

# User Guide

## Overseas Companies: establishing a presence in the UK

This is a general overview of some of the issues that will face an overseas company wishing to set up business in the UK. The subject is too big for the advice to be anything other than general and before taking action you should obtain detailed accountant's and lawyer's advice.

### Trading in the UK

There are four principal ways in which an overseas company can set up a presence in the UK, these are:-

- Incorporate a subsidiary
- Form a Limited Liability Partnership
- Appoint an agent
- Set up a branch

### Incorporating a subsidiary company

This is probably the easiest method in that there is no restriction in the UK on overseas owners being the sole shareholders and directors. A company can be formed in days

and if there is urgent need within 24 hours. The cost is in the region of 250 pounds sterling plus Value Added Tax (VAT), currently 17.5% on the fees. Basic corporation tax of 21% is payable on the profits until they reach £1.5m. The company is a legal entity in its own right with its own unique name and identity. It can be registered for VAT with Her Majesty's Revenue and Customs (HMRC). If you chose to set up a subsidiary this can increase the regulatory burden, if you have no other subsidiary it may trigger the requirement to produce group accounts. A UK subsidiary of an overseas company will become part of a group which means that its accounts will have to be audited

which will add an additional financial burden on the company. One of the benefits of incorporation in the UK is limited liability so that in the event of the subsidiary being liquidated the total liability of the shareholders will be their investment in the shares and, usually nothing else. Company's in the UK are regulated principally by the Companies Act 2006 and many other statutes governing matters such as taxation, employees and health and safety.

## A Limited Liability Partnership (LLP)

This is a hybrid organisation which is registered with the Registrar of Companies at Companies House with its own unique name but it is still a partnership and is taxed as such at the tax rate of the partners, usually at 40% up to £150,000 of earnings when it will be 50%. LLP's are subject to the general UK laws as are companies. The accounts may not need to be audited.

## Agency

This gives the overseas company very few proprietary rights other than to create a presence in the UK through the medium of the agent's business is not suitable for establishing a substantial presence but it can be a way of testing the UK market. One advantage is that there are not likely to be any employment issues to concern Overseas owners but they should be aware that on termination of the agency the agent may be entitled to compensation.

## The Branch Structure

An overseas company that wishes to set up a branch must comply with the Overseas Companies Regulations 2009 which include a requirement to register any Establishment the company has in the UK and also imposes certain accounting requirements and requirements

to deliver returns. This is a relatively new concept and as there are significant responsibilities involved they warrant further examination.

Overseas companies are required to register under the Regulations when opening any place of business where the company regularly conducts business or premises that indicate that a company may be contacted there (the Establishment).

### Registration

Within a month of an overseas company opening a UK Establishment, it must register particulars of the company on form OS1NO1 with the Registrar of Companies. The form includes details of incorporation, the company's name, directors of the company and address and contract details for the UK Establishment. The return should also include constitutional documents and in some cases account information.

### Alterations to Register Particulars

Should the overseas company within a UK Establishment alter the particulars already lodged with the Registrar of Companies then it must file with the Registrar details of the alterations made. Similarly if the company is wound up or enters into insolvency or equivalent proceedings it must file a return

with the Registrar.

### Company Charges

The Regulations provide that companies with a registered UK Establishment must register certain charges with the Registrar of Companies.

### Accounts and Reports

The Regulations make two sets of provisions; one for companies required to disclose their accounts under the law of the country in which the company is incorporated (Parent Law) and one for those not required to disclose accounts under their Parent Law. For companies required to disclose accounts under their Parent Law, the requirement is to deliver copies of all accounting documents that it is required to disclose by its Parent Law to the registrar. There are separate rules for a company incorporated within the European Economic Area (EEA). Companies incorporated outside the EEA who are not required to disclose accounting documents under their Parent Law have three options when choosing an accounting framework:

- Overseas accounts in accordance with the Companies Act 2006.
- Parent Law accounts
- International accounting standards.

The choice of type of accounts will depend on factors such as

whether the company has a presence in several countries, any benefits of choosing Parent Law and whether the company has any plans to apply for listing in the future.

