

OVERSEAS COMPANIES IN GREAT BRITAIN

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OVERSEAS COMPANIES IN GREAT BRITAIN

1. Introduction

It has long been a requirement that 'overseas companies' establishing a 'place of business in Great Britain' have to comply with certain registration requirements at the companies' registry either in England and Wales or in Scotland. Since 1993, there has been a separate set of provisions which apply where an overseas company opens a 'branch' in Great Britain (i.e. England and Wales and Scotland).

In order to determine, therefore, which set of regulations apply to a foreign company setting up business in Great Britain, it is now necessary to consider whether the company has opened a branch, or established a place of business. (Note that where a foreign company has created a presence in some way which is neither a branch nor a place of business, no registration requirements will apply).

This guide sets out to explain the distinction between a branch and place of business and to provide an outline of the registration and related requirements for all overseas companies that establish such place of business or branch in Great Britain. However, this is only an outline guide, and further legal advice should be sought where necessary.

NB: An extensive review of company law has taken place over the last few years. With respect to overseas companies one of the main conclusions to come out of the consultation process was that there should be a single regime applying to all overseas companies, and that due to relevant EU law, this should generally reflect the existing provisions applying to non-UK companies setting up a branch in the UK. The Companies Act 2006 has now been passed. The Act widens the definition of 'overseas company', and provides for regulations that will be able to specify the connection with the UK that gives rise to the various disclosure obligations imposed by the Act. As recommended, the regulations will generally reflect the existing provisions relating to overseas companies setting up a branch in the UK. Another notable change will be the extension of existing restrictions on the use of business names to cover all overseas companies carrying on business in the UK (not just those with a place of business in the UK). Note, however, that the provisions in the Act relating to overseas companies, will not be coming into force until 1 October 2009.

2. What is a branch?

A branch is a part of a company that is organised so as to conduct business on behalf of a company as opposed to carrying on business which is merely ancillary or incidental to the company's business as a whole. In other words a person will be able to deal direct with a branch of the foreign company in Great Britain rather than with that company in its country of incorporation. Other types of commercial enterprises (for instance partnerships and unincorporated bodies) cannot register in Great Britain as a branch.

3. What is a place of business?

A place of business is a premises where there is a physical or visible indication that the company may be contacted there, or a particular location where the company habitually conducts business from, even if there is no physical sign of the company's connection with it. However, as the business carried on at that place is only ancillary or incidental to the company's

business as a whole, it does not amount to a branch. Such activities might include internal computer processing, warehousing or simply a representative office.

Note that where there is no physical location in Great Britain, registration is not required. For example, an independent agent who conducts business on behalf of the company is not a place of business of an overseas company. Neither is an occasional location such as a hotel where a director may conduct business during periodic visits to this country.

4. Branch registration, filing and disclosure requirements

4.1 Initial Registration

If an overseas company opens a branch in Great Britain then it is required to register its branch with the Registrar of Companies (either the Registrar of Companies for England and Wales, or the Registrar of Companies for Scotland, depending on the location of the branch (the '**Registrar**'). Within one month of having opened a branch in a part of Great Britain, an overseas company must deliver the following to the Registrar:

- a completed form BR1 (containing much detail about the company and its officers);
- a certified copy (see 6.2 below) of the company's constitutional documents (e.g. charter, statute, operating agreement);
- a copy of the latest set of audited accounts required to be published by parent law; and
- the current registration fee (£20).

4.2 Filing requirements with respect to alterations

Any changes to the original information filed need to be notified to the Registrar within 21 days of such change, on the following forms:

- Form BR2 - Changes to the constitutional documents of an overseas company.
- Form BR3 - Changes to the company details, including the head office address, the parent law, the place of registration, and the issued share capital of the company.
- Form BR4 - Changes of director or secretary or of their particulars.
- Form BR5 - Change in details of the branch, including address and the nature of the business.
- Form BR6 - Change of person authorised to accept process of service or to represent the company in the business of the branch, or of their particulars.
- Form BR7 - Change of branch against which the constitutional documents and accounts of the company are registered.
- Form 225 - Change of accounting reference date of a company subject to filing accounts under section 700 of the Companies Act 1985 (see 4.4 below).

