

2009 No. 2437

COMPANIES

**The Companies (Companies Authorised to Register)
Regulations 2009**

<i>Made</i> - - - -	<i>4th September 2009</i>
<i>Laid before Parliament</i>	<i>8th September 2009</i>
<i>Coming into force</i> - -	<i>1st October 2009</i>

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The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation(b) and measures relating to employment rights and duties(c).

In exercise of the powers conferred by section 2(2) of that Act and sections 1042 and 1292(1) of the Companies Act 2006(d), the Secretary of State makes the following Regulations.

PART 1
INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Companies (Companies Authorised to Register) Regulations 2009.

(2) These Regulations come into force on 1st October 2009.

(a) 1972 c.68. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

(b) S.I. 2007/193.

(c) S.I. 2000/738.

(d) 2006 c.46.

PART 2

REGISTRATION REQUIREMENTS

Introduction

Application of this Part

2.—(1) The provisions of this Part apply in relation to the registration of a company under the Companies Act 2006 in pursuance of section 1040 of that Act (companies not formed under companies legislation but authorised to register).

(2) In this Part—

- (a) references to a company are to a company authorised to register under that section (see subsections (1), (4) and (5) of that section); and
- (b) references to registration are to registration under that section.

Agreement of members to registration

Agreement of members to registration

3.—(1) A company must not register without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed) at a general meeting summoned for the purpose.

(2) Where a company not having the liability of its members limited by an enactment or letters patent wishes to register as a limited company, the majority required to assent as required by paragraph (1) is not less than 75% of the members present in person or by proxy at the meeting.

(3) In computing any majority under this regulation when a poll is demanded, regard is to be had to the number of votes to which each member is entitled according to the company's regulations.

Requirements for registration

Registration documents

4.—(1) An application for registration of the company must be delivered to the registrar together with the documents required by this regulation and a statement of compliance.

(2) The application for registration must state—

- (a) the name with which the company is proposed to be registered,
- (b) whether the company's registered office is to be situated in England and Wales (or in Wales), in Scotland or in Northern Ireland,
- (c) whether the liability of the members of the company is to be limited, and if so whether it is to be limited by shares or by guarantee, and
- (d) whether the company is to be a private or a public company.

(3) The application must contain—

- (a) in the case of a joint stock company, a statement of capital and initial shareholdings (see regulation 5);
- (b) in the case of a company that is to be limited by guarantee, a statement of guarantee (see regulation 6);
- (c) a statement of the company's proposed officers (see regulation 7).

(4) The application must contain—

- (a) a statement of the intended address of the company’s registered office, and
 - (b) a copy of any enactment, royal charter, letters patent, deed of settlement, contract of partnership or other instrument constituting or regulating the company.
- (5) The application must be delivered—
- (a) to the registrar of companies for England and Wales, if the registered office of the company is to be situated in England and Wales (or in Wales);
 - (b) to the registrar of companies for Scotland, if the registered office of the company is to be situated in Scotland;
 - (c) to the registrar of companies for Northern Ireland, if the registered office of the company is to be situated in Northern Ireland.

Statement of capital and initial shareholdings

5.—(1) The statement of capital and initial shareholdings required to be delivered in the case of a joint stock company must comply with this regulation.

- (2) It must state—
- (a) the total number of shares of the company that on a date specified in the statement (“the reference date”) are held by members of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares—
 - (i) the particulars specified in paragraph (4) below of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) The reference date must be not more than 28 days before the date of the application for registration.
- (4) The particulars referred to in paragraph (2)(c)(i) are—
- (a) particulars of any voting rights attached to the shares, including rights that arise only in certain circumstances;
 - (b) particulars of any rights attached to the shares, as respects dividends, to participate in a distribution;
 - (c) particulars of any rights attached to the shares, as respects capital, to participate in a distribution (including on winding up); and
 - (d) whether the shares are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.
- (5) The statement of capital and initial shareholdings must also state—
- (a) the names and service addresses of all persons who on the reference date were members of the company, and
 - (b) with respect to each member of the company—
 - (i) the number, nominal value (of each share) and class of shares held by that member on that date, and
 - (ii) the amount to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (6) For the purposes of paragraph (5)(a) a person’s “name” means his 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 his Christian name (or other forename) and surname or in addition to either or both of them.

