I. 1986/1032 (N.I. 6).  
 (f) S.I. 2001/1228.  
 (g) S.R. (NI) 2004 No 335.  
 (h) Section 447 was substituted by section 21 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27).  
 (i) 1989 c.40.  
 (j) 2000 c.8.

a person appointed to conduct an investigation under section 167 (appointment of persons to carry out general investigations) or 168(3) or (5) (appointment of persons to carry out investigations in particular cases) of the Financial Services and Markets Act 2000(a);

an inspector appointed under section 284 (power to investigate) of the Financial Services and Markets Act 2000;

an overseas regulatory authority within the meaning of section 82(b) of the Companies Act 1989 (request for assistance by overseas regulatory authority);

a police force.

## SCHEDULE 2

Regulations 23 and 24

### CONDITIONS FOR PERMITTED DISCLOSURE

#### PART 1

##### DISCLOSURE TO SPECIFIED PUBLIC AUTHORITY

1. Paragraphs 2 and 3 set out the conditions specified for the disclosure of protected information by the registrar to a specified public authority.

2. The specified public authority has delivered to the registrar a statement that it intends to use the protected information only for the purpose of facilitating the carrying out by that specified public authority of a public function (“the permitted purpose”).

3. Subject to paragraph 4, the specified public authority (“the authority”) has delivered to the registrar a statement that it will, where it supplies a copy of the protected information to a processor for the purpose of processing the information for use in respect of the permitted purpose—

- (a) ensure that the processor is one who carries on business in the European Economic Area;
- (b) require that the information is not transmitted outside the European Economic Area by the processor; and
- (c) require that the processor does not disclose the information except to the authority or an employee of the authority.

4. Paragraph 3 does not apply where the specified public authority is the Secret Intelligence Service, Security Service or Government Communications Headquarters.

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(a) Sections 167 and 168 were amended by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/176).

(b) Section 82 was amended by section 79 of the Criminal Justice Act 1993 (c.36), the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649) and the Prospectus Regulations 2005 (S.I. 2005/1433).

## PART 2

### DISCLOSURE TO CREDIT REFERENCE AGENCY

5. Paragraphs 6 to 10 set out the conditions specified for the disclosure of protected information by the registrar to a credit reference agency.

6. The credit reference agency—

- (a) is carrying on in the United Kingdom or in another EEA State a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose;
- (b) maintains appropriate procedures—
  - (i) to ensure that an independent person can investigate and audit the measures maintained by the agency for the purposes of ensuring the security of any protected information disclosed to that agency; and
  - (ii) for the purposes of ensuring that it complies with its obligations under the Data Protection Act 1998(a), or, where the agency carries on business in a EEA State other than the United Kingdom, with its obligations under legislation implementing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data(b);
- (c) has not been found guilty of an offence under—
  - (i) section 1112 (general false statement offence) of the Companies Act 2006 or section 2 of the Fraud Act 2006(c) (fraud by false representation); or
  - (ii) section 47 (failure to comply with enforcement notice) of the Data Protection Act 1998 in circumstances where it has used the protected information for purposes other than those described in sub-paragraphs (a) to (e) of paragraph 7 below.

7. The credit reference agency has delivered to the registrar a statement that it intends to use that protected information only for the purposes of—

- (a) providing an assessment of the financial standing of a person;
- (b) meeting any obligations contained in the Money Laundering Regulations 2007(d) or any rules made pursuant to section 146 of the Financial Services and Markets Act 2000(e) (money laundering rules), or in any legislation of another EEA State implementing Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing(f);
- (c) conducting conflict of interest checks required or made necessary by any enactment;
- (d) the provision of protected information to—
  - (i) a public authority specified in Schedule 1 which has satisfied the requirements of paragraphs 2 and 3 of this Schedule; or
  - (ii) a credit reference agency which has satisfied the requirements of this Part of this Schedule; or
- (e) conducting checks for the prevention and detection of crime and fraud.

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(a) 1998 c.29.

(b) OJ L 281, 23.11.1995, p. 31.

(c) 2006 c.35.

(d) S.I. 2007/2157.

(e) Section 146 enables the making of rules by the Financial Services Authority in relation to the prevention and detection of money laundering in connection with the carrying on of regulated activities by authorised persons.

(f) OJ L 309, 25.11.2005, p. 15.

8. The credit reference agency has delivered to the registrar a statement that it intends to take delivery of and to use the protected information only in the United Kingdom or in another EEA State.

9. The credit reference agency has delivered to the registrar a statement that it will, where it supplies a copy of the protected information to a processor for the purpose of processing the information for use in respect of the purposes referred to in paragraph 7—

- (a) ensure that the processor is one who carries on business in the European Economic Area;
- (b) require that the information is not transmitted outside the European Economic Area by the processor; and
- (c) require that the processor does not disclose the information except to the credit reference agency or an employee of the credit reference agency.

10. The credit reference agency has delivered to the registrar a statement that it meets the conditions in paragraph 6 above.

## PART 3

### INTERPRETATION OF THIS SCHEDULE

11.—(1) In this Schedule—

“processor” means any person who provides a service which consists of putting information into data form or processing information in data form, and any reference to a processor includes a reference to the processor’s employees; and

“public function” includes—

- (a) any function conferred by or in accordance with any provision contained in any enactment;
- (b) any function conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;
- (c) any similar function conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom; and
- (d) any function exercisable in relation to the investigation of any criminal offence or for the purpose of any criminal proceedings.

(2) In this Schedule any reference to—

- (a) an employee of any person who has access to protected information shall be deemed to include any person working or providing services for the purposes of that person or employed by or on behalf of, or working for, any person who is so working or who is supplying such a service; and
- (b) the disclosure for the purpose of facilitating the carrying out of a public function includes disclosure in relation to, and for the purpose of, any proceedings whether civil, criminal or disciplinary in which the specified public authority engages while carrying out its public functions.

## APPLICATION TO PREVENT DISCLOSURE OF ADDRESS TO CREDIT REFERENCE AGENCY

### Introductory

1. In this Schedule “application for higher protection” has the meaning given by regulation 25(1).

### Application by the individual concerned

2.—(1) An application for higher protection may be made to the registrar by an individual who is, or proposes to become, a director or permanent representative of a company to which Part 4 applies.

(2) The grounds on which an application may be made under this paragraph are that the applicant considers that there is a serious risk that the applicant, or a person who lives with the applicant, will be subjected to violence or intimidation as a result of the activities of at least one of—

- (a) the overseas companies of which the applicant is, or proposes to become, a director or permanent representative;
- (b) the overseas companies of which the applicant was a director or permanent representative or secretary;
- (c) the companies of which the applicant is or has been a director; or
- (d) the limited liability partnerships of which the applicant is or has been a member.

(3) The application must contain—

- (a) a statement of the grounds on which the application is made;
- (b) the name and any former name of the applicant;
- (c) the date of birth of the applicant;
- (d) the usual residential address of the applicant;
- (e) where the registrar has allocated a unique identifier to the applicant, that unique identifier;
- (f) the name and registered number of each overseas company of which the applicant is, or proposes to become, a director or permanent representative; and
- (g) where the grounds of the application are those described in sub-paragraph (2)(b), (c) or (d), the name and registered number of the overseas company, company or limited liability partnership.

