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.

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

COMPANIES

The Overseas Companies Regulations 2009

Made - - - -	*0000*
Coming into force - -	*1st October 2009*

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(**1**).

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

(**1**) 2006 c.46.

(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)(**2**), 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 Treaty, with a view to making such safeguards equivalent throughout the Community (68/151/EEC)(**3**);

"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

(**2**) OJ L 395, 30.12.1989, p. 36.
(**3**) 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).

(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

(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,