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STATUTORY INSTRUMENTS

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**1992 No. 3179**

**COMPANIES**

**BANKS AND BANKING**

**The Oversea Companies and Credit and Financial  
Institutions (Branch Disclosure) Regulations 1992**

*Made - - - - 13th December 1992*

*Coming into force - - 1st January 1993*

Whereas in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972<sup>(1)</sup> a draft of these Regulations has been approved by resolution of each House of Parliament.

Now, therefore, the Secretary of State, being a Minister designated<sup>(2)</sup> for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures

- (i) relating to the publication of documents, particulars and other items relating to a branch opened by a company governed by the law of another Member State of the European Economic Community or of a State which is not such a Member State, and
- (ii) relating to credit and financial institutions

in exercise of the powers conferred on him by that section and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation etc.**

1.—(1) These Regulations may be cited as the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992.

(2) In these Regulations, “the principal Act” means the Companies Act 1985<sup>(3)</sup> and “the 1989 Act” means the Companies Act 1989<sup>(4)</sup>.

(3) These Regulations shall come into force on 1st January 1993.

(4) These Regulations extend to England and Wales and Scotland.

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(1) 1972 c. 68.  
(2) S.I.1990/1304.  
(3) 1985 c. 6.  
(4) 1989 c. 40.

## **Implementation of the Bank Branches Directive.**

2.—(1) Before section 700(5) of the principal Act there shall be inserted—

**“Credit and financial institutions to which the Bank Branches Directive (89/117/EEC) applies.**

**699A.**—(1) This section applies to any credit or financial institution—

- (a) which is incorporated or otherwise formed outside the United Kingdom and Gibraltar,
- (b) whose head office is outside the United Kingdom and Gibraltar, and
- (c) which has a branch in Great Britain.

(2) Schedule 21C (delivery of accounts and reports) shall have effect in relation to any institution to which this section applies.

(3) In this section—

“branch”, in relation to a credit or financial institution, means a place of business which forms a legally dependent part of the institution and which conducts directly all or some of the operations inherent in its business;

“credit institution” means a credit institution as defined in article 1 of the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC), that is to say an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

“financial institution” means a financial institution within the meaning of Article 1 of the Council Directive on the obligations of branches established in a Member State of credit and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (the Bank Branches Directive, 89/117/EEC); and

“undertaking” has the same meaning as in Part VII.

## **Scope of sections 700 to 703.**

**699B.** Sections 700 to 703 shall not apply to any institution to which section 699A applies.”(6)

(2) The Schedule set out in Schedule 1 to these Regulations shall be inserted after Schedule 21B to the principal Act(7).

## **Implementation of the Eleventh Company Law Directive.**

3.—(1) Part XXIII of the principal Act (oversea companies) shall have effect subject to the amendments set out in Schedule 2 to these Regulations.

(2) After section 705 of that Act there shall be inserted(8)—

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(5) Section 700 as substituted by section 23 of, and paragraph 13 of Schedule 10 to, the Companies Act 1989, is in Chapter II of Part XXIII of the principal Act.

(6) Schedule 21C referred to in this paragraph, is inserted into the principal Act by Schedule 1 to these Regulations. “Undertaking”, as referred to in this paragraph, is defined in section 259 of the principal Act, as inserted by section 22 of the 1989 Act.

(7) Schedule 21B is inserted into the principal Act by paragraph 5 of Schedule 2 to these Regulations.

(8) Schedule 21A referred to in section 705A is inserted into the principal Act by paragraph 3 of Schedule 2 to these Regulations.

**“Registration of branches of oversea companies.**

**705A.**—(1) For each company to which section 690A applies the registrar, shall keep, in such form as he thinks fit, a register of the branches registered by the company under paragraph 1 of Schedule 21A.

(2) The registrar shall allocate to every branch registered by him under this section a number, which shall be known as the branch’s registered number.

(3) Branches' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.

(4) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to him necessary.

(5) A change of a branch’s registered number has effect from the date on which the company is notified by the registrar of the change; but for a period of three years beginning with the date on which that notification is sent by the registrar the requirement of section 693(2) as to the use of the branch’s registered number on business letters and order forms is satisfied by the use of either the old number or the new.

(6) Where an oversea company to which section 690A applies files particulars, in any circumstances permitted by this Act, by:

- (i) adopting particulars already filed in respect of another branch; or
- (ii) including in one document particulars which are to relate to two or more branches,

the registrar shall ensure that the particulars concerned become part of the registered particulars of each branch concerned.”

**Consequential amendments.**

- 4. Schedule 3 to these Regulations (consequential amendments) shall have effect.

**Transition.**

- 5. Schedule 4 to these Regulations (transitional provisions) shall have effect.

13th December 1992

*Neil Hamilton*  
Parliamentary Under-Secretary of State for  
Corporate Affairs,  
Department of Trade and Industry

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SCHEDULE 1

Regulation 2.

DELIVERY OF REPORTS AND ACCOUNTS: CREDIT AND FINANCIAL INSTITUTIONS  
TO WHICH THE BANK BRANCHES DIRECTIVE (89/117/EEC) APPLIES

“SCHEDULE 21C

Section 699A.

DELIVERY OF REPORTS AND ACCOUNTS: CREDIT AND FINANCIAL INSTITUTIONS  
TO WHICH THE BANK BRANCHES DIRECTIVE (89/117/EEC) APPLIES

PART I

INSTITUTIONS REQUIRED TO PREPARE ACCOUNTS UNDER PARENT LAW

**Scope of Part and Interpretation**

1.—(1) This Part of this Schedule applies to any institution to which section 699A applies which is required by its parent law to prepare and have audited accounts for its financial periods and whose only or principal branch within the United Kingdom is in Great Britain.

(2) In this Part of this Schedule, “branch” has the meaning given by section 699A.

**Duty to deliver copies in Great Britain**

2.—(1) An institution to which this Part of this Schedule applies shall, within one month of becoming such an institution, deliver to the registrar for registration—

- (a) copies of the latest accounting documents of the institution prepared in accordance with its parent law to have been disclosed before the end of the period allowed for compliance with this sub-paragraph or, if earlier, the date of compliance with it, and
- (b) if any of the documents mentioned in paragraph (a) above is not written in the English language, a translation of it into English certified in the prescribed manner to be a correct translation.

Where an institution to which this Part of this Schedule applies had, immediately prior to becoming such an institution, a branch in Northern Ireland which was its only or principal branch within the United Kingdom it may, instead of delivering the documents mentioned in sub-paragraph (1)(a) under that paragraph, deliver thereunder a notice that it has become an institution to which this Part of this Schedule applies, provided that those documents have been delivered to the registrar for Northern Ireland pursuant to the Companies (Northern Ireland) Order 1986(9).

3.—(1) An institution to which this Part of this Schedule applies shall deliver to the registrar for registration—

- (a) copies of all the accounting documents of the institution prepared in accordance with its parent law which are disclosed on or after the end of the period allowed for compliance with paragraph 2(1) or, if earlier, the date on which it complies with that paragraph, and
- (b) if any of the documents mentioned in paragraph (a) above is not written in the English language, a translation of it into English, certified in the prescribed manner to be a correct translation.