4.3 Notification of insolvency

If an overseas company with a branch in Great Britain is being wound up outside Great Britain it must tell the Registrar of Companies. The type of winding up taking place will determine which form is required.

4.4 Accounting Requirements

Branches of overseas companies whose parent law requires the publication of accounts which have been audited must deliver a copy of those accounts (together with a certified translation if necessary - see 6.2 below) within three months of public disclosure. This applies to all companies from European Economic Area (EEA) Member States even where a company is categorised as 'small' and allowed to deliver modified accounts, even to the extent of them being unaudited.

All branches of overseas companies whose parent law does not require the publication of audited accounts must, within 13 months of a company's accounting reference date (the date in each year to which the accounts are to be made up), deliver accounts to Companies House that comply with section 700 of the Companies Act 1985 (as amended by Statutory Instrument 1990 No. 440). Such accounts are known as 'Section 700 Accounts' and must relate to the company and not solely to the branch. Where the accounting period is the overseas company's first and is a period longer than 12 months the Section 700 Accounts must be filed within 13 months of the first anniversary of the date of establishing a branch in Great Britain. Section 700 Accounts consist of, as a minimum, a balance sheet and profit and loss account, with a minimum of notes. No directors' or auditors' report is required, neither are details of directors' emoluments or pension contributions. A filing fee is payable on filing each set of accounts.

4.5 Credit and Financial Institutions

There are special rules governing the filing requirements for branches of credit or financial institutions. However, in practice, the requirements are similar to those for overseas companies, and only in some very rare cases will company accounting disclosure requirements be different.

5. Place of business registration, filing and disclosure requirements

5.1 Registration

Within one month of establishing a place of business in Great Britain, the following must be delivered to the Registrar:

- completed form 691 (containing much detail about the company and its officers);
- a certified copy (see 6.2 below) of the company's constitutional documents (e.g. charter, statute, operating agreement); and
- the current registration fee (£20).

5.2 Filing requirements with respect to alterations

- Form 692(1)(a) - Changes to the constitutional documents of an overseas company.
- Form 692(1)(b) - Changes of the directors or secretary, or of their particulars.

- Form 692(1)(c) - Changes of the person authorised to accept service of process on behalf of the overseas company, or of their particulars.
- Form 692(2) - Change of corporate name of an overseas company.
- Form 225 - Change of the accounting reference date of an overseas company.

5.3 **Isle of Man and Channel Island companies**

Such companies that establish a place of business in Great Britain also need to file an annual return with the Registrar.

5.4 **Accounting Requirements**

The provisions set out in the second paragraph of section 4.4 above apply.

6. **Provisions affecting overseas companies generally**

6.1 **The name of the company**

The company must initially be registered in its corporate name, but thereafter it becomes subject to the same restrictions on company names as British companies. Briefly this means that a name is unacceptable if it is the 'same as' a name already on the register or contains certain sensitive words or expressions which cannot be justified.

If a company name is unacceptable, the Secretary of State will order the company to adopt an acceptable business name for use in Great Britain. The order will specify a period during which the company must register the change of name. The company will be unable to conduct business in Great Britain in its corporate name once the period stated in the notice has expired.

6.2 **What are certified copies of documents?**

Constitutional documents and accounts must be in their original language but documents not in English must be accompanied by a certified translation into English. The certification of the constitution must be made in the country of incorporation. Details of the methods of certifications are given in the notes to the relevant forms.

6.3 **What about charges?**

Briefly the requirements are that all overseas companies which have registered a branch or a place of business which create a mortgage or charge in Great Britain must register the charge at Companies House. To register a charge the appropriate form must be sent to the Registrar of Companies within 21 days of the creation date of the charge. In addition, an overseas company is required to keep at its branch or principal place of business in England and Wales and/or (as the case may be) Scotland, a register of charges. The register, and copies of the charges, are open to public inspection.