(4) The application must be accompanied by evidence which supports the applicant’s statement of the grounds of the application.

(5) The registrar may refer to—

- (a) a police force, or
- (b) any other person whom the registrar considers may be able to assist in answering the question,

any question relating to an assessment of the nature and extent of any risk of violence or intimidation.

(6) The registrar shall—

- (a) determine the application, and

- (b) send notice of the determination to the applicant (to the applicant's usual residential address as stated in the application) within five working days of the determination's being made.

### **Application by company**

3.—(1) An application for higher protection may be made to the registrar by a company to which Part 4 applies on behalf of any of its directors or permanent representatives.

(2) The grounds on which an application under sub-paragraph (1) may be made are that the company considers that there is a serious risk that the director or permanent representative on behalf of whom the application is made, or a person who lives with that director or permanent representative, will be subjected to violence or intimidation as a result of the company's activities.

(3) The application must contain—

- (a) a statement of the grounds on which the application is made;
- (b) the name and registered number of the applicant;
- (c) the name and any former name of each director or permanent representative on behalf of whom the application is made;
- (d) the date of birth of each such director or permanent representative;
- (e) the usual residential address of each such director or permanent representative;
- (f) where the registrar has allocated a unique identifier to any such director or permanent representative, that unique identifier;
- (g) the name and registered number of each UK-registered company or overseas company to which Part 4 applies of which each such director or permanent representative is a director or permanent representative.

(4) The application must be accompanied by evidence which supports the applicant's statement of the grounds of the application.

(5) The registrar may refer to—

- (a) a police force, or
- (b) any other person whom the registrar considers may be able to assist in answering the question,

any question relating to an assessment of the nature and extent of any risk of violence or intimidation.

(6) The registrar shall—

- (a) determine the application, and
- (b) send notice of the determination within five working days of its being made—
  - (i) to the applicant (to its registered office or, if it is not registered, to the address of its principal place of business in its country of incorporation), and
  - (ii) to each director or permanent representative on behalf of whom the application was made (to the usual residential address of the director or permanent representative as stated in the application).

### **Supplementary provisions relating to applications**

4.—(1) For the purpose of paragraphs 2(4) and 3(4) the registrar may direct that additional information or evidence should be delivered to him, what such information or evidence should be and how it should be verified.

(2) The registrar shall not make available for public inspection—

- (a) any application for higher protection; or
- (b) any documents provided in support of that application; or

(c) any representations received in connection with the revocation of a decision under paragraph 7.

(3) For the purpose of determining an application for higher protection the registrar may accept any answer to a question referred in accordance with paragraph 2(5) or 3(5) as providing sufficient evidence of the nature and extent of any risk of violence or intimidation.

(4) In paragraphs 2 and 3 “former name” means a name that has been notified to the registrar under regulation 6(3)(a)(ii) or 7(1)(f)(ii) and the definition in regulation 2 shall not apply.

## **Appeals**

**5.—**(1) An applicant who has received notice under paragraph 2 or 3 that the application has been unsuccessful may appeal to the High Court or, in Scotland, the Court of Session on the grounds that the decision—

- (a) is unlawful;
- (b) is irrational or unreasonable;
- (c) has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

(2) No appeal under this paragraph may be brought unless the leave of the court has been obtained.

(3) An applicant must bring an appeal within 35 days of the date of the notice or, with the court’s permission, after the end of such period, but only if the court is satisfied—

- (a) where permission is sought before the end of that period, that there is good reason for the applicant being unable to bring the appeal in time; or
- (b) where permission is sought after that time, that there was a good reason for the applicant’s failure to bring the appeal in time and for any delay in applying for permission.

(4) The court determining an appeal may—

- (a) dismiss the appeal, or
- (b) quash the decision,

and where the court quashes a decision it may refer the matter to the registrar with a direction to reconsider it and make a determination in accordance with the findings of the court.

## **Duration of favourable decision on application**

**6.** A decision of the registrar in favour of the applicant on an application for higher protection continues to have effect until—

- (a) the registrar is notified by the individual in respect of whom the application was made (or their personal representative) of the wish that the decision should cease to apply, or
- (b) the registrar revokes the decision in accordance with paragraph 7.

## **Revocation of favourable decision on application**

**7.—**(1) The registrar may revoke a decision in favour of the applicant on an application for higher protection if the individual in respect of whom the application was made, or any other person, is found guilty of an offence under section 1112 of the Companies Act 2006 (general false statement offence) committed in purporting to comply with any provision of this Schedule.

(2) The registrar must send to the individual notice of any proposal to revoke a decision under this paragraph.

(3) The notice must—

- (a) inform the individual that they may, within the period of 28 days beginning with the date of the notice, deliver representations to the registrar, and

- (b) state that if representations are not received by the registrar within that period, the decision will be revoked at the expiry of that period.
- (4) If within the period specified in sub-paragraph (3) the individual delivers representations as to why the decision should not be revoked, the registrar must—
  - (a) have regard to the representations in determining whether to revoke the decision, and
  - (b) send notice of the determination to the individual within five working days of its being made.
- (5) Any communication by the registrar under this paragraph in respect of a proposal or determination must be sent to the individual's usual residential address.

## SCHEDULE 4

Regulation 38

### OVERSEAS COMPANIES INDIVIDUAL ACCOUNTS

#### PART 1

#### GENERAL RULES

1. Subject to the following provisions of this Schedule—
  - (a) every balance sheet must show each of the line items required to be included in a balance sheet in accordance with international accounting standards;
  - (b) every profit and loss account must show each of the line items required to be included in a profit and loss account in accordance with international accounting standards;
  - (c) every balance sheet and profit and loss account must clearly indicate in what currency it is prepared.
- 2.—(1) The company's directors must use the same line items in preparing overseas companies individual accounts for each financial year, unless in their opinion there are special reasons for a change.
  - (2) Particulars of any such change must be given in a note to the accounts in which the new line item is first used, and the reasons for the change must be explained.
3. Where the company's directors consider it appropriate, the balance sheet or the profit and loss account may show a combination of line items where they are of a similar nature.
- 4.—(1) Items that are not of a similar nature or function shall be presented separately unless they are not material.
  - (2) For the purpose of this paragraph an item is "material" if it either supplements the information given with respect to any particular item shown in the balance sheet and profit and loss account or is otherwise relevant to assessing the company's state of affairs.
  - (3) Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.
- 5.—(1) Where the nature of the company's business requires it, the company's directors must adapt the line items in the balance sheet or profit and loss account.
  - (2) The directors may combine items if—
    - (a) their individual amounts are not material to assessing the state of affairs or profit and loss of the company for the financial year in question, or

(b) the combination facilitates that assessment.

(3) Where sub-paragraph (2)(b) applies, the individual amounts of any items which have been combined must be disclosed in a note to the accounts.