(2) The period allowed for delivery, in relation to a document required to be delivered under this paragraph, is 3 months from the date on which the document is first disclosed.

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(9) S.I.1986/1032 (N.I.6), as amended.

4. Where an institution's parent law permits it to discharge an obligation with respect to the disclosure of accounting documents by disclosing documents in a modified form, it may discharge its obligation under paragraph 2 or 3 by delivering copies of documents modified as permitted by that law.

5.—(1) Neither paragraph 2 nor paragraph 3 shall require an institution to deliver documents to the registrar if at the end of the period allowed for compliance with that paragraph—

- (a) it is not required by its parent law to register them,
- (b) they are made available for inspection at each branch of the institution in Great Britain, and
- (c) copies of them are available on request at a cost not exceeding the cost of supplying them.

(2) Where by virtue of sub-paragraph (1) above an institution is not required to deliver documents under paragraph 2 or 3 and any of the conditions specified in that sub-paragraph ceases to be met, the institution shall deliver the documents to the registrar for registration within 7 days of the condition ceasing to be met.

#### **Registrar to whom documents to be delivered**

6. The documents which an institution is required to deliver to the registrar under this Part of this Schedule shall be delivered—

- (a) to the registrar for England and Wales if the institution's only branch, or (if it has more than one) its principal branch within the United Kingdom, is in England and Wales; or
- (b) to the registrar for Scotland if the institution's only branch, or (if it has more than one) its principal branch within the United Kingdom, is in Scotland.

#### **Penalty for non-compliance**

7.—(1) If an institution fails to comply with paragraph 2, 3 or 5(2) before the end of the period allowed for compliance, the institution and every person who immediately before the end of that period was a director of the institution, or, in the case of an institution which does not have directors, a person occupying an equivalent office, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) It is a defence for a person charged with an offence under this paragraph to prove that he took all reasonable steps for securing compliance with paragraph 2, 3 or 5(2), as the case may be.

#### **Interpretation**

8.—(1) In this Part of this Schedule—

“financial period” in relation to an institution, means a period for which the institution is required or permitted by its parent law to prepare accounts;

“parent law”, in relation to an institution, means the law of the country in which the institution has its head office;

and references to disclosure are to public disclosure, except where an institution is not required under its parent law, any enactment (including any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978<sup>(10)</sup>) having effect for Great Britain or its constitution to publicly disclose its accounts, in which case such references are to the disclosure of the accounts to the persons for whose information they have been prepared.

(2) For the purposes of this Part of this Schedule, the following are accounting documents in relation to a financial period of an institution—

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(10) 1978 c. 30.

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- (a) the accounts of the institution for the period, including, if it has one or more subsidiaries, any consolidated accounts of the group,
- (b) any annual report of the directors (or, in the case of an institution which does not have directors, the persons occupying equivalent offices) for the period,
- (c) the report of the auditors on the accounts mentioned in paragraph (a) above, and
- (d) any report of the auditors on the report mentioned in paragraph (b) above.

## PART II

### INSTITUTIONS NOT REQUIRED TO PREPARE ACCOUNTS UNDER PARENT LAW

#### Scope of Part and Interpretation

**9.**—(1) This Part of this Schedule applies to any institution to which section 699A applies which—

- (a) is incorporated, and
- (b) is not required by the law of the country in which it has its head office to prepare and have audited accounts.

(2) In this Part of this Schedule, “branch” has the meaning given by section 699A.

#### Preparation of accounts and reports

**10.** An institution to which this Part of this Schedule applies shall in respect of each financial year of the institution prepare the like accounts and directors' report, and cause to be prepared such an auditors' report, as would be required if the institution were a company to which section 700 applied.

**11.** Sections 223 to 225 apply to an institution to which this Part of this Schedule applies subject to the following modifications—

- (a) for the references to the incorporation of the company there shall be substituted references to the institution becoming an institution to which this Part of this Schedule applies; and
- (b) section 225(4) shall be omitted.

#### Duty to deliver accounts and reports

**12.**—(1) An institution to which this Part of this Schedule applies shall in respect of each financial year of the institution deliver to the registrar copies of the accounts and reports prepared in accordance with paragraph 10.

(2) If any document comprised in those accounts or reports is in a language other than English, the institution shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

#### Time for delivery

**13.**—(1) The period allowed for delivering accounts and reports under paragraph 12 above is 13 months after the end of the relevant accounting reference period, subject to the following provisions of this paragraph.

(2) If the relevant accounting reference period is the institution's first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the institution's becoming an institution to which this Part of this Schedule applies.

(3) If the relevant accounting reference period is treated as shortened by virtue of a notice given by the institution under section 225, the period allowed is that applicable in accordance with the above provisions or 3 months from the date of the notice under that section, whichever last expires.

(4) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to an institution to which this Part of this Schedule applies, extend that period by such further period as may be specified in the notice.

(5) In this paragraph "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.

#### **Registrar to whom documents to be delivered**

**14.** The documents which an institution is required to deliver to the registrar under this Part of the Schedule shall be delivered—

- (a) to the registrar for England and Wales if the institution's only branch, or (if it has more than one) its principal branch within Great Britain, is in England and Wales; or
- (b) to the registrar for Scotland if the institution's only branch, or (if it has more than one) its principal branch within Great Britain, is in Scotland.

#### **Penalty for non-compliance**

**15.—**(1) If the requirements of paragraph 12 are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements of this Act, the institution and every person who immediately before the end of that period was a director of the institution, or, in the case of an institution which does not have directors, a person occupying an equivalent office, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

(3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by this Schedule."

## SCHEDULE 2

Regulation 3.

### AMENDMENTS OF PART XXIII OF THE PRINCIPAL ACT

#### PART I

#### REGISTRATION ETC.

#### **Preliminary**

1. Chapter I of Part XXIII shall be amended as mentioned in paragraphs 2 to 14 below.

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## Registration

2. Before section 691 there shall be inserted—

**“Branch registration under the Eleventh Company Law Directive (89/666/EEC).**

**690A.**—(1) This section applies to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar, and
- (b) has a branch in Great Britain.

(2) Schedule 21A to this Act (Branch registration under the Eleventh Company Law Directive (89/666/EEC)) shall have effect in relation to any company to which this section applies.

### Scope of sections 691 and 692.

**690B.** Sections 691 and 692 shall not apply to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar, and
- (b) has a branch in the United Kingdom.”

3. After Schedule 21 there shall be inserted—

“SCHEDULE 21A

Section 690A.

### BRANCH REGISTRATION UNDER THE ELEVENTH COMPANY LAW DIRECTIVE (89/666/EEC)

#### Duty to register

1.—(1) A company shall, within one month of having opened a branch in a part of Great Britain, deliver to the registrar for registration a return in the prescribed form containing—

- (a) such particulars about the company as are specified in paragraph 2,
- (b) such particulars about the branch as are specified in paragraph 3, and
- (c) if the company is one to which section 699AA applies, such particulars in relation to the registration of documents under Schedule 21D as are specified in paragraph 4.