(7) Where a member of the company holds shares of more than one class, the information required under paragraph (5)(b)(i) is required for each class.

Statement of guarantee

6.—(1) Where the company proposes to register as a company limited by guarantee, the members' assent to its being registered (see regulation 3) must be accompanied by a resolution containing a statement of guarantee.

(2) The statement of guarantee required is a statement that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company such amount as may be required for—

- (a) payment of the debts and liabilities of the company contracted before he ceases to be a member,
- (b) payment of the costs, charges and expenses of winding up, and
- (c) adjustment of the rights of the contributories among themselves,

not exceeding a specified amount.

(3) The statement of guarantee required to be delivered to the registrar in the case of a company that is to be limited by guarantee is a copy of the resolution containing the statement of guarantee.

Statement of proposed officers

7.—(1) The statement of the company's proposed officers required to be delivered to the registrar must contain the required particulars of—

- (a) the person who is, or persons who are, to be a director or directors of the company on registration;
- (b) in the case of a company that is to be a private company, any person who is (or any persons who are) to be the secretary (or joint secretaries) of the company on registration;
- (c) in the case of a company that is to be a public company, the person who is (or the persons who are) to be the secretary (or joint secretaries) of the company on registration;
- (d) a consent by each person named as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.

(2) The required particulars are the particulars that will be required to be stated—

- (a) in the case of a director, in the company's register of directors and register of residential addresses (see sections 162 to 165 of the Companies Act 2006);
- (b) in the case of a secretary, in the company's register of secretaries (see sections 277 to 278 of that Act).

(3) Regulation 7 of the Companies (Disclosure of Address) Regulations 2009^(a) (disclosure of protected information: application under section 243 on behalf of proposed director) applies as if—

- (a) references to a subscriber to the memorandum of association were to any member of the company, and
- (b) references to the proposed company were to the company proposing to register.

Statement of compliance

8.—(1) The statement of compliance required to be delivered to the registrar is a statement that the requirements of this Part as to registration have been complied with.

(a) S.I. 2009/214.

- (2) The registrar may accept the statement of compliance as sufficient evidence of compliance.

Registration as a public company

Registration as a public company

- 9.—(1) A joint stock company may be registered as a public company limited by shares if—
- (a) the following conditions are met, and
 - (b) the application for registration is accompanied by the documents specified in paragraph (4) below.
- (2) The conditions are—
- (a) that the requirements of section 91 of the Companies Act 2006 are met as regards its share capital;
 - (b) the requirements of section 92 of that Act are met as regards its net assets; and
 - (c) if section 93 of that Act applies (recent allotment of shares for non-cash consideration), that the requirements of that section are met.
- (3) Sections 91 to 93 apply for this purpose as in the case of a private company applying to be re-registered under section 90 of the Companies Act 2006 (re-registration of private company as public), but as if any reference to the special resolution required by section 90 were to the joint stock company's resolution that it be a public company.
- (4) The following documents must be delivered to the registrar together with the application for registration (as well as those required by regulation 4)—
- (a) a copy of the resolution that the company be a public company;
 - (b) a copy of the balance sheet and other documents referred to in section 92(1); and
 - (c) if section 93 applies (recent allotment of shares for non-cash consideration), a copy of the valuation report (if any) under subsection (2)(a) of that section.
- (5) The statement of compliance required to be delivered with the application is a statement that the requirements of this Part as to registration as a public company have been complied with.
- (6) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be registered as a public company.

Change of name on registration

Change of name on registration

- 10.—(1) Where the name of a company seeking registration is a name by which it is precluded from being registered by any provision of the Companies Acts, either—
- (a) because it is directly prohibited from being registered with that name, or
 - (b) because the Secretary of State would not approve the company being registered with that name,
- the company may change its name with effect from the date on which it is registered.
- (2) A change of name under this regulation requires the like assent of the company's members as is required by regulation 3 for registration.