NB: charges must also be presented for registration for an overseas company that has not registered a branch or place of business in Great Britain as such charges are subject to the 'Slavenburg' ruling. Although the Registrar is unlikely to register the charge without prior registration by the overseas company either as a branch or a place of business, delivery of the particulars does prevent the charge being rendered void against any creditor.

6.4 **Publicity**

The overseas company must exhibit conspicuously at every place where it establishes a place of business, and on all billheads and letter paper, websites (for example on the "About Us" page) e-mails and order forms, and in all its notices and other official publications, its name, the country in which it is incorporated and, where the liability of its members is limited, that fact. If the overseas company chooses to give details of any director on letterheads or stationery, it must give the same details of all the directors.

If it operates under a name other than its full corporate name, in order to enable those dealing with such business to know the identity of the owning overseas company, the actual corporate name of the overseas company and its business or other address in Great Britain at which documents may be served, must be displayed at its premises and on business stationery and this information must also be supplied on request to any customer or supplier.

As in the case of registration of the corporate name, the approval of the Secretary of State is required if a business name contains certain words or expressions which are set out in regulations approved by Parliament or if the name gives the impression that the business is connected with H.M. Government or a local authority.

In addition to such general publicity requirements, a branch must state the following particulars on all letter paper, e-mails, websites and order forms used in carrying on the business of the branch:

- Place of registration;
- Registered number;

If the company is not from an EU member state but is registered in its country of incorporation:

- the identity of the registry in which the company is registered in its country of incorporation;
- its registered number in its country of incorporation;

If the company is from a non-EU member state:

- the legal form of the company;
- the location of its head office; and
- if applicable, the fact that it has been wound up.

6.5 **What if the activities in Great Britain increase or decrease?**

If the activities of a limited company that registers a place of business change to the extent that it now qualifies as a branch, it must register as such by delivering a completed Form BR1 to the Registrar with the registration fee. In such cases, if the information previously filed with the Registrar is up to date, copies of the constitutional documents and directors' details are not required.

Similarly, if a branch of an overseas company changes to the extent that it only qualifies as a place of business then it must re-register as such by delivering a completed Form 691 together with the registration fee. If the

information previously filed with the Registrar is up to date, copies of the constitutional documents and directors' details are not required.

On conversion of a branch to a place of business, any establishment in another part of the United Kingdom, for example, Northern Ireland, included under the original branch registration must be registered as a place of business.

A company cannot have both a place of business registration and a branch registration in the UK at the same time. A branch registration will take precedence over a place of business registration(s) that must be closed. (This will happen automatically when a single place of business re-registers as a branch with the Registrar).

6.6 What if a company closes its activities?

If a company closes a place of business or a branch in Great Britain, it must give notice to this effect by delivering a letter signed by an officer or authorised person of the company to the Registrar. All obligations of the company to deliver documents to the Registrar cease from the date of receipt of the notice.

If a company closes its only branch in Great Britain then the company record will be closed. If it is not the only branch, but was originally the principal branch, then Form BR7 must be delivered to notify the Registrar of the branch at which the constitutional documents are kept.

7. Further information

Further information can be obtained from Companies House as follows:

Foreign & Miscellaneous Section

Companies House

Crown Way

Cardiff

CF14 3UZ

Telephone: 0870 3333636

Document Section

Companies House

37 Castle Terrace

Edinburgh

EH1 2EB

Telephone: 0131 535 5836

8. Northern Ireland

- 8.1 Northern Ireland (which is a part of the United Kingdom but not part of Great Britain) has its own companies legislation which, however, broadly follows that of the rest of the United Kingdom. **Note, however, that the Companies Act 2006 will extend GB company law in this area to Northern Ireland on 1 October 2009.**

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This document reflects the law and practice as at October 2008. It is general in nature, and does not purport in any way to be comprehensive or a substitute for specialist legal advice in individual circumstances.