(2) The return shall, except where sub-paragraph (3) below applies, be accompanied by the documents specified in paragraph 5 and, if the company is one to which Part I of Schedule 21D applies, the documents specified in paragraph 6.

(3) This sub-paragraph applies where—

- (a) at the time the return is delivered, the company has another branch in the United Kingdom,
- (b) the return contains a statement to the effect that the documents specified in paragraph 5, and, if the company is one to which Part I of Schedule 21D applies, paragraph 6, are included in the material registered in respect of the other branch, and
- (c) the return states where the other branch is registered and what is its registered number.

(4) In sub-paragraph (1) above, the reference to having opened a branch in a part of Great Britain includes a reference to a branch having become situated there on ceasing to be situated elsewhere.

(5) If at the date on which the company opens the branch in Great Britain the company is subject to any proceedings referred to in section 703P(1) (winding up) or 703Q(1) (insolvency



proceedings etc), the company shall deliver a return under section 703P(1) or (as the case may be) 703Q(1) within one month of that date.

If on or before that date a person has been appointed to be liquidator of the company and continues in that office at that date, section 703P(3) and (4) (liquidator to make return within 14 days of appointment) shall have effect as if it required a return to be made under that section within one month of the date of the branch being opened.

### **Particulars required**

- 2.—(1) The particulars referred to in paragraph 1(1)(a) are—
- (a) the corporate name of the company,
  - (b) its 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 sub-paragraph (3) below, and
    - (ii) with respect to the secretary (or where there are joint secretaries, with respect to each of them) the particulars specified in sub-paragraph (4) below,
  - (e) the extent of the powers of the directors 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 an institution to which section 699A (or the equivalent provision in Northern Ireland) applies.
- (2) In the case of a company which is not incorporated in a Member State, those particulars also include—
- (a) the law under which the company is incorporated,
  - (b) in the case of a company to which either paragraphs 2 and 3 of Part I of Schedule 21C or Schedule 21D applies) the period for which the company is required by the law under which it is incorporated to prepare accounts, together with the period allowed for the preparation and public disclosure of accounts for such a period, and
  - (c) unless disclosed by the documents specified in paragraph 5—
    - (i) the address of its principal place of business in its country of incorporation,
    - (ii) its objects, and
    - (iii) the amount of its issued share capital.
- (3) The particulars referred to in sub-paragraph (1)(d)(i) above are—
- (a) in the case of an individual—
    - (i) his name,
    - (ii) any former name,
    - (iii) his usual residential address,
    - (iv) his nationality,
    - (v) his business occupation (if any),
    - (vi) particulars of any other directorships held by him, and
    - (vii) his date of birth;

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- (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.
- (4) The particulars referred to in sub-paragraph (1)(d)(ii) above are—
  - (a) in the case of an individual, his name, any former name and his usual residential address;
  - (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

Where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars required by paragraph (a) above.

- (5) In sub-paragraphs (3)(a) and (4)(a) above—
  - (a) “name” means a person’s forename and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his forename and surname, or in addition to either or both of them; and
  - (b) the reference to a former name does not include—
    - (i) in the case of a peer, or an individual normally known by a title, the name by which he was known previous to the adoption of or succession to the title;
    - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more;
    - (iii) in the case of a married woman, the name by which she was known previous to the marriage.
- (6) Where—
  - (a) at the time a return is delivered under paragraph 1(1) the company has another branch in the same part of Great Britain as the branch covered by the return; and
  - (b) the company has delivered the particulars required by sub-paragraphs (1)(b) to (f) and (2) to (5) to the registrar with respect to that branch (or to the extent it is required to do so by virtue of Schedule 21B to this Act) and has no outstanding obligation to make a return to the registrar in respect of that branch under paragraph 7 in relation to any alteration to those particulars,

the company may adopt the particulars so delivered as particulars which the registrar is to treat as having been filed by the return by referring in the return to the fact that the particulars have been filed in respect of that other branch and giving the number with which the other branch is registered.

- 3. The particulars referred to in paragraph 1(1)(b) are—
  - (a) the address of the branch,
  - (b) the date on which it was opened,
  - (c) the business carried on at it,
  - (d) if different from the name of the company, the name in which that business is carried on,
  - (e) a list of the names and addresses of all persons resident in Great Britain authorised to accept on the company’s behalf service of process in respect of the business of the branch and of any notices required to be served on the company in respect of the business of the branch,
  - (f) a list of the names and usual residential addresses of all persons authorised to represent the company as permanent representatives of the company for the business of the branch,

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- (g) the extent of the authority of any person falling within paragraph (f) above, including whether that person is authorised to act alone or jointly, and
  - (h) if a person falling within paragraph (f) above is not authorised to act alone, the name of any person with whom he is authorised to act.
4. The particulars referred to in paragraph 1(1)(c) are—
- (a) whether it is intended to register documents under paragraph 2(2) or, as the case may be, 10(1) of Schedule 21D in respect of the branch or in respect of some other branch in the United Kingdom, and
  - (b) if it is, where that other branch is registered and what is its registered number.

#### **Documents required**

5. The first documents referred to in paragraph 1(2) are—
- (a) a certified copy of the charter, statutes or memorandum and articles of the company (or other instrument constituting or defining the company’s constitution), and
  - (b) if any of the documents mentioned in paragraph (a) above is not written in the English language, a translation of it into English certified in the prescribed manner to be a correct translation.
- 6.—(1) The second documents referred to in paragraph 1(2) are—
- (a) copies of the latest accounting documents prepared in relation to a financial period of the company to have been publicly disclosed in accordance with the law of the country in which it is incorporated before the end of the period allowed for compliance with paragraph 1 in respect of the branch or, if earlier, the date on which the company complies with paragraph 1 in respect of the branch, and
  - (b) if any of the documents mentioned in paragraph (a) above is not written in the English language, a translation of it into English certified in the prescribed manner to be a correct translation.
- (2) In sub-paragraph (1)(a) above, “financial period” and “accounting documents” shall be construed in accordance with paragraph 6 of Schedule 21D.

#### **Alterations**

7.—(1) If, after a company has delivered a return under paragraph 1(1) above, any alteration is made in—

- (a) its charter, statutes or memorandum and articles (or other instrument constituting or defining its constitution), or
- (b) any of the particulars referred to in paragraph 1(1),

the company shall, within the time specified below, deliver to the registrar for registration a return in the prescribed form containing the prescribed particulars of the alteration.

In the case of an alteration in any of the documents referred to in paragraph (a), the return shall be accompanied by a certified copy of the document as altered, together with, if the document is not written in the English language, a translation of it into English certified in the prescribed manner to be a correct translation.

- (2) The time for the delivery of the return required by sub-paragraph (1) above is—
- (a) in the case of an alteration in any of the particulars specified in paragraph 3, 21 days after the alteration is made; or

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- (b) in the case of any other alteration, 21 days after the date on which notice of the alteration in question could have been received in Great Britain in due course of post (if despatched with due diligence).