**6.**—(1) Subject to sub-paragraph (2), the directors may exclude an item in the balance sheet or profit and loss account if there is no amount to be shown for that item for the financial year to which the balance sheet or the profit and loss account relates.

(2) Where an amount can be shown for the item in question for the immediately preceding financial year that amount must be shown under the line item for that item.

**7.**—(1) For every item shown in the balance sheet or profit and loss account the corresponding amount for the immediately preceding financial year must also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount may be adjusted and particulars of the non-comparability and of any adjustment must be disclosed in a note to the accounts.

**8.** Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

**9.** The company's directors must, in determining how amounts are presented within items in the profit and loss account and balance sheet, have regard to the substance of the reported transaction or arrangement, in accordance with generally accepted accounting principles or practice.

## PART 2

### ACCOUNTING PRINCIPLES AND RULES

#### **Preliminary**

**10.**—(1) The amounts to be included in respect of all items shown in a company's accounts must be determined in accordance with the principles set out in this Part.

(2) But if it appears to the company's directors that there are special reasons for departing from any of those principles in preparing the company's accounts in respect of any financial year they may do so, in which case particulars of the departure, the reasons for it and its effect must be given in a note to the accounts.

#### **Accounting principles**

**11.**—(1) The company is presumed to be carrying on business as a going concern.

(2) If the accounts are not prepared on a going concern basis, that fact shall be disclosed, together with the basis on which the accounts are prepared and the reason why the company is not a going concern.

**12.** Accounting policies must be applied consistently within the same accounts and from one financial year to the next.

**13.** All income and charges relating to the financial year to which the accounts relate must be taken into account, without regard to the date of receipt or payment.

**14.** In determining the aggregate amount of any item, the amount of each individual asset or liability that falls to be taken into account must be determined separately.

## PART 3

### NOTES TO THE ACCOUNTS

**15.** Any information required in the case of any company by the following provisions of this Part of this Schedule must (if not given in the company's accounts) be given by way of a note to the accounts.

**16.** The accounting policies adopted by the company in determining the amounts to be included in respect of items shown in the balance sheet and in determining the profit or loss of the company must be stated (including such policies with respect to the depreciation and diminution in value of assets).

**17.** It must be stated whether the accounts have been prepared in accordance with the applied accounting standards and particulars of any material departure from those standards and the reasons for it must be given.

**18.** The company must include in the statement of accounting policies—

- (a) the measurement basis (or bases) used in preparing the accounts; and
- (b) any other accounting policies used that are relevant to an understanding of the accounts.

**19.—(1)** The company must provide information which is relevant to assessing the company's state of affairs.

(2) As a minimum that information must relate, where applicable, to—

- (a) property, plant and equipment;
- (b) investment property;
- (c) intangible assets;
- (d) financial assets;
- (e) biological assets;
- (f) inventories;
- (g) trade and other receivables (and the amount falling due after more than one year must be shown separately for each item included under receivables);
- (h) trade and other payables (and the amount falling due after more than one year must be shown separately for each item included under payables);
- (i) provisions;
- (j) financial liabilities;
- (k) issued capital and reserves;
- (l) finance costs;
- (m) finance income;
- (n) expenses and interest paid to group undertakings (this must be shown separately from expenses and interest paid to other entities);
- (o) income and interest derived from group undertakings (this must be shown separately from income and interest derived from other sources);
- (p) transactions with related parties;
- (q) dividends;
- (r) items described as other, sundry, miscellaneous or equivalent;
- (s) guarantees;
- (t) contingent liabilities;
- (u) commitments;
- (v) other off-balance sheet arrangements;

(w) financial instruments.

20. In this Schedule the expression “line item” has the same meaning as in international accounting standard 1 on the presentation of financial statements<sup>(a)</sup> and includes “items”, “layout items” and other equivalent terms.

## SCHEDULE 5

Regulation 38

### OVERSEAS COMPANIES GROUP ACCOUNTS

#### General rules

1.—(1) Overseas companies group accounts must comply so far as practicable with the provisions of Schedule 4 as if the undertakings included in the consolidation (“the group”) were a single company.

(2) In the case of overseas companies group accounts the minimum information listed in paragraph 19(2) of Schedule 4 must also relate to—

- (a) investments accounted for using the equity method;
- (b) minority interests, presented within equity.

2. The consolidated balance sheet and profit and loss account must incorporate in full the information contained in the individual accounts of the undertakings included in the consolidation, subject to the adjustments authorised or required by the following provisions of this Schedule and to such other adjustments (if any) as may be appropriate in accordance with generally accepted accounting principles or practice.

3.—(1) Where assets and liabilities to be included in the group accounts have been valued or otherwise determined by undertakings according to accounting rules differing from those used for the group accounts, the values or amounts must be adjusted so as to accord with the rules used for the group accounts.

(2) If it appears to the directors of the parent company that there are special reasons for departing from sub-paragraph (1) they may do so, but particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

(3) The adjustments referred to in this paragraph need not be made if they are not material.

4. Amounts that in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

#### Elimination of group transactions

5.—(1) Debts and claims between undertakings included in the consolidation, and income and expenditure relating to transactions between such undertakings, must be eliminated in preparing the group accounts.

(2) Where profits and losses resulting from transactions between undertakings included in the consolidation are included in the book value of assets, they must be eliminated in preparing the group accounts.

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(a) OJ L320, 29.11.2008, p.1.

(3) The elimination required by sub-paragraph (2) may be effected in proportion to the group's interest in the shares of the undertakings.

(4) Sub-paragraphs (1) and (2) need not be complied with if the amounts concerned are not material.

**6.**—(1) The following provisions apply where an undertaking becomes a subsidiary undertaking of the parent company.

(2) That event is referred to in those provisions as an “acquisition”, and references to the “undertaking acquired” are to be construed accordingly.

**7.**—(1) An acquisition must be accounted for—

- (a) by the acquisition method of accounting, or
- (b) if the generally accepted accounting principles under which the accounts have been prepared allow it to be accounted for by another method, by that method.

(2) If an acquisition is accounted for in accordance with sub-paragraph (1)(b), the method used must be disclosed in the notes to the accounts.

### **Minority interests**

**8.**—(1) In the balance sheet there must be shown, as a separate item and under an appropriate line item, the amount of capital and reserves attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent company and its subsidiary undertakings.

(2) In the profit and loss account formats there must be shown, as a separate item and under an appropriate line item—

- (a) the amount of any profit or loss on ordinary activities, and
- (b) the amount of any profit or loss on extraordinary activities,

attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent company and its subsidiary undertakings.

### **Joint ventures**

**9.**—(1) Where an undertaking included in the consolidation manages another undertaking jointly with one or more undertakings not included in the consolidation, that other undertaking (“the joint venture”) may, if it is not—

- (a) a body corporate, or
- (b) a subsidiary undertaking of the parent company,

be dealt with in the group accounts by the method of proportional consolidation.

(2) The provisions of this Schedule relating to the preparation of consolidated accounts apply, with any necessary modifications, to proportional consolidation under this paragraph.

