

Department for Business, Enterprise and Regulatory Reform
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By email: companiesact2006_consultation@berr.gsi.gov.uk

7 March 2008

Dear Sir or Madam

Consultation on the draft Overseas Companies Regulations 2008

We welcome the opportunity to comment on the draft Overseas Companies Regulations 2008 (the 'Regulations').

We support the Department's objective of simplifying the registration of and reporting by overseas companies and consider that the Regulations largely achieve that objective.

There are certain areas where we consider that the administrative burden on overseas companies could be lifted further, without any consequential deterioration in the information filed with the relevant Registrar:

- Regulation 25, section 391(2) determines a company's accounting reference date by reference to the date on which it became a relevant overseas company. Many overseas companies will prepare accounting information (for consolidation or other purposes) to a date other than this and may, consequently, wish to change their UK accounting reference dates, as permitted by Regulation 25, section 392, so as to reduce the annual burden of compliance with the Regulations. The registration process could be simplified by permitting overseas companies to select their accounting reference date on initial registration and thus avoid having to use immediately the section 392 process.
- Where a parent company of an overseas company falling within the scope of Chapter 3 of Part 4 of the Regulations prepares consolidated accounts (that include the overseas company) we suggest that the overseas company could be permitted to file only its parent company's group accounts with the registrar, provided that they comply with Regulation 26, where the overseas company's liabilities are guaranteed by the parent company whose group accounts are to be filed. A copy of the guarantee, with a certified translation where necessary, should also be filed with the relevant Registrar.

As noted in the Explanatory Memorandum, Regulation 6 of The Companies (Registrar of Companies) Regulations 2008 (the 'Registrar Regulations') is to permit certain documents to be filed in a language other than English (when accompanied by a certified translation). However, the currently available draft of these Regulations does not include accounting documents or the

company's constitution in the list of those documents that can be filed in a language other than English (contrary to the statement in the Explanatory Memorandum). We recommend that a full check is made to ensure that the draft Registrar Regulations require all documents that are to be filed to be accompanied by a certified translation, where necessary, before the Registrar Regulations are laid before Parliament.

We recognise that the Regulations use a number of terms that are defined elsewhere in legislation. However, to provide as much assistance as possible to users of the Regulations, we recommend that the Explanatory Memorandum, or the Guidance notes, to the Regulations should provide cross-references to the location of definitions, such as, 'overseas company', 'parent', 'subsidiary', 'subsidiary undertaking', 'liquidation', 'member state' and 'credit and financial institutions'.

We have a number of detailed comments on the drafting of the Regulations that are set out in the Appendix to this letter.

If you have any questions regarding our response, we shall be pleased to discuss them with you. Please contact Angela Green (020 7213 5401) or Nigel Dealy (020 7814 2252).

Yours faithfully

PricewaterhouseCoopers LLP

DETAILED COMMENTS ON DRAFT OVERSEAS COMPANIES REGULATIONS 2008

1. Regulation 14(2) could be simplified further to require delivery of a company's return within a specified number of days (for example, 28 or 35), allowing 21 days plus a reasonable margin for the time taken for delivery to the UK.

2. Throughout the Regulations, those stating the 'penalty for non-compliance' are not always consistent with each other for no apparent reason. In some cases the reason is evident (for example, liquidators are only liable for non-compliance with regulations 9(3), 67(3) and 67(5)). However, it is not clear why, the company, shadow directors and agents of the company are liable for non-compliance with only certain of the Regulations for which directors are liable. Further, it is not clear why it is a defence under only certain Regulations for a director to have taken all reasonable steps to ensure compliance. For each 'penalty for non-compliance' Regulation (excluding those extracts from the Companies Act 2006), we have prepared a table below that compares and thus contrasts those persons that are liable:

	Reg 10 Registering	Reg 23 Filing parent law accounts	Reg 38 Filing parent law accounts (credit and financial institutions)	Reg 54 Trading disclosures	Reg 69 Winding up/ insolvency	Reg 82 Notify registrar of residential address	Reg 86 Delivery of returns	Reg 89 Notice of closure
Company's at fault	✓			✓	✓	✓	✓	✓
Every director who permits default is at fault	✓	✓	✓	✓	✓	✓	✓	✓
Includes shadow directors				✓				
Includes agents of the company	✓							
Proving that all reasonable steps to ensure compliance is a defence		✓	✓		✓			
Liquidator (specified regs only)	✓				✓			

3. Regulation 18(4) currently states that 'Paragraph (1) does not require accounting documents to be delivered in respect of a UK establishment if, by virtue of the company's parent law, that establishment is exempt from the obligation to deliver accounting documents'. We consider that the word 'company' should be substituted for the word 'establishment' where it is used for the second time in that sentence.