(3) Where—

- (a) a company has more than one branch in Great Britain, and
- (b) an alteration relates to more than one of those branches,

sub-paragraph (1) above shall have effect to require the company to deliver a return in respect of each of the branches to which the alteration relates.

(4) For the purposes of sub-paragraph (3) above—

- (a) an alteration in any of the particulars specified in paragraph 2 shall be treated as relating to every branch of the company (though where the company has more than one branch in a part of Great Britain a return in respect of an alteration in any of those particulars which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given), but
- (b) an alteration in the company's charter, statutes or memorandum and articles (or other instrument constituting or defining its constitution) shall only be treated as relating to a branch if the document altered is included in the material registered in respect of it.

8.—(1) Sub-paragraph (2) below applies where—

- (a) a company's return under paragraph 1(1) includes a statement to the effect mentioned in paragraph 1(3)(b), and
- (b) the statement ceases to be true so far as concerns the documents specified in paragraph 5.

(2) The company shall, within the time specified below, deliver to the registrar of companies for registration in respect of the branch to which the return relates—

- (a) the documents specified in paragraph 5, or
- (b) a return in the prescribed form—
  - (i) containing a statement to the effect that those documents are included in the material which is registered in respect of another branch of the company in the United Kingdom, and
  - (ii) stating where the other branch is registered and what is its registered number.

(3) The time for complying with sub-paragraph (2) above is 21 days after the date on which notice of the fact that the statement in the earlier return has ceased to be true could have been received in Great Britain in due course of post (if despatched with due diligence).

(4) Sub-paragraph (2) above shall also apply where, after a company has made a return under sub-paragraph (2)(b) above, the statement to the effect mentioned in sub-paragraph (2)(b)(i) ceases to be true.

(5) For the purposes of sub-paragraph (2)(b), where the company has more than one branch in a part of Great Britain a return which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given.”

4. After section 692 there shall be inserted—

**“Change in registration regime.**

**692A.—**(1) Where a company ceases to be a company to which section 690A applies and, immediately after ceasing to be such a company—

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(a) continues to have in Great Britain a place of business which it had immediately before ceasing to be such a company, and

(b) does not have a branch in Northern Ireland,

it shall be treated for the purposes of section 691 as having established the place of business on the date when it ceased to be a company to which section 690A applies.

(2) Where a limited company incorporated outside the United Kingdom and Gibraltar—

(a) ceases to have a branch in Northern Ireland, and

(b) both immediately before and immediately after ceasing to do so, has a place of business, but not a branch, in Great Britain,

it shall be treated for the purposes of section 691 as having established the place of business on the date when it ceased to have a branch in Northern Ireland.

(3) Where a company—

(a) becomes a company to which section 690A applies,

(b) immediately after becoming such a company, has in a part of Great Britain an established place of business but no branch, and

(c) immediately before becoming such a company, had an established place of business in that part,

sections 691 and 692 shall, in relation to that part, continue to apply to the company (notwithstanding section 690B) until such time as it gives notice to the registrar for that part that it is a company to which that section applies.

(4) Schedule 21B to this Act (transitional provisions in relation to change in registration regime) shall have effect.”

5. After Schedule 21A there shall be inserted—

“SCHEDULE 21B

Section 692A.

CHANGE IN REGISTRATION REGIME: TRANSITIONAL PROVISIONS

1.—(1) This paragraph applies where a company which becomes a company to which section 690A applies was, immediately before becoming such a company (referred to in this paragraph as the relevant time), a company to which section 691 applies.

(2) The company need not include the particulars specified in paragraph 2(1)(d) of Schedule 21A in the first return to be delivered under paragraph 1(1) of that Schedule to the registrar for a part of Great Britain if at the relevant time—

(a) it had an established place of business in that part,

(b) it had complied with its obligations under section 691(1)(b)(i), and

(c) it had no outstanding obligation to make a return to the registrar for that part under subsection (1) of section 692, so far as concerns any alteration of the kind mentioned in subsection (1)(b) of that section,

and if it states in the return that the particulars have been previously filed in respect of a place of business of the company in that part, giving the company’s registered number.

(3) The company shall not be required to deliver the documents mentioned in paragraph 5 of Schedule 21A with the first return to be delivered under paragraph 1(1) of that Schedule to the registrar for a part of Great Britain if at the relevant time—

(a) it had an established place of business in that part,

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- (b) it had delivered the documents mentioned in section 691(1)(a) to the registrar for that part, and
- (c) it had no outstanding obligation to make a return to that registrar under subsection (1) of section 692, so far as concerns any alteration in any of the documents mentioned in paragraph (a) of that subsection,

and if it states in the return that the documents have been previously filed in respect of a place of business of the company in that part, giving the company's registered number.

2.—(1) This paragraph applies where a company which becomes a company to which section 691 applies was, immediately before becoming such a company (referred to in this paragraph as the relevant time), a company to which section 690A applies.

(2) The company shall not be required to deliver the documents mentioned in section 691(1)(a) to the registrar for a part of Great Britain if at the relevant time—

- (a) it had a branch in that part,
- (b) the documents mentioned in paragraph 5 of Schedule 21A were included in the material registered in respect of the branch, and
- (c) it had no outstanding obligation to make a return to the registrar for that part under paragraph 7 of that Schedule, so far as concerns any alteration in any of the documents mentioned in sub-paragraph (1)(a) of that paragraph,

and if it states in the return that the documents have been previously filed in respect of a branch of the company, giving the branch's registered number.

(3) The company need not include the particulars mentioned in section 691(1)(b)(i) in the return to be delivered under section 691(1)(b) to the registrar for a part of Great Britain if at the relevant time—

- (a) it had a branch in that part,
- (b) it had complied with its obligations under paragraph 1(1)(a) of Schedule 21A in respect of the branch so far as the particulars required by paragraph 2(1)(d) of that Schedule are concerned, and
- (c) it had no outstanding obligation to make a return to the registrar for that part under paragraph 7 of that Schedule, so far as concerns any alteration in any of the particulars required by paragraph 2(1)(d) of that Schedule,

and if it states in the return that the particulars have been previously filed in respect of a branch of the company, giving the branch's registered number.

(4) Where sub-paragraph (3) above applies, the reference in section 692(1)(b) to the list of the directors and secretary shall be construed as a reference to the list contained in the return under paragraph 1(1) of Schedule 21A with any alterations in respect of which a return under paragraph 7(1) of that Schedule has been made.”

#### **Duty to state name etc.**

6. In section 693, the existing provision shall become subsection (1) and after that subsection there shall be inserted—

“(2) Every company to which section 690A applies shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the place of registration of the branch, and
- (b) the registered number of the branch.

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(3) Every company to which section 690A applies, which is not incorporated in a Member State and which is required by the law of the country in which it is incorporated to be registered shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the identity of the registry in which the company is registered in its country of incorporation, and
- (b) the number with which it is registered.