Registration

Registration

11. If the registrar is satisfied that the requirements of this Part as to registration are complied with, the registrar shall register the documents delivered to him.

Issue of certificate of incorporation

12.—(1) On the registration of a company, the registrar shall give a certificate that the company is incorporated.

(2) The certificate must state—

- (a) the name and registered number of the company,
- (b) the date of its incorporation,
- (c) whether it is a limited or unlimited company, and if it is limited whether it is limited by shares or limited by guarantee,
- (d) whether it is a private or a public company, and
- (e) whether the company's registered office is situated in England and Wales (or in Wales), in Scotland or in Northern Ireland.

(3) The certificate must be signed by the registrar or authenticated by the registrar's official seal.

(4) The certificate is conclusive evidence that the requirements of this Part as to registration have been complied with and that the company is duly registered under the Companies Act 2006.

(5) Section 1064 of that Act (public notice of certificate of incorporation) applies to a certificate of incorporation issued under this regulation.

PART 3

EFFECT OF REGISTRATION

Introduction

Interpretation of this Part

13. In this Part—

“registration” means registration under the Companies Act 2006 in pursuance of section 1040 of that Act; and

“instrument” includes a deed of settlement, a contract of partnership or letters patent.

Transfer of property, rights and liabilities

Transfer of property, rights and liabilities

14.—(1) All property belonging to or vested in the company at the date of its registration passes to and vests in the company on registration for all the estate and interest of the company in the property.

(2) Registration does not affect the company's rights or liabilities in respect of any debt or obligation incurred, or contract entered into, by, to, with or on behalf of the company before registration.

Pending legal proceedings

15.—(1) All actions and other legal proceedings which at the time of the company's registration are pending by or against the company, or the public officer or any member of it, may be continued in the same manner as if the registration had not taken place.

(2) Execution shall not issue against the effects of any individual member of the company on any judgment, decree or order obtained in such an action or proceeding; but in the event of the company's property and effects being insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

The company's constitution

Constitutional provisions to have effect as if contained in articles of association

16.—(1) All provisions contained in any enactment or other instrument constituting or regulating the company are deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much of them as would, if the company had been formed and registered under the Companies Act 2006, be contained in registered articles of association.

(2) The provisions brought in by paragraph (1) include, in the case of a company registered as a company limited by guarantee, those of the resolution declaring the amount of the guarantee.

Power to substitute articles of association

17. A registered company may by special resolution alter the form of its constitution by substituting articles of association for any instrument constituting or regulating the company, other than an enactment, a royal charter or letters patent.

Application of the Companies Acts

General application of the Companies Acts

18.—(1) Subject to the following regulations, the provisions of the Companies Acts apply to a registered company, and to its members and contributories, in the same manner as if it had been formed and registered under the Companies Act 2006.

(2) References in this and the following regulations to the Companies Acts—

- (a) include the Companies (Cross-Border Mergers) Regulations 2007(a), and
- (b) do not include Part 2 of the Companies (Audit, Investigation and Community Enterprise) Act 2004(b) (community interest companies).

Exclusions

19.—(1) The model articles of association prescribed by the Secretary of State under section 19 of the Companies Act 2006 do not apply unless adopted by special resolution.

(2) Provisions relating to the numbering of shares do not apply to a joint stock company whose shares are not numbered.

Restrictions on power to alter company's constitution

20.—(1) Subject to the provisions of this Part, the company does not have power—

- (a) to alter any provision contained in an enactment relating to the company,
- (b) without the consent of the Secretary of State, to alter any provision contained in letters patent relating to the company.

(2) The company does not have power to alter any provision contained in a royal charter or letters patent with respect to the company's objects.

(3) Where by virtue of paragraph (1) or (2) a company does not have power to alter a provision, it does not have power to ratify acts of the directors in contravention of the provision.

(a) S.I. 2007/2974, as amended by S.I. 2008/583.

(b) 2004 c.27.