### Duty to file copies of accounting documents disclosed under Parent Law

The Regulations required to an overseas company deliver accounting documents including:

1. The accounts of the overseas company, including if it has one or more subsidiaries, the consolidating accounts for the group.
2. An annual report of the directors
3. A report of auditors on the accounts and directors' report.

Directors must deliver copies of all accounting documents prepared in relation to a financial period which it is required to disclose by its Parent Law to the registrar. If the Parent Law only requires modified accounting documents to be disclosed, it will be sufficient to deliver copies of these.

In the case of an overseas company incorporated in an EEA state, it does not have to deliver any accounting documents if it is not required to do so under its Parent Law.

### Companies with more than one UK Establishment

If an overseas company has more than one UK Establishment it must deliver copies of accounting documents in respect of each Establishment unless the original registered particulars state that the accounting requirements will be complied with in another UK Establishment. In this case the particulars must include the registered number of that UK Establishment.

### Additional Information Required

In addition to the accounting documents the overseas company must also submit a statement containing information on:

- The legislation under which the accounts have been prepared and (if applicable) audited.
- Whether the accounts have been prepared in accordance with a set of generally accepted accounting principles (GAAP) and, if so, the name of the organisation or body that issued the principles.
- Whether the accounts have been audited.
- If they have been audited, whether they have been audited in accordance with generally accepted accounting standards (GAAS) and the name of the organisation or body that

issued the standards.

- If the accounts have not been audited, whether or not the company is required to have its accounts audited.

### Filing Period

The directors of an overseas company must comply with the obligations to file accounting documents. This period is three months from the date on which the document is first required to be disclosed in accordance with the company's Parent Law.

### Penalty for non-compliance

If the requirements to deliver accounting documents are not complied with and offences are committed by the person who was a director immediately before the end of the period allowed for filing accounting documents, there is a defence if the person charged can prove that he took reasonable steps to ensure that the requirements must be complied with before the end of the allowed period.

### Companies not required to disclose accounting records under Parent Law

If a company's Parent Law does not require it to disclose accounting records, it must comply with the Companies Act 2006 (Act) as modified by the Regulations with regards to the definition of the overseas company's financial year and the duty to prepare accounts. The Regulations modify sections

390-392, 394-397 and 402-406 of the Act.

### Duty to Prepare Accounts

The Directors of an overseas company which does not have to disclose accounting records under its Parent Law, has a duty under section 394 of the Act to prepare accounts for the company as a whole for each financial year. It is not enough to produce accounts simply for the UK Establishment.

### Individual Companies: Accounting Frameworks

An overseas company has three options as to which accounting framework it wants to follow:

- Parent Law
- International accounting standards
- Section 396 of the Act

Regardless of which framework a company chooses all accounts are required to include the following information in the notes to the accounts:

- Which framework has been used for the accounts
- Whether the accounts have been audited
- If the accounts have been audited the notes must also state:-
- Whether they have been audited in accordance with a set of GAAS
- The name of the organisation or body that issued the standard.

### Overseas companies' group accounts

As an overseas company may not chose to produce Parent Law group accounts unless they contain the information specified for overseas companies accounts, these accounts are in effect the minimum standard for an overseas company with a UK Establishment. This may be an appealing option because it may be less onerous than the other options, but in cases where an overseas company has Establishments in several countries it could end up having to produce a different set of accounts for each jurisdiction.

Section 404 of the Act provides that accounts under this framework must be comprised of:

- A consolidated balance sheet dealing with the parent and its subsidiary undertakings.
- A consolidated profit and loss account dealing with the profit and loss of the parent and its subsidiary undertakings.
- The content of both the balance sheet and the profit and loss account and must comply with Schedule 5 of the Regulations which also sets out which notes must accompany the accounts.

### Penalty for non-compliance

If the accounts do not comply with part 5 of the Regulations,

every director who knew the accounts did not comply or was reckless as to whether they complied and failed to take reasonable steps to secure compliance to prevent the accounts from being approved, commits an offence.