(4) Every company to which section 690A applies and which is not incorporated in a Member State shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the legal form of the company,
- (b) the location of its head office, and
- (c) if applicable, the fact that it is being wound up.”

### **Regulation in respect of names**

7.—(1) Section 694 shall be amended as follows.

(2) In subsection (1), for “(defined below in subsection (3))” there shall be substituted “(determined in accordance with subsections (3A) and (3B))”.

(3) In subsection (3), the words from “being the date” to the end are hereby repealed.

(4) After that subsection there shall be inserted—

“(3A) For the purposes of subsections (1) to (3), the relevant date, in relation to a company, is the date on which it has complied with paragraph 1 of Schedule 21A or section 691(1) or, if there is more than one such date, the first date on which it has complied with that paragraph or that subsection since becoming an oversea company.

(3B) But where the company’s corporate name has changed since the date ascertained in accordance with subsection (3A), the relevant date is the date on which the company has, in respect of the change or, if more than one, the latest change, complied with paragraph 7(1) of Schedule 21A or section 692(2), as the case may be.”

### **Service of documents**

8. After section 694 there shall be inserted—

**“Service of documents: companies to which section 690A applies.**

**694A.**—(1) This section applies to any company to which section 690A applies.

(2) Any process or notice required to be served on a company to which this section applies in respect of the carrying on of the business of a branch registered by it under paragraph 1 of Schedule 21A is sufficiently served if—

- (a) addressed to any person whose name has, in respect of the branch, been delivered to the registrar as a person falling within paragraph 3(e) of that Schedule, and
- (b) left at or sent by post to the address for that person which has been so delivered.

(3) Where—

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- (a) a company to which this section applies makes default, in respect of a branch, in delivering to the registrar the particulars mentioned in paragraph 3(e) of Schedule 21A, or
- (b) all the persons whose names have, in respect of a branch, been delivered to the registrar as persons falling within paragraph 3(e) of that Schedule are dead or have ceased to reside in Great Britain, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company in respect of the carrying on of the business of the branch by leaving it at, or sending it by post to, any place of business established by the company in Great Britain.

(4) Where a company to which this section applies has more than one branch in Great Britain, any notice or process required to be served on the company which is not required to be served in respect of the carrying on of the business of one branch rather than another shall be treated for the purposes of this section as required to be served in respect of the carrying on of the business of each of its branches.”

9. In section 695(1), after “oversea company” there shall be inserted “to which section 691 applies”.

#### **Registrar to whom documents to be delivered**

10. After section 695 there shall be inserted—

**“Registrar to whom documents to be delivered: companies to which section 690A applies.**

**695A.**—(1) References to the registrar, in relation to a company to which section 690A applies, (except references in Schedule 21C) shall be construed in accordance with the following provisions.

(2) The documents which a company is required to deliver to the registrar shall be delivered—

- (a) to the registrar for England and Wales, if required to be delivered in respect of a branch in England and Wales, and
- (b) to the registrar for Scotland, if required to be delivered in respect of a branch in Scotland.

(3) If a company closes a branch in a part of Great Britain, it shall forthwith give notice of that fact to the registrar for that part; and from the date on which notice is so given it is no longer obliged to deliver documents to that registrar in respect of that branch.

(4) In subsection (3) above, the reference to closing a branch in either part of Great Britain includes a reference to a branch ceasing to be situated in that part on becoming situated elsewhere.”

11. Section 696 shall be amended as follows:

- (a) in subsection (1), after “oversea company” there shall be inserted “to which section 691 applies;”
- (b) in subsection (3), after “registrar of companies” there shall be inserted “, in relation to a company to which section 691 applies;”;
- (c) in subsection (4), after “oversea company” there shall be inserted “to which section 691 applies”.



## Penalties for non-compliance

12. In section 697, the following is inserted as subsection (3):

“(3) if an overseas company fails to comply with section 695A or Schedule 21A, the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, is liable to a fine and, in the case of a continuing offence, to a daily default fine for continued contravention”.

## Interpretation

13.—(1) Section 698 shall be amended as follows.

(2) The existing provision shall become subsection (1) and the words “for this Chapter” shall be omitted from the sidenote.

(3) The following is inserted as subsection (2):

“(2) For the purposes of this Part (except section 699A and Schedule 21C):

- (a) where a branch comprises places of business in more than one part of the United Kingdom, the branch shall be treated as being situated in that part of the United Kingdom where its principal place of business is situated; and
- (b) “branch” means a branch within the meaning of the Council Directive concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (the Eleventh Company Law Directive, [89/666/EEC](#))”.

## Channel Islands and Isle of Man companies

14. In section 699(1), after “overseas company” there shall be inserted “to which section 691 applies”.

## PART II

### DELIVERY OF ACCOUNTS AND REPORTS

15. Chapter II of Part XXIII(11) shall be amended as mentioned in paragraphs 16 to 18 below.

16. After section 699A(12) there shall be inserted—

**“Companies to which the Eleventh Company Law Directive applies.**

**699AA.—**(1) This section applies to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar,
- (b) has a branch in Great Britain, and
- (c) is not an institution to which section 699A applies.

(2) Schedule 21D to this Act (delivery of accounts and reports) shall have effect in relation to any company to which this section applies.”

17. In section 699B(13), there shall be inserted at the end “or to any limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in the United Kingdom”.

(11) Chapter II of Part XXIII was substituted for the existing chapter of that number by section 23 of, and paragraph 13 of Schedule 10 to, the 1989 Act.

(12) Section 699B is inserted by regulation 2 of these Regulations.

(13) Section 699A is inserted by regulation 2 of these Regulations.

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18. After Schedule 21C there shall be inserted—

“SCHEDULE 21D

Section 699AA.

DELIVERY OF REPORTS AND ACCOUNTS: COMPANIES TO WHICH THE ELEVENTH COMPANY LAW DIRECTIVE APPLIES

PART I

COMPANIES REQUIRED TO MAKE DISCLOSURE UNDER PARENT LAW

**Scope of Part**

1. This Part of this Schedule applies to any company to which section 699AA applies which is required by its parent law to prepare, have audited and disclose accounts.

**Duty to deliver copies in Great Britain**

2.—(1) This paragraph applies in respect of each branch which a company to which this Part of this Schedule applies has in Great Britain.

(2) The company shall deliver to the registrar for registration in respect of the branch copies of all the accounting documents prepared in relation to a financial period of the company which are disclosed in accordance with its parent law on or after the end of the period allowed for compliance in respect of the branch with paragraph 1 of Schedule 21A or, if earlier, the date on which the company complies with that paragraph in respect of the branch.

(3) Where the company’s parent law permits it to discharge its obligation with respect to the disclosure of accounting documents by disclosing documents in a modified form, it may discharge its obligation under sub-paragraph (2) above by delivering copies of documents modified as permitted by that law.