Provisions as to capital structure

- 21.** The provisions with respect to—
- (a) the re-registration of an unlimited company as limited,
 - (b) the powers of an unlimited company on re-registration as a limited company to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up, and
 - (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in that event,

apply notwithstanding any provisions contained in any enactment, royal charter or other instrument constituting or regulating the company.

Saving for other powers to alter company's constitution

22.—(1) Except as mentioned in paragraph (2), none of the provisions of this Part or of the Companies Acts affects any power of altering the company's constitution or regulations vested in the company by virtue of any enactment or other instrument constituting or regulating it.

(2) Paragraph (1) does not apply to the power of the court under section 996(2) of the Companies Act 2006 (protection of members against unfair prejudice: power of court to regulate the conduct of the company's affairs).

Status of banking company in Scotland

23. A banking company in Scotland that is incorporated by virtue of registration under these Regulations is deemed a bank incorporated, constituted or established by or under an Act of Parliament.

PART 4

TRANSITIONAL PROVISIONS AND SAVINGS

Transitional provisions and savings

24.—(1) Part 2 of these Regulations has effect in accordance with paragraph 93 of Schedule 2 to the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008(a) (by virtue of which it applies to applications made on or after 1st October 2009).

(2) The transitional provisions and savings relating to the coming into force of the provisions of the Companies Acts in relation to companies as defined in section 1 of the Companies Act 2006(b) (companies formed and registered under that Act) also have effect in relation to those provisions as applied by Part 3 of these Regulations.

(3) In any such transitional provision or saving as applied by paragraph (2), a reference to a commencement date other than 1st October 2009 shall be read as a reference to 1st October 2009.

4th September 2009

Davies of Abersoch
Minister for Trade, Investment and Business
Department for Business, Innovation and Skills

(a) S.I. 2008/2860 (C.126).

(b) Relevant transitional provisions or savings have been made by S.I. 2006/3428 (C.132), 2007/1093 (C.49), 2007/2194 (C.84), 2007/2607 (C.101), 2007/3495 (C.150), 2008/674 (C.26), 2008/1886 (C.83), and 2008/2860 (C.126).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the registration of a company on an application under section 1040 of the Companies Act 2006 (c.46) (“the Act”) (i.e. a company not formed under the Companies Acts but authorised to register). These Regulations replace the provisions made by sections 681 to 682, and 684 to 690 of and Schedule 21 to the Companies Act 1985 (c.6) and Articles 630 to 631, and 633 to 639 of and Schedule 20 to the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6)).

Part 2 of the Regulations deals with the process of an application to register under section 1040 of the Act. Regulation 3 provides that a company may not register without the assent of a specified majority of its members. Regulation 4 sets out the requirements for the application to the registrar of companies to register under section 1040, and specifies the documents that need to be provided with that application. Regulations 5, 6, 7 and 8 make detailed provision regarding the statements which must accompany the application, namely, a statement of capital and initial shareholdings (in the case of an application by a joint stock company), a statement of guarantee (in the case of a company wishing to register as company limited by guarantee), a statement of proposed officers and a statement of compliance. Regulation 9 provides for the requirements that are to be met for a joint stock company to register as a public company. Regulation 10 sets out the circumstances in which a company may change its name on registration. Regulations 11 and 12 require the registrar to register a company which complies with the registration requirements in these Regulations and to issue the company with a certificate of incorporation.

Part 3 of the Regulations provides for the effects of registration under the Act. Regulation 18 provides that, on registration, the provisions of the Companies Acts apply to the company which has made the application to register under section 1040 as if it had been formed and registered under the Act. Regulations 14, 15 and 21 make provision for the transfer of property, rights and liabilities and the effect on pending legal proceedings, and the capital structure of the company. Regulations 16, 17, 19, 20, and 22 make provision for matters relating to the company’s constitution.

The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974) implement Directive 2005/56/EC on cross-border mergers of limited liability companies (O.J. L310, 25.11.2005 p.1).

An Impact Assessment has not been prepared for these Regulations as they have no impact on the cost of business, charities or voluntary bodies.

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STATUTORY INSTRUMENTS

2009 No. 2437

COMPANIES

The Companies (Companies Authorised to Register)
Regulations 2009

£5.50