### **Associated undertakings**

**10.** An “associated undertaking” means an undertaking in which an undertaking included in the consolidation has a participating interest and over whose operating and financial policy it exercises a significant influence, and which is not—

- (a) a subsidiary undertaking of the parent company, or
- (b) a joint venture dealt with in accordance with paragraph 9.

**11.**—(1) The interest of an undertaking in an associated undertaking, and the amount of profit or loss attributable to such an interest, shall be shown—

- (a) by the equity method of accounting, or

(b) if the generally accepted accounting principles under which the accounts have been prepared allow it to be accounted for by another method, by that method.

(2) If an interest is accounted for in accordance with sub-paragraph (1)(b), the method used must be disclosed in the notes to the accounts.

(3) Where the associated undertaking is itself a parent undertaking, the net assets and profits or losses to be taken into account are those of the parent and its subsidiary undertakings (after making any consolidation adjustments).

## SCHEDULE 6

Regulation 53

### CREDIT AND FINANCIAL INSTITUTIONS INDIVIDUAL ACCOUNTS

#### PART 1

#### GENERAL RULES

1. Subject to the following provisions of this Schedule—

- (a) every balance sheet must show each of the line items required to be included in a balance sheet in accordance with international accounting standards;
- (b) every profit and loss account must show each of the line items required to be included in a profit and loss account in accordance with international accounting standards;
- (c) every balance sheet and profit and loss account must clearly indicate in what currency it is prepared.

2.—(1) The institution's directors must use the same line items in preparing overseas institutions individual accounts for each financial year, unless in their opinion there are special reasons for a change.

(2) Particulars of any such change must be given in a note to the accounts in which the new line item is first used, and the reasons for the change must be explained.

3. Where the institution's directors consider it appropriate, the balance sheet or the profit and loss account may show a combination of line items where they are of a similar nature.

4.—(1) Items that are not of a similar nature or function shall be presented separately unless they are not material.

(2) For the purpose of this paragraph an item is "material" if it either supplements the information given with respect to any particular item shown in the balance sheet and profit and loss account or is otherwise relevant to assessing the institution's state of affairs.

(3) Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

5.—(1) Where the nature of the institution's business requires it, the directors must adapt the line items in the balance sheet or profit and loss account.

(2) The directors may combine items if—

- (a) their individual amounts are not material to assessing the state of affairs or profit or loss of the institution for the financial year in question, or
- (b) the combination facilitates that assessment.

(3) Where sub-paragraph (2)(b) applies, the individual amounts of any items which have been combined must be disclosed in a note to the accounts.

**6.—**(1) Subject to sub-paragraph (2), the directors may exclude an item in the balance sheet or profit and loss account if there is no amount to be shown for that item for the financial year to which the balance sheet or the profit and loss account relates.

(2) Where an amount can be shown for the item in question for the immediately preceding financial year that amount must be shown under the line item for that item.

**7.—**(1) For every item shown in the balance sheet or profit and loss account the corresponding amount for the immediately preceding financial year must also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount may be adjusted and particulars of the non-comparability and of any adjustment must be disclosed in a note to the accounts.

**8.** Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

**9.** The institution's directors must, in determining how amounts are presented within items in the profit and loss account and balance sheet, have regard to the substance of the reported transaction or arrangement, in accordance with generally accepted accounting principles or practice.

## PART 2

### ACCOUNTING PRINCIPLES AND RULES

**10.—**(1) The amounts to be included in respect of all items shown in an institution's accounts must be determined in accordance with the principles set out in this Part.

(2) But if it appears to the directors that there are special reasons for departing from any of those principles in preparing the accounts in respect of any financial year they may do so, in which case particulars of the departure, the reasons for it and its effect must be given in a note to the accounts.

**11.—**(1) The institution is presumed to be carrying on business as a going concern.

(2) If the accounts are not prepared on a going concern basis, that fact shall be disclosed, together with the basis on which the accounts are prepared and the reason why the institution is not a going concern.

**12.** Accounting policies must be applied consistently within the same accounts and from one financial year to the next.

**13.** All income and charges relating to the financial year to which the accounts relate must be taken into account, without regard to the date of receipt or payment.

**14.** In determining the aggregate amount of any item, the amount of each individual asset or liability that falls to be taken into account must be determined separately.

## PART 3

### NOTES TO THE ACCOUNTS

**15.** Any information required in the case of any institution by the following provisions of this Part of this Schedule must (if not given in the accounts) be given by way of a note to the accounts.

**16.** The accounting policies adopted by the institution in determining the amounts to be included in respect of items shown in the balance sheet and in determining the profit or loss of the institution must be stated (including such policies with respect to the depreciation and diminution in value of assets).

17. It must be stated whether the accounts have been prepared in accordance with the applied accounting standards and particulars of any material departure from those standards and the reasons for it must be given.

18. The institution must include in the statement of accounting policies—

- (a) the measurement basis (or bases) used in preparing the accounts; and
- (b) any other accounting policies used that are relevant to an understanding of the accounts.

19.—(1) The institution must provide information which is relevant to assessing the institution's state of affairs.

(2) As a minimum that information must relate, where applicable, to—

- (a) property, plant and equipment;
- (b) investment property;
- (c) intangible assets;
- (d) financial assets;
- (e) biological assets;
- (f) inventories;
- (g) trade and other receivables (and the amount falling due after more than one year must be shown separately for each item included under receivables);
- (h) trade and other payables (and the amount falling due after more than one year must be shown separately for each item included under payables);
- (i) provisions;
- (j) financial liabilities;
- (k) issued capital and reserves;
- (l) finance costs;
- (m) finance income;
- (n) expenses and interest paid to group undertakings (this must be shown separately from expenses and interest paid to other entities);
- (o) income and interest derived from group undertakings (this must be shown separately from income and interest derived from other sources);
- (p) transactions with related parties;
- (q) dividends;
- (r) items described as other, sundry, miscellaneous or equivalent;
- (s) guarantees;
- (t) contingent liabilities;
- (u) commitments;
- (v) other off balance sheet arrangements;
- (w) financial instruments.

20. In this Schedule the expression “line item” has the same meaning as in international accounting standard 1 on the presentation of financial statements<sup>(a)</sup> and includes “items”, “layout items” and other equivalent terms.

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(a) OJ L320, 29.11.2008, p.1.

## CREDIT AND FINANCIAL INSTITUTIONS GROUP ACCOUNTS

**General rules**

1.—(1) Overseas institutions group accounts must comply so far as practicable with the provisions of Schedule 6 as if the undertakings included in the consolidation (“the group”) were a single institution.

(2) In the case of group accounts the minimum information listed in paragraph 19(2) of Schedule 6 must also relate to—

- (a) investments accounted for using the equity method;
- (b) minority interests, presented within equity.

2. The consolidated balance sheet and profit and loss account must incorporate in full the information contained in the individual accounts of the undertakings included in the consolidation, subject to the adjustments authorised or required by the following provisions of this Schedule and to such other adjustments (if any) as may be appropriate in accordance with generally accepted accounting principles or practice.

3.—(1) Where assets and liabilities to be included in the group accounts have been valued or otherwise determined by undertakings according to accounting rules differing from those used for the group accounts, the values or amounts must be adjusted so as to accord with the rules used for the group accounts.