(4) If any document, a copy of which is delivered under sub-paragraph (2) above, is in a language other than English, the company shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

3. Paragraph 2 above shall not require documents to be delivered in respect of a branch if—
- (a) before the end of the period allowed for compliance with that paragraph, they are delivered in respect of another branch in the United Kingdom, and
  - (b) the particulars registered under Schedule 21A in respect of the branch indicate an intention that they are to be registered in respect of that other branch and include the details of that other branch mentioned in paragraph 4(b) of that Schedule.

**Time for delivery**

4. The period allowed for delivery, in relation to a document required to be delivered under paragraph 2, is 3 months from the date on which the document is first disclosed in accordance with the company’s parent law.

**Penalty for non-compliance**

5.—(1) If a company fails to comply with paragraph 2 before the end of the period allowed for compliance, it, and every person who immediately before the end of that period was a director

of it, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) It is a defence for a person charged with an offence under this paragraph to prove that he took all reasonable steps for securing compliance with paragraph 2.

### **Interpretation**

6.—(1) In this Part of this Schedule—

“financial period”, in relation to a company, means a period for which the company is required or permitted by its parent law to prepare accounts;

“parent law”, in relation to a company, means the law of the country in which the company is incorporated;

and references to disclosure are to public disclosure.

(2) For the purposes of this Part of this Schedule, the following are accounting documents in relation to a financial period of a company—

- (a) the accounts of the company for the period, including, if it has one or more subsidiaries, any consolidated accounts of the group,
- (b) any annual report of the directors for the period,
- (c) the report of the auditors on the accounts mentioned in paragraph (a) above, and
- (d) any report of the auditors on the report mentioned in paragraph (b) above.

## **PART II**

### **COMPANIES NOT REQUIRED TO MAKE DISCLOSURE UNDER PARENT LAW**

#### **Scope of Part**

7. This Part of this Schedule applies to any company to which section 699AA applies which is not required by the law of the country in which it is incorporated to prepare, have audited and publicly disclose accounts.

#### **Preparation of accounts and reports**

8. A company to which this Part of this Schedule applies shall in respect of each financial year of the company prepare the like accounts and directors' report, and cause to be prepared such an auditors' report, as would be required if the company were a company to which section 700 applied.

9. Sections 223 to 225 apply to a company to which this Part of this Schedule applies subject to the following modifications—

- (a) for the references to the incorporation of the company there shall be substituted references to the company becoming a company to which this Part of this Schedule applies, and
- (b) section 225(4) shall be omitted.

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### **Duty to deliver accounts and reports**

**10.—(1)** A company to which this Part of this Schedule applies shall in respect of each financial year of the company deliver to the registrar copies of the accounts and reports prepared in accordance with paragraph 8.

(2) If any document comprised in those accounts or reports is in a language other than English, the company shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(3) A company required to deliver documents under this paragraph in respect of a financial year shall deliver them in respect of each branch which it has in Great Britain at the end of that year.

(4) Sub-paragraph (3) above is without prejudice to section 695A(3).

**11.** Paragraph 10 shall not require documents to be delivered in respect of a branch if—

- (a) before the end of the period allowed for compliance with that paragraph, they are delivered in respect of another branch in the United Kingdom, and
- (b) the particulars registered under paragraph 1 of Schedule 21A in respect of the branch indicate an intention that they are to be registered in respect of that other branch and include the details of that other branch mentioned in paragraph 4(b) of that Schedule.

### **Time for delivery**

**12.—(1)** The period allowed for delivering accounts and reports under paragraph 10 is 13 months after the end of the relevant accounting reference period, subject to the following provisions of this paragraph.

(2) If the relevant accounting reference period 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's becoming a company to which this Part of this Schedule applies.

(3) If the relevant accounting reference period is treated as shortened by virtue of a notice given by the company under section 225, the period allowed is that applicable in accordance with the above provisions or 3 months from the date of the notice under that section, whichever last expires.

(4) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company to which this part of this Schedule applies extend that period by such further period as may be specified in the notice.

(5) In this paragraph "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.

### **Penalty for non-compliance**

**13.—(1)** If the requirements of paragraph 10 are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements of this Act, the company and every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

(3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by this Act."

PART III  
WINDING UP ETC.

19. At the end of Part XXIII there shall be inserted—

“CHAPTER IV  
WINDING UP ETC.

**Scope of Chapter.**

**703O.** This Chapter applies to any company to which section 690A applies.

**Particulars to be delivered to the registrar: winding up.**

**703P.**—(1) Subject to subsection (8), where a company to which this Chapter applies is being wound up, it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—

- (a) the name of the company;
- (b) whether the company is being wound up by an order of a court and, if so, the name and address of the court and the date of the order;
- (c) if the company is not being so wound up, as a result of what action the winding up has commenced;
- (d) whether the winding up has been instigated by:
  - (i) the company’s members;
  - (ii) the company’s creditors; or
  - (iii) some other person or persons,and, in the case of (iii) the identity of that person or those persons shall be given; and
- (e) the date on which the winding up became or will become effective.

(2) The period allowed for delivery of a return under subsection (1) above is 14 days from the date on which the winding up begins.

(3) Subject to subsection (8), a person appointed to be the liquidator of a company to which this Chapter applies shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—

- (a) his name and address,
- (b) the date of his appointment, and
- (c) a description of such of his powers, if any, as are derived otherwise than from the general law or the company’s constitution.

(4) The period allowed for delivery of a return under subsection (3) above is 14 days from the date of the liquidator’s appointment.

(5) Subject to subsection (8), the liquidator of a company to which this Chapter applies shall deliver to the registrar for registration a return in the prescribed form upon the occurrence of the following events—

- (a) the termination of the winding up of the company, and

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- (b) the company ceasing to be registered, in circumstances where ceasing to be registered is an event of legal significance.

The following particulars shall be given:

- (i) in the case of (a), the name of the company and the date on which the winding up terminated; and
- (ii) in the case of (b), the name of the company and the date on which the company ceased to be registered.

(6) The period allowed for delivery of a return under subsection (5) is 14 days from the date of the event concerned.

(7) The obligation to deliver a return under subsection (1), (3) or (5) above shall apply in respect of each branch which the company has in Great Britain (though where the company has more than one branch in a part of Great Britain a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

(8) No return is required under subsection (1), (3), or (5) above in respect of a winding up under Part V of the Insolvency Act 1986<sup>(14)</sup>.

**Particulars to be delivered to the registrar: insolvency proceedings etc.**

**703Q.**—(1) Where a company to which this Chapter applies becomes subject to any of the following proceedings (other than proceedings for the winding up of the company), that is to say, insolvency proceedings or an arrangement or composition or any analogous proceedings, it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—

- (a) the name of the company;
- (b) whether the proceedings are by order of a court and, if so, the name and address of the court and the date of the order;
- (c) if the proceedings are not by order of a court, as a result of what action the proceedings have been commenced;
- (d) whether the proceedings have been instigated by:
  - (i) the company's members;
  - (ii) the company's creditors; or
  - (iii) some other person or persons,and, in the case of (iii) the identity of that person or those persons shall be given; and
- (e) the date on which the proceedings became or will become effective.