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4. We believe that Regulation 21 should require accounting documents to be delivered within three months of the date on which the document is *required to be* first disclosed in accordance with the company's parent law. As presently drafted, the overseas company could defer indefinitely its filing/disclosure under its parent law (which may not incur it any penalty) and thus avoid filing such documents with the relevant Registrar in the UK without incurring a penalty in the UK. By making the change we have suggested, it should ensure that the UK penalty regime does bite and thus incentivises companies to file their documents in the UK by the appropriate deadline.
5. In Regulation 26, section 395(1) permits an overseas company to file 'IAS Accounts'. The interaction between that Regulation and the definition of International Accounting Standards in Regulation 45, section 474 means that those 'IAS Accounts' must comply with IAS as issued by the International Accounting Standards Board (IASB) and not with IAS as adopted by the EU. We consider that Regulation 45, section 474 should be amended so that the definition of International Accounting Standards refers to both Articles (2) and (4) of the IAS Regulations, thus permitting Overseas companies to file IAS Accounts that comply either with IAS as issued by the IASB or with IAS as adopted by the EU.
6. We consider that Regulation 26, sections 397(1)(b) and 406(1)(b) should be deleted: where Overseas companies have applied national variants of IAS, they will be preparing their accounts in accordance with their parent law and are thus required by Schedule 1 para to disclose the accounting framework applied.
7. In Regulation 26, section 397(1)(d)(ii) and (2)(c) and section 406(d)(ii) and (2)(e)(ii), the word 'applied' should be substituted for the word 'followed' for consistency.
8. In Regulation 26, section 397, an additional requirement should be added to require disclosure of the fact that the accounts have been prepared in accordance with section 396.
9. Regulation 26, section 398 seems to be a modified version of section 399 of the Companies Act 2006, so should refer to section 399.
10. Sections 400 and 402 of the Companies Act 2006 should be incorporated into Regulation 26.
11. In Regulation 26, section 403(1) should state 'The group accounts *of the overseas company* may be prepared....' to avoid ambiguity.
12. Regulation 26, section 407 should be deleted as this would be imposing an unnecessary burden on overseas companies. This requirement in the Companies Act 2006 for consistency of accounting framework is only relevant for UK companies.
13. Regulation 26 contains a number of disclosure requirements. Consideration should be given to moving them to the Schedules to the Regulations that contain other disclosure requirements.
14. In Regulation 28, section 441(4)(c) should state 'the requirement to deliver accounts *in respect of that other UK establishment* is so complied with...' to avoid ambiguity.
15. Regulation 33(1) needs to include the procedures where a newly formed company (that doesn't have 'latest accounting documents') registers as an overseas company. Consideration should be given to any other Regulations that should include such procedures.
16. We consider that, for simplicity, Regulations 37 and 60 should be merged with Regulation 85.

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17. Regulations 37 and 60 should require that, where a credit or financial institution has two or more branches and files documents only in respect of one of those (its principal branch), a return should be made in respect of each other branch, stating that the documents have been filed in respect of another branch, where that other branch is registered and its registered number (similar to the requirement in Regulation 8 and consistent with Article 6 of the 11th EU Directive).
18. In Regulations 37 and 60, closing brackets should be moved to after the words 'its principal branch' in each of (a), (b) and (c) so that each reads "...if the institution's only branch, (or if it has more than one, its principal branch) within the United Kingdom.."
19. Comments 5 to 14 apply also to Regulation 40.
20. Regulation 71(1) should refer to Regulation 70 and not Regulation 73.
21. In Regulation 82(2), a reference (b) should be inserted in front of the words 'for continued contravention...'
22. In Regulation 92(a), the words 'are revoked' at the end of the section should be deleted, as they are superfluous.
23. In Schedule 1 para 1, International Accounting Standard should include capital 'I', 'A' and 'S' to conform with the IAS Regulation. However, it may be that for internal consistency reasons lower case is appropriate.
24. Schedule 1 para 1 should refer to 'line items' rather than 'headings and sub-headings', as this would conform with the terminology used in International Accounting Standards. This also applies to paras 3, 5, 6(2) and 10.
25. In Schedule 1, para 2 is written in terms of the Schedule 4 formats from the 1985 Act. In the absence of such formats, it would seem reasonable to draft the requirement as follows: "The company's directors must show the same line items in the balance sheet and profit and loss account for each financial year, unless in their opinion there are special reasons for a change."
26. Schedule 1, para 3 seems similar to para 5. Unless it is necessary to include both, para 3 should be deleted and para 5(b) should be amended to state 'they are of a similar nature and the combination facilitates that assessment'.
27. In Schedule 1 para 7(1) and (2), it should read 'profit *and* loss account' and not 'profit or loss account'.
28. Schedule 1 para 18 should require disclosure of which accounting standards (if any) have been applied in the preparation of the accounts and particulars of any material departures from those. The current reference to 'applicable accounting standards' is unclear.
29. Schedule 1 para 20(2)(p) should be amended so as to remove the reference to IAS.
30. In Schedule 1 para 20(2), an additional requirement should be inserted before (v) for the disclosure of other off-balance sheet arrangements.
31. Schedule 2 para 7 should permit the application of merger accounting for an acquisition where it is permitted by the accounting framework being used in the preparation of the accounts. .
32. Schedule 2 para 8, the references to 'headings' should be replaced with references to 'line items'. In addition in 8(2), the word 'format' should be deleted.

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33. In Schedule 3 para 1(a), the word 'either' should be deleted. In addition, comment number 16 applies.
34. Comments 23 to 30 apply also to the same paragraphs of Schedule 3.
35. Comments 31 and 32 apply also to the same paragraphs of Schedule 4.