(2) If it appears to the directors of the parent institution that there are special reasons for departing from sub-paragraph (1) they may do so, but particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

(3) The adjustments referred to in this paragraph need not be made if they are not material.

4. Amounts that in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

**Elimination of group transactions**

5.—(1) Debts and claims between undertakings included in the consolidation, and income and expenditure relating to transactions between such undertakings, must be eliminated in preparing the group accounts.

(2) Where profits and losses resulting from transactions between undertakings included in the consolidation are included in the book value of assets, they must be eliminated in preparing the group accounts.

(3) The elimination required by sub-paragraph (2) may be effected in proportion to the group’s interest in the shares of the undertakings.

(4) Sub-paragraphs (1) and (2) need not be complied with if the amounts concerned are not material.

6.—(1) The following provisions apply where an undertaking becomes a subsidiary undertaking of the parent institution.

(2) That event is referred to in those provisions as an “acquisition”, and references to the “undertaking acquired” are to be construed accordingly.

7.—(1) An acquisition must be accounted for—

- (a) by the acquisition method of accounting, or
- (b) if the generally accepted accounting principles under which the accounts have been prepared allow it to be accounted for by another method, by that method.

(2) If an acquisition is accounted for in accordance with sub-paragraph (1)(b), the method used must be disclosed in the notes to the accounts.

### **Minority interests**

**8.**—(1) In the balance sheet there must be shown, as a separate item and under an appropriate line item, the amount of capital and reserves attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent institution and its subsidiary undertakings.

(2) In the profit and loss account formats there must be shown, as a separate item and under an appropriate line item—

- (a) the amount of any profit or loss on ordinary activities, and
- (b) the amount of any profit or loss on extraordinary activities,

attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent institution and its subsidiary undertakings.

### **Joint ventures**

**9.**—(1) Where an undertaking included in the consolidation manages another undertaking jointly with one or more undertakings not included in the consolidation, that other undertaking (“the joint venture”) may, if it is not—

- (a) a body corporate, or
- (b) a subsidiary undertaking of the parent institution,

be dealt with in the group accounts by the method of proportional consolidation.

(2) The provisions of this Schedule relating to the preparation of consolidated accounts apply, with any necessary modifications, to proportional consolidation under this paragraph.

### **Associated undertakings**

**10.** An “associated undertaking” means an undertaking in which an undertaking included in the consolidation has a participating interest and over whose operating and financial policy it exercises a significant influence, and which is not—

- (a) a subsidiary undertaking of the parent institution, or
- (b) a joint venture dealt with in accordance with paragraph 9.

**11.**—(1) The interest of an undertaking in an associated undertaking, and the amount of profit or loss attributable to such an interest, shall be shown—

- (a) by the equity method of accounting, or
- (b) if the generally accepted accounting principles under which the accounts have been prepared allow it to be accounted for by another method, by that method.

(2) If an interest is accounted for in accordance with sub-paragraph (1)(b), the method used must be disclosed in the notes to the accounts.

(3) Where the associated undertaking is itself a parent undertaking, the net assets and profits or losses to be taken into account are those of the parent and its subsidiary undertakings (after making any consolidation adjustments).

## TRANSITIONAL PROVISIONS AND SAVINGS

## PART 1

## INTRODUCTION

**Interpretation****1.** In this Schedule—

“the 1985 Act” means the Companies Act 1985;

“the 1986 Order” means the Companies (Northern Ireland) Order 1986;

“the register” means the records kept by the registrar relating to overseas companies;

“the registrar” means the registrar of companies for England and Wales, Scotland or Northern Ireland.

**Registration of returns and documents delivered before 1st October 2009**

**2.**—(1) The provisions of Chapter 1 of Part 23 of the 1985 Act or Chapter 1 of Part 23 of the 1986 Order (overseas companies: registration etc) continue to have effect on and after 1st October 2009 so far as necessary for the purposes of the registration of returns or other documents delivered to the registrar before that date.

(2) References in this Schedule to matters appearing on the register, or to documents held by the registrar, immediately before 1st October 2009 include any such return or other document that is subsequently registered.

## PART 2

## INITIAL REGISTRATION OF PARTICULARS

**Company with existing registered branch****3.**—(1) An overseas company that immediately before 1st October 2009—

(a) had a branch in the United Kingdom, and

(b) had complied in respect of that branch with the requirements of paragraph 1(1) to (3) of Schedule 21A to the 1985 Act or paragraph 1(1) to (3) of Schedule 20A to the 1986 Order,

is treated as having complied in respect of that branch with the requirements of Part 2 of these Regulations (initial registration of particulars).

(2) Paragraphs 4 to 8 supplement sub-paragraph (1) and provide for particular things done under the 1985 Act or 1986 Order to be treated as if done under the corresponding provision of these Regulations.

**4.**—(1) The following particulars about the company, as they appeared on the register immediately before 1st October 2009, are treated as if delivered and registered under regulation 6(1)—

(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) the list of its directors and secretaries, together with—
  - (i) with respect to each director, the particulars specified in sub-paragraph (3), and
  - (ii) with respect to each secretary, the particulars specified in sub-paragraph (4);
- (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;
- (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 following particulars about the company, as they appeared on the register immediately before 1st October 2009, are treated as delivered and registered under regulation 6(2)—

- (a) the law under which the company is incorporated;
- (b) in the case of—
  - (i) a company to which Chapter 2 of Part 5 of these Regulations applies (companies required to prepare and disclose accounts under parent law), or
  - (ii) a company to which Chapter 2 of Part 6 of these Regulations applies (institutions required to prepare 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 paragraph 6)—
  - (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 sub-paragraph (1)(d)(i) (directors) are—

- (a) in the case of an individual—
  - (i) name,
  - (ii) any former name,
  - (iii) service address,
  - (iv) usual residential address,
  - (v) nationality,
  - (vi) business occupation (if any), and
  - (vii) 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, and
  - (ii) registered or principal office.

(4) The particulars referred to in sub-paragraph (1)(d)(ii) (secretaries) are—

- (a) in the case of an individual—
  - (i) name,
  - (ii) any former name, and
  - (iii) 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, and
  - (ii) registered or principal office.

(5) For the purposes of sub-paragraph (1)(f) the statement whether the company is an institution to which section 699A of the 1985 Act or Article 648A of the 1986 Order applies is treated as a statement whether the company is a credit or financial institution as defined for the purposes of these Regulations.

(6) For the purposes of sub-paragraphs (3)(a)(iii) and (4)(a)(iii) the individual's usual residential address as registered immediately before 1st October 2009 is treated as a service address.