(2) Where a company to which this Chapter applies ceases to be subject to any of the proceedings mentioned in subsection (1) it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars:

- (a) the name of the company; and
- (b) the date on which it ceased to be subject to the proceedings.

(3) The period allowed for delivery of a return under subsection (1) or (2) is 14 days from the date on which the company becomes subject, or (as the case may be) ceases to be subject to the proceedings concerned.

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(14) 1986 c. 45.

(4) The obligation to deliver a return under subsection (1) or (2) shall apply in respect of each branch which the company has in Great Britain (though where the company has more than one branch in a part of Great Britain a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

### **Penalty for non-compliance**

**703R.**—(1) If a company fails to comply with section 703P(1) or 703Q(1) or (2) within the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) If a liquidator fails to comply with section 703P(3) or (5) within the period allowed for compliance, he is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps for securing compliance with the requirements concerned.”

## SCHEDULE 3

Regulation 4.

### CONSEQUENTIAL AMENDMENTS

#### **Civil Aviation Act 1982 (c. 16)**

1. In section 23(3) of the Civil Aviation Act 1982 (when reasonable inquiries to find a body corporate deemed to have been made) in paragraph (b) for the words from “made” to the end there shall be substituted

“made—

- (i) at every address registered in respect of that company for the purposes of section 691(1)(b)
- (ii) of the said Act of 1985 or, as the case may be, at every address for service registered in respect of a branch of that company under Schedule 21A of that Act, and
- (ii) at every address registered in respect of that company for the purposes of Article 641(1)(b)
- (ii) of the said Order of 1986.”

#### **Insurance Companies Act 1982 (c. 50)**

2. In section 87(2) of the Insurance Companies Act 1982 (application of provisions to insurance companies) for paragraph (a) there shall be substituted—

“(a) sections 691, 692, 693(1), 695, 696 to 698, 700 to 703 and 708 of the Companies Act,”

#### **Companies Act 1985 (c. 6)**

3. The Companies Act 1985 shall be amended as mentioned in paragraphs 4 to 9 below.

4. In section 696(3), after “this Part” there shall be inserted “(except references in Schedule 21C)”.

5. In section 705(5)(15) there shall be inserted the following before paragraph (a):

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(15) Section 705 was inserted into the principal Act by section 145 of, and paragraph 14 of Schedule 19 to, the 1989 Act.

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“(za) any overseas company which has complied with paragraph 1 of Schedule 21A other than a company which appears to the registrar not to have a branch in Great Britain;”

6. In sections 706(2)(a) and 707(4)(a) (documents required to be delivered to the registrar to state company’s registered number) there shall be inserted at the end “and, if the document is delivered under sections 695A(3), 703P or 703Q or Schedules 21A or 21D the registered number of the branch to which it relates.”

7. In section 711(1) (public notice by registrar of receipt of certain documents) there shall be inserted at the end—

- “(u) any return delivered under paragraph 1, 7 or 8 of Schedule 21A (branch registration),
- (v) any document delivered under paragraph 1 or 8 of that Schedule,
- (w) any notice under section 695A(3) of the closure of a branch,
- (x) any document delivered under Schedule 21C (accounts and reports of foreign credit and financial institutions),
- (y) any document delivered under Schedule 21D (accounts and reports of overseas companies subject to branch registration, other than credit and financial institutions),
- (z) any return delivered under section 703P (particulars of winding up of overseas companies subject to branch registration).”

8. In section 714(1) (registrar’s index of companies) after paragraph (a) there shall be inserted—

“(aa) companies incorporated outside the United Kingdom and Gibraltar which have complied with paragraph 1 of Schedule 21A and which do not appear to the registrar of companies not to have a branch in Great Britain,”

9.—(1) Schedule 24 (punishment of offences) shall be amended as follows.

(2) The following entries shall be inserted at the appropriate places—

“697(3)	Overseas Company failing to comply with Section 695A or Schedule 21A	Summary	For an offence which is not a continuing offence, one fifth of level 5 of the standard scale.  For an offence which is a continuing offence one fifth of level 5 of the standard scale.	£100
703R(1)	Company failing to register winding up or commencement of insolvency proceedings etc.	1. On indictment.	A fine	



		<b>2. Summary.</b>	The statutory maximum.	£100
703R(2).	Liquidator failing to register appointment, termination of winding up or striking-off of company.	<b>1. On indictment.</b>	A fine.	
		<b>2. Summary.</b>	The statutory maximum.	£100
Sch. 21C, Pt.I, para. 7	Credit or financial institution failing to deliver accounting documents.	<b>1. On indictment.</b>	A fine.	
		<b>2. Summary.</b>	The statutory maximum.	£100
Sch. 21C, Pt.II, para. 15	Credit or financial institution failing to deliver accounts and reports.	<b>1. On indictment.</b>	A fine.	
		<b>2. Summary.</b>	The statutory maximum.	£100
Sch. 21D, Pt.I, para. 5	Company failing to deliver accounting documents.	<b>1. On indictment.</b>	A fine.	
		<b>2. Summary.</b>	The statutory maximum.	£100
Sch. 21D, Pt.I, para. 13	Company failing to deliver accounts and reports.	<b>1. On indictment.</b>	A fine.	
		<b>2. Summary.</b>	The statutory maximum.	£100”

**Banking Act 1987 (c. 22)**

**10.**—(1) Section 79 of the Banking Act 1987 (duty to provide information and documents) shall be amended as follows.

(2) In subsection (2), after paragraph (a) there shall be inserted—

“(aa) in the case of an overseas institution to which section 690A of that Act applies, copies of the documents which it is required to deliver for registration in accordance with paragraph 1(1) or (2) of Schedule 21A of that Act;”.

(3) In subsection (5)—

(a) for “section 692 or 696(4) of” there shall be substituted “section 692, 695A(3) or 696 of, or paragraph 7 or 8 of Schedule 21A to,”;

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- (b) for “that section or Article applied)” there shall be substituted “that section, paragraph or Article applied)”.

### **The Companies Act 1989 (c. 40)**

**11.** Schedule 15 to the Companies Act 1989 (which prospectively inserts new sections 703A to 703N into the principal Act) shall be amended as mentioned in paragraphs 12 to 15 below.

**12.** In the new section 703A(3) (definition of “registered overseas company”), prospectively inserted by Schedule 15, after “which” there shall be inserted—

- “(a) has duly delivered documents under paragraph 1 of Schedule 21A to the registrar for that part of Great Britain and has not subsequently given notice to him under section 695A(3) that it has closed the branch in respect of which the documents were registered, or

(b)”

**13.** In the new section 703B(2) (date for determining whether a charge requires registration), prospectively inserted by Schedule 15, for paragraph (a) there shall be substituted—

- “(a) in the case of a charge over property of a company at the date when it becomes a registered overseas company, as at that date.”.

**14.—(1)** The new section 703D (duty to deliver particulars of charges for registration), prospectively inserted by Schedule 15, shall be amended as follows.