### Duty to file accounts

Accounts and any accompanying reports must be delivered to the registrar for each financial year. The copy of the balance sheet must state the name of the person who signed it on behalf of the Board. Accounts must be delivered in respect of each UK Establishment unless:

- Particulars relating to the Establishments states that the accounting requirements must be complied with in respect of another UK Establishment.
- The Particulars give the registered number of that Establishment.
- The requirement is complied with before the end of the period for filing accounts.

### Period allowed for filing accounts

The period allowed for delivering accounts is 13 months after the end of the relevant accounting reference period. However, if the accounting reference period in question is the company's first and is a period of more than 12 months, the period allowed is

13 months from the first anniversary of the company becoming a relevant overseas company.

### Penalties for non-compliance

If the duty to file accounts is not complied in the period allowed, every person who was a director of the company immediately before the end of the period allowed is guilty of an offence. It would be a defence if the person charged could show that he took all reasonable steps to secure that the requirement would be complied with before the end of the period. It would not be a defence to prove that the relevant documents were not prepared.

## Trading Disclosures

### Information to be displayed at the business location

All overseas companies carrying on business in the UK must make sure that the company's name and country of incorporation is displayed at:

- The address of every person authorised to accept service of documents on behalf of the company.
- Every location in the UK which carries on business, unless the location is:

Primarily used for living accommodation; or

1. Where the business is carried

on by a company, in respect of which the Registrar is prohibited from disclosing the residential address of all directors or permanent representatives, or a credit reference agency; or

2. The place of business of any liquidator, administrator or administrated receiver appointed in respect of that company.

Where the company is required to display its name and country of all operations, it must make sure that the display is continuous and can be easily seen by visitors.

### Information to be included in communications

The Regulations provide that an overseas company carrying on business in the UK must include the company's name on all the following documents when they are used in carrying on business in the UK:

- Business letters
- Notices and other official publications
- Bills of exchange
- Promissory notes
- Endorsements
- Order forms
- Cheques purporting to be signed on behalf of the company
- Orders for money, goods or services purporting to be signed by or on behalf of the company
- Bills of parcel, invoices and other demands for payments

- Receipts
- Letters of credit
- Application for licenses to carry on a trade or activity
- All other forms of business correspondence and documentation
- Websites

If an overseas company states the name of any director in any of its correspondence, it must name all of the directors of the company.

### Additional requirements for overseas companies that have registered UK Establishments

The Regulations require overseas companies with registered Establishments in the UK to include a note of where the Establishment is registered and its registered number on business letters, order forms and websites. In addition, an overseas company that is not incorporated an EEA State must include in those documents:

- The company's country of incorporation
- The identity of the registry in which the company is registered in its country of incorporation
- The number in which it is registered at in that registry
- The location of its head office
- The legal form of the company
- If the liability of the members of the company is limited, the fact it is a limited company.

### Address for Service

An overseas company must, in response to a written request disclose the address for service of any person in the UK who is authorised to accept service on its behalf within 5 days of receipt of the request

### Civil consequences of failure to make required disclosures

Under section 66 a company that fails to comply with the disclosure provisions of the Regulations cannot bring a claim against someone who:

- Has a contractual claim against the company, that they have been unable to bring because the company has not complied with its disclosure requirements under the Regulations; or
- Has suffered a substantial loss in connection with the contract because of a breach of the Regulations.

Unless the Court is satisfied it is just and equitable to permit to permit the proceedings to continue.

### Company Name

An overseas company with a UK Establishment must comply with part 3 of the Company and Business Names (Miscellaneous provisions) Regulations 2009 (Company Name Regulations). Like companies registered in the UK, an overseas company with a registered UK Establishment is

subject to restrictions on what they can call themselves.

Before setting up a UK Establishment overseas companies should conduct a trade mark search to ensure that the name that they propose to call the UK Establishment does not conflict with an existing registered trade mark. You should also make enquiries to ensure that a registered trade mark has not become established using the same name and that another company has not registered a domain name the same as the name that overseas company intends its subsidiary or branch to be called.

### Registration of Trade marks in the UK

It would be wise for an overseas company setting up an Establishment in the UK to register as a trade mark the trading name of the subsidiary or branch in the UK.

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