5.—(1) The following particulars about the branch, as they appeared on the register immediately before 1st October 2009, are treated as if delivered and registered under regulation 7—

- (a) the address of the branch,
- (b) the date on which it was opened,
- (c) the business carried on at it,
- (d) the name of the branch (if different from the company's name),
- (e) the 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 branch, or a statement that there is no such person,
- (f) the list of persons authorised to represent the company as a permanent representative of the company in respect of the branch, together with the following particulars of each such person—
  - (i) name,
  - (ii) any former name,
  - (iii) service address, and
  - (iv) usual residential address,
- (g) the extent of the authority of any person falling within paragraph (f), including whether that person is authorised to act alone or jointly, and
- (h) if a person falling within paragraph (f) is not authorised to act alone, the name of any person with whom they are authorised to act.

(2) For the purposes of sub-paragraph (1)(e) and (f)(iii), the individual's usual residential address as registered immediately before 1st October 2009 is treated as a service address.

6.—(1) The certified copy of the company's constitution delivered under paragraph 5(a) of Schedule 21A to the 1985 Act or paragraph 5(a) of Schedule 20A to the 1986 Order, as held by the registrar immediately before 1st October 2009, is treated as if delivered and registered under regulation 8(1).

(2) Any certified translation delivered under paragraph 5(b) of Schedule 21A to that Act or paragraph 5(b) of Schedule 20A to that Order, as held by the registrar immediately before 1st October 2009, is treated as if delivered under regulation 8(1) in accordance with regulation 78 of these Regulations.

(3) The following, as they appeared on the register immediately before 1st October 2009, are treated as if delivered and registered under regulation 8(2)—

- (a) any statement under paragraph 1(3)(b) of Schedule 21A to the 1985 Act or paragraph 1(3)(b) of Schedule 20A to the 1986 Order to the effect that a copy of the company's constitution is included in the material delivered in respect of another branch;
- (b) the registered number of that other branch.

7.—(1) Copies of accounting documents delivered under paragraph 6(1)(a) of Schedule 21A to the 1985 Act or paragraph 6(1)(a) of Schedule 20A to the 1986 Order, if not superseded by the delivery of copies of accounting documents for a subsequent financial period, are treated as if delivered and registered under regulation 9(1).

(2) A certified translation of any such document delivered under paragraph 6(1)(b) of Schedule 21A to that Act or paragraph 6(1)(b) of Schedule 20A to that Order is treated as if delivered under regulation 9(1) in accordance with regulation 78.

(3) The following, as they appeared on the register immediately before 1st October 2009, are treated as if delivered and registered under regulation 9(2)—

- (a) any statement under paragraph 1(3)(b) of Schedule 21A to the 1985 Act or paragraph 1(3)(b) of Schedule 20A to the 1986 Order to the effect that copies of accounting documents are included in the material registered in respect of another branch;
- (b) the registered number of that other branch.

**8.**—(1) If the company is one to which Chapter 2 of Part 5 of these Regulations applies (companies required to prepare and disclose accounts under parent law), the following, as they appeared on the register immediately before 1st October 2009, are treated as if delivered and registered under regulation 10—

- (a) the statement in the return in respect of a branch whether it is intended to file copies of accounting documents in respect of that branch or in respect of another branch;
- (b) if the return states that it is intended to file copies of accounting documents in respect of another branch, the registered number of that branch.

(2) The statement of intention with respect to the registration of documents under paragraph 2(2) or 10(1) of Schedule 21D to the 1985 Act or paragraph 2(2) or 10(1) of Schedule 20D to the 1986 Order shall be read as a statement of intention with respect to the filing of copies of accounting documents under Chapter 2 of Part 5 of these Regulations.

#### **Company with existing registered place of business**

**9.**—(1) An overseas company that immediately before 1st October 2009—

- (a) had a place of business (other than a branch) in the United Kingdom, and
- (b) had delivered to the registrar in respect of that place of business the documents required by section 691(1) of the 1985 Act or Article 641(1) of the 1986 Order,

is treated as having complied in respect of that place of business with the requirements of Part 2 of these Regulations (initial registration of particulars).

(2) Paragraphs 10 to 12 below supplement sub-paragraph (1) and provide for particular things done under the 1985 Act or 1986 Order to be treated as if done under the corresponding provision of these Regulations.

**10.**—(1) The following particulars about the company, as they appeared on the register immediately before 1st October 2009, are treated as if delivered and registered under regulation 6(1)—

- (a) the company's name;
- (b) the list of the company's directors and secretaries together with—
  - (i) with respect to each director, the particulars specified in sub-paragraph (2), and
  - (ii) with respect to each secretary, the particulars specified in sub-paragraph (3).

(2) The particulars referred to in sub-paragraph (1)(b)(i) (directors) are—

- (a) in the case of an individual—
  - (i) name,
  - (ii) any former name,
  - (iii) service address,
  - (iv) usual residential address,
  - (v) nationality,
  - (vi) business occupation (if any), and
  - (vii) 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) its corporate or firm name, and
- (ii) its registered or principal office.

(3) The particulars referred to in sub-paragraph (2)(b)(ii) (secretaries) are—

(a) in the case of an individual—

- (i) name,
- (ii) any former name, and
- (iii) 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) its corporate or firm name, and
- (ii) its registered or principal office.

(4) For the purposes of sub-paragraph (1)(a) the company's name is treated as registered immediately before 1st October 2009 if it then appeared in the index maintained under section 714 of the 1985 Act or Article 663 of the 1986 Order (the registrar's index of company and corporate names).

(5) For the purposes of sub-paragraphs (2)(a)(iii) and (3)(a)(iii), the individual's usual residential address as registered immediately before 1st October 2009 is treated as a service address.

**11.—**(1) The following particulars about the place of business, as they appeared on the register immediately before 1st October 2009, are treated as registered under regulation 7—

- (a) the date on which the place of business was opened, and
- (b) the name and service address of one or more persons resident in the United Kingdom authorised to accept service of documents on behalf of the company.

(2) For the purposes of sub-paragraph (1)(b) an individual's usual residential address as registered immediately before 1st October 2009 is treated as a service address.

**12.—**(1) The certified copy of the company's constitution delivered under section 691(1)(a) of the 1985 Act or Article 641(1)(a) of the 1986 Order, as held by the registrar immediately before 1st October 2009, is treated as if delivered and registered under regulation 8(1).

(2) Any certified translation delivered under section 691(1)(a) of the 1985 Act or Article 641(1)(a) of the 1986 Order, as held by the registrar immediately before 1st October 2009, is treated as if delivered under regulation 8(1) in accordance with regulation 78.

### **Duty to deliver transitional return**

**13.—**(1) Where paragraph 3 or 9 applies in relation to an establishment, the company must deliver to the registrar not later than 31st March 2010 a transitional return in respect of the establishment.

(2) The return must contain such of the particulars specified in regulation 6 (particulars of the company) as are not treated as registered in respect of the establishment by virtue of paragraph 3 or 9.

Regulation 5(2) (reference to particulars included in those delivered in respect of another UK establishment) applies in relation to the return required by this paragraph as in relation to a return under Part 2 of these Regulations.

(3) The return must contain such of the particulars specified in regulation 7 (particulars of the establishment) as are not treated as registered by virtue of paragraph 5 or 11.

(4) If the company is one to which Part 5 of these Regulations applies (delivery of accounting documents: general), the return must—

- (a) make any statement required by regulation 10 (statement as to future manner of compliance with accounting requirements) that is not treated as made by virtue of paragraph 8, and
- (b) if the company states that it intends to file copies of accounting documents, or accounts, in respect of another UK establishment, give the registered number of that establishment.

(5) If the company is one to which Chapter 2 of Part 5 of these Regulations applies (companies required to prepare and disclose accounts under parent law), the return must, as regards any document specified in regulation 9(1) (copies of accounting documents) that is not treated as delivered by virtue of paragraph 7, either—

- (a) be accompanied by the document, or
- (b) make the statement specified in regulation 9(3) (statement that document included in those delivered in respect of another UK establishment).

(6) Sub-paragraph (5) does not apply if the company is required by its parent law to prepare and disclose accounts made up to a date before 1st October 2010.

### **Company with existing unregistered branch or place of business**

14.—(1) An overseas company that immediately before 1st October 2009—

- (a) had a branch in the United Kingdom in respect of which it had not complied with paragraph 1(1) to (3) of Schedule 21A to the 1985 Act or paragraph 1(1) to (3) of Schedule 20A to the 1986 Order,
- (b) had a place of business (other than a branch) in the United Kingdom in respect of which it had not complied with section 691 of the 1985 Act or Article 641 of the 1986 Order,

is treated for the purposes of these Regulations as if it had opened that establishment on 1st October 2009.

(2) This does not affect any liability under section 697(1) or (3) of the 1985 Act or Article 647(1) or (3) of the 1986 Order (penalties for non-compliance) in respect of failure to comply with the provisions mentioned in sub-paragraph (1)(a) or (b) before 1st October 2009.

## **PART 3**

### **ALTERATIONS TO REGISTERED PARTICULARS**

#### **Alteration to registered particulars**

15.—(1) The provisions of the 1985 Act or 1986 Order relating to alterations of registered particulars continue to apply in relation to an alteration made before 1st October 2009.

(2) Those provisions are—

- (a) in the case of a company subject to section 690A of the 1985 Act or Article 640A of the 1986 Order (branch registration under the 11th Company Law Directive), paragraph 7(1)(b) of Schedule 21A to that Act or paragraph 7(1)(b) of Schedule 20A to that Order;
- (b) in the case of a company to which section 691 of the 1985 Act or Article 641 of the 1986 Order (registration of place of business other than branch) applies, section 692(1)(b) and (c) and (2) of that Act or Article 642(1)(b) and (c) and (2) of that Order.

(3) If a return giving the particulars of the alteration required by the 1985 Act or 1986 Order is duly delivered on or after 1st October 2009, Part 2 of this Schedule (initial registration of particulars) applies as if it had been delivered and registered immediately before that date.

(4) Regulation 13 (return of alteration in registered particulars) applies to alterations made on or after 1st October 2009.

### **Alteration in company's constitution**

**16.**—(1) The provisions of the 1985 Act or 1986 Order relating to alterations of the company's constitution continue to apply in relation to an alteration made before 1st October 2009.

(2) Those provisions are—

- (a) in the case of a company subject to section 690A of the 1985 Act or Article 640A of the 1986 Order (branch registration under the 11th Company Law Directive), paragraph 7(1)(a) of Schedule 21A to that Act or paragraph 7(1)(a) of Schedule 20A to that Order;
- (b) in the case of a company to which section 691 of the 1985 Act or Article 641 of the 1986 Order (registration of place of business other than branch) applies, section 692(1)(a) of that Act or Article 642(1)(a) of that Order.

(3) If the following are duly delivered on or after 1st October 2009—

- (a) a return giving the particulars of the alteration required by the 1985 Act or 1986 Order,
- (b) a certified copy of the company's constitution as altered, and
- (c) any certified translation required by the 1985 Act or 1986 Order,

Part 2 of this Schedule (initial registration of particulars) applies as if they had been delivered and registered immediately before that date.

(4) Regulation 14 (return of alteration in company's constitution) applies to alterations made on or after 1st October 2009.

### **Alteration as regards filing of certified copy of constitution**

**17.**—(1) The provisions of paragraph 8 of Schedule 21A to the 1985 Act or paragraph 8 of Schedule 20A to the 1986 Order (statement that certified copy of company's constitution included in the material registered in respect of another UK branch ceasing to be true) continue to apply where that statement ceased to be true before 1st October 2009.

(2) If there is duly delivered on or after 1st October 2009—

- (a) a certified copy of the company's constitution and any certified translation required by the 1985 Act or 1986 Order, or
- (b) a return stating that those documents are included in the material registered in respect of another UK branch (giving the registered number of that other branch),

Part 2 of this Schedule (initial registration of particulars) applies as if they had been delivered and registered immediately before that date.

(3) Regulation 15 (return of alteration as regards filing of certified copy of constitution) applies where that statement ceases to be true on or after 1st October 2009.

## **PART 4**

### **RESIDENTIAL ADDRESSES: PROTECTION FROM DISCLOSURE**

#### **Existing registered residential address treated as service address**

**18.**—(1) This paragraph applies where an address that immediately before 1st October 2009 appeared on the register as the usual residential address of a director, secretary or permanent representative of an overseas company is to be treated, on and after that date, as a service address.

(2) Any return of an alteration in any such residential address of a director, secretary or permanent representative of an overseas company occurring before 1st October 2009 that is received by the registrar on or after that date is treated as being or, as the case may be, including notification of a change of service address.

(3) The registrar may make such entries in the register as appear to be appropriate having regard to any provision to the effect mentioned in sub-paragraph (1) and to sub-paragraph (2).

(4) Where a residential address appears in the register as a service address by virtue of this paragraph, that address is not protected information for the purposes of Part 4 of these Regulations.

#### **Residential addresses: protection from disclosure**

**19.**—(1) Regulation 21 (duty of registrar to omit protected information from material available for inspection) does not apply—

- (a) to material delivered to the registrar before 1st October 2009, or
- (b) to material delivered to the registrar on or after 1st October 2009 by virtue of paragraph 18 (return of alteration occurring before that date).

(2) In regulation 21(2)(b) (exclusion of material registered before commencement) the reference to things registered before 1st October 2009 is treated as including anything registered as a result of a return in accordance with paragraph 18(2) (return on or after 1st October 2009 of alteration occurring before that date).

(3) Sub-paragraphs (1) and (2) have effect subject to paragraph 21 below (which provides for the continued protection of information formerly protected by a confidentiality order).

**20.** In determining under regulation 27 whether to put a director or permanent representative's usual residential address on the public record, the registrar may take into account only—

- (a) communications sent by the registrar on or after 1st October 2009, and
- (b) evidence as to the effectiveness of service coming to the registrar's attention on or after that date.

#### **Continuation of protection afforded by confidentiality orders under the 1985 Act**

**21.**—(1) A director or permanent representative of an overseas company in relation to whom a confidentiality order under section 723B of the 1985 Act was in force immediately before 1st October 2009 is treated on and after that date as if—

- (a) they had made an application under regulation 25 (application to prevent disclosure of protected information by registrar to credit reference agency), and
- (b) that application had been determined by the registrar in their favour.

(2) The provisions of Schedule 3 to these Regulations relating to decisions of the registrar in favour of an applicant (in particular, as to the duration and revocation of such a decision) apply accordingly.

(3) As those provisions apply in accordance with this paragraph any reference to an offence under section 1112 of the Companies Act 2006 (general false statement offence) shall be read as a reference to an offence under regulations under section 723E(1)(a) of the 1985 Act in relation to the application for the confidentiality order.

#### **Effect of pending application for confidentiality order**

**22.**—(1) Section 723B(3) to (8) of the 1985 Act (application for confidentiality order) continue to apply in relation to an application for a confidentiality order made before 1st October 2009.

(2) Paragraph 21 (continuation of protection afforded by confidentiality orders) applies to an individual in respect of whom such an application has been made, and has not been determined or withdrawn, as to an individual in relation to whom a confidentiality order was in force immediately before that date.

(3) If the application is dismissed or withdrawn, that paragraph ceases to apply.

(4) If the application is successful that paragraph continues to apply as in the case of an individual in relation to whom a confidentiality order was in force immediately before 1st October 2009.

## PART 5

### DELIVERY OF ACCOUNTING DOCUMENTS: GENERAL

#### **Companies required to prepare and disclose accounts under parent law**

**23.**—(1) This paragraph applies to companies to which Chapter 2 of Part 5 of these Regulations applies (companies required to prepare and disclose accounts under parent law).

(2) The provisions of that Chapter apply in relation to accounting documents first disclosed in accordance with the company's parent law on or after 1st October 2009.

(3) In the case of a company to which section 699AA of the 1985 Act or Article 648AA of the 1986 Order applied (company to which 11th Company Law Directive applies), the provisions of Part 1 of Schedule 21D to that Act or Part 1 of Schedule 20D to that Order continue to apply in relation to accounting documents first disclosed in accordance with the company's parent law before 1st October 2009.

(4) In the case of a company to which section 700 of the 1985 Act or Article 649 of the 1986 Order applied (company with place of business but not branch in UK), the relevant provisions of that Act or Order continue to apply in relation to the period between—

- (a) the end of the last financial year of the company beginning before 1st October 2009, and
- (b) the beginning of the first financial period of the company in respect of which accounting documents are first disclosed in accordance with the company's parent law on or after that date,

and that period shall be treated as a financial year of the company (if it would otherwise not be) for the purposes of those provisions.

(5) For the purposes of sub-paragraph (4)—

- (a) the relevant provisions of the 1985 Act are sections 700 to 703 and the provisions applied by those sections;
- (b) the relevant provisions of the 1986 Order are Articles 649 to 652 and the provisions applied by those Articles.

#### **Companies not required to prepare and disclose accounts under parent law**

**24.**—(1) This paragraph applies to companies to which Chapter 3 of Part 5 of these Regulations applies (companies not required to prepare and disclose accounts under parent law).

(2) The provisions of that Chapter apply in relation to accounting documents for financial years of the company beginning on or after 1st October 2009.

(3) The provisions of—

- (a) Part 2 of Schedule 21D to the 1985 Act or Part 2 of Schedule 20D to the 1986 Order (companies to which the 11th Company Law Directive applies), or
- (b) sections 700 to 702 of that Act or Articles 649 to 652 of that Order (companies with place of business but not branch in the UK),

continue to apply in relation to accounting documents for financial years beginning before that date.

## PART 6

### DELIVERY OF ACCOUNTING DOCUMENTS: CREDIT OR FINANCIAL INSTITUTIONS

#### **Institutions required to prepare accounts under parent law**

**25.**—(1) This paragraph applies to credit or financial institutions to which Chapter 2 of Part 6 of these Regulations applies (institutions required to prepare accounts under parent law).

(2) An institution that immediately before 1st October 2009—

(a) had a branch in the United Kingdom, and

(b) had complied with the requirements of paragraph 2 of Schedule 21C to the 1985 Act or paragraph 2 of Schedule 20C to the 1986 Order,

is treated as having complied with the requirements of regulation 45 (initial filing of copies of accounting documents).

(3) Regulation 46 (filing of copies of subsequent accounting documents) applies in relation to accounting documents first disclosed in accordance with the company's parent law on or after 1st October 2009.

(4) Paragraph 3 of Schedule 21C to the 1985 Act or paragraph 3 of Schedule 20D to the 1986 Order continues to apply in relation to accounting documents first disclosed in accordance with the company's parent law before 1st October 2009.

#### **Institutions not require to prepare accounts under parent law**

**26.**—(1) This paragraph applies to credit or financial institutions to which Chapter 3 of Part 6 of these Regulations applies (institutions not required to prepare accounts under parent law).

(2) The provisions of that Chapter apply in relation to accounting documents for financial years of the institution beginning on or after 1st October 2009.

(3) The provisions of Part 2 of Schedule 21C to the 1985 Act or Part 2 of Schedule 20C to the 1986 Order continue to apply in relation to accounting documents for financial years beginning before that date.

## PART 7

### RETURNS IN CASE OF WINDING UP ETC

#### **Return in case of winding up**

**27.**—(1) Regulation 69 (return in case of winding up) applies in relation to a winding up beginning on or after 1st October 2009.

(2) Section 703P(1) of the 1985 Act or Article 652P(1) of the 1986 Order (particulars to be delivered: winding up) continues to apply in relation to a winding up beginning before that date.

#### **Returns to be made by liquidator**

**28.**—(1) Regulation 70(1) (return of appointment of liquidator) applies in relation to an appointment made on or after 1st October 2009.

(2) Section 703P(3) of the 1985 Act or Article 652P(3) of the 1986 Order continues to apply in relation to an appointment made before that date.

(3) Regulation 70(3) (return by liquidator where winding up terminates or company ceases to be registered) applies where the event concerned occurs on or after 1st October 2009.

(4) Section 703P(5) of the 1985 Act or Article 652P(5) of the 1986 Order continues to apply where the event occurred before that date.

**Return in case of insolvency proceedings etc (other than winding up)**

**29.**—(1) Regulation 71 (return of insolvency proceedings etc) applies where the proceedings in question begin on or after 1st October 2009.

(2) Section 703Q of the 1985 Act or Article 652Q of the 1986 Order continues to apply where the proceedings began before that date.

**Notice of appointment of judicial factor**

**30.** Regulation 73 (notice of appointment of judicial factor) applies in relation to appointments made on or after 1st October 2009.

## PART 8

### SUPPLEMENTARY PROVISIONS

**Saving for provisions as to form or manner in which documents to be delivered**

**31.**—(1) Any saving in this Schedule for the effect of a provision of the 1985 Act or 1986 Order requiring the use of a prescribed form extends to the form and the power under which it is prescribed.

(2) Any saving in this Schedule for the effect of a provision of the 1985 Act or 1986 Order requiring a document to be delivered to the registrar extends to section 707B of the 1985 Act or Article 656B of the 1986 Order (delivery to the registrar using electronic communications) so far as relating to the provision in question and the delivery of documents under it.

## 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 Oversea 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/>.

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