(2) In subsection (1), for “delivers documents for registration under section 691” there shall be substituted—

- “(a) delivers documents for registration under paragraph 1 of Schedule 21A—  
(i) in respect of a branch in England and Wales, or  
(ii) in respect of a branch in Scotland,  
for the first time since becoming a company to which section 690A applies, or  
(b) delivers documents for registration under section 691.”.

(3) After that subsection there shall be inserted—

- “(1A) Subsection (1) above does not apply in relation to a charge if—  
(a) the particulars of it required to be delivered under that subsection have already been so delivered to the registrar to whom the documents mentioned in subsection (1) above are delivered, and  
(b) the company has at all times since they were so delivered to him been a registered overseas company in relation to the part of Great Britain for which he is registrar.”

**15.—(1)** The new section 703E (registrar to whom particulars etc. to be delivered), prospectively inserted by Schedule 15, shall be amended as follows.

(2) In subsection (1), after “under” there shall be inserted “paragraph 1 of Schedule 21A or, as the case may be,”.

(3) In subsection (2), for paragraphs (a) and (b) and the words after paragraph (b) there shall be inserted—

- “(a) where the company is a company to which section 690A applies—  
(i) if it has registered a branch in one part of Great Britain but has not registered a branch in the other, to the registrar for the part in which it has registered a branch,

- (ii) if it has registered a branch in both parts of Great Britain but the property subject to the charge is situated in one part of Great Britain only, to the registrar for that part, and
  - (iii) in any other case, to the registrars for both parts of Great Britain; and
- (b) where the company is a company to which section 691 applies—
- (i) if it is registered in one part of Great Britain and not in the other, to the registrar for the part in which it is registered,
  - (ii) if it is registered in both parts of Great Britain but the property subject to the charge is situated in one part of Great Britain only, to the registrar for that part, and
  - (iii) in any other case, to the registrar for both parts of Great Britain.”

(4) In subsection (4), for the first sentence there shall be substituted—

“If a company ceases to be a registered overseas company in relation to either part of Great Britain, charges over property of the company shall cease to be subject to the provisions of this Chapter, as regards registration in that part of Great Britain, as from the date on which the notice under section 695A(3) or, as the case may be, 696(3) is given.”

**16.** Schedule 16 to the Companies Act 1989 shall be amended by the insertion, immediately after the heading “Companies Act 1985 (c. 6)”, of the following:

“**1A.** Section 695A(1) is amended by the insertion of the words “or Chapter III of this Part” after “Schedule 21C”.”

**17.** Paragraph 13 of Schedule 19 to the 1989 Act (which prospectively substitutes a new section 696 (registrar to whom documents to be delivered) of the principal Act) shall be amended as follows:

- (a) by the insertion in the new subsection (1) of “to which section 691 applies” after “overseas company”; and
- (b) by the substitution, in subsection (1) of “in Schedule 21C or Chapter III of this Part)” for “in Chapter III of this Part (registration of charges): see section 703E”.

## SCHEDULE 4

Regulation 5

### TRANSITIONAL PROVISIONS

#### **Branch registration**

**1.—(1)** This paragraph applies to any limited company incorporated outside the United Kingdom and Gibraltar which, immediately after 31st December 1992, has a branch in England and Wales which it had there immediately before 1st January 1993.

(2) A company to which this paragraph applies shall be treated for the purposes of paragraph 1(1) of Schedule 21A to the principal Act as having opened on 1st January 1993 any branch which it has in England and Wales immediately after 31st December 1992 and had there immediately before 1st January 1993.

(3) Where a company to which this paragraph applies was a registered overseas company in relation to England and Wales immediately before 1st January 1993, paragraph 1(1) of Schedule 21A to the principal Act shall have effect, in its application by virtue of sub-paragraph (2) above, with the substitution for “one month” of “six months”.

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(4) For the purposes of sub-paragraph (3) above, a company is a registered overseas company in relation to England and Wales if it has duly delivered documents to the registrar for England and Wales under section 691 of the principal Act and has not subsequently given notice to him under section 696(4) of that Act that it has ceased to have an established place of business there.

(5) Subject to sub-paragraph (6), sections 691 and 692 of the principal Act shall, in relation to England and Wales, continue to apply to a company to which this paragraph applies (notwithstanding section 690B of that Act) until such time as it has—

- (a) complied with paragraph 1 of Schedule 21A to the principal Act in respect of a branch in England and Wales, or
- (b) ceased to have a branch there.

(6) Sections 691 and 692 of the principal Act shall not however apply to any company to which this paragraph applies, if the company had no place of business in England and Wales immediately prior to 1st December 1992.

(7) This paragraph shall also apply with the substitution for references to England and Wales of references to Scotland.

(8) For the purposes of this paragraph “branch” has the same meaning as in section 698(2) of the principal Act and whether a branch is in England and Wales or Scotland is to be determined in accordance with that section.

**2.—(1)** This paragraph applies to any limited company incorporated outside the United Kingdom and Gibraltar which—

- (a) has an established place of business in England and Wales both immediately before 1st January 1993 and immediately after 31st December 1992, and
- (b) does not have a branch there immediately after 31st December 1992.

(2) Where, immediately after 31st December 1992, a company to which this paragraph applies has a branch elsewhere in the United Kingdom, sections 691 and 692 of the principal Act shall, in relation to England and Wales, continue to apply to the company (notwithstanding section 690B of that Act) until such time as it gives the registrar for England and Wales notice of the fact that it is a company to which section 690A applies.

(3) In sub-paragraph (2) above, “registrar” has the same meaning as in the principal Act.

(4) This paragraph shall also apply with the substitution for references to England and Wales of references to Scotland.

(5) For the purposes of this paragraph “branch” has the same meaning as in section 698(2) of the principal Act and whether a branch is in England and Wales or Scotland or Northern Ireland is to be determined in accordance with that section.

**3.—(1)** Where—

- (a) a company to which paragraph 1 above applies delivers a return under paragraph 1(1) of Schedule 21A to the principal Act in respect of a branch in England and Wales or Scotland,
- (b) the return is the first which the company has delivered under that provision in respect of a branch in that part of Great Britain, (c) immediately before delivering the return, the company was a registered overseas company in relation to that part of Great Britain, and
- (d) the company states in the return that the particulars have previously been delivered in respect of a place of business of the company in that part, giving the company’s registered number,

the documents previously registered under section 691(1)(a) of that Act shall be treated as registered under paragraph 1 of Schedule 21A to that Act in respect of the branch to which the return relates.

(2) For the purposes of this paragraph, a company is a registered overseas company in relation to England and Wales or Scotland if—

- (a) it has duly delivered documents to the registrar for that part of Great Britain under section 691 of the principal Act,
- (b) it has duly complied with any obligation to make a return to that registrar under section 692(1)(a) of that Act, and
- (c) it has not subsequently given notice to that registrar under section 696(4) of that Act that it has ceased to have an established place of business in that part.

(3) For the purposes of this paragraph “branch” has the same meaning as in section 698(2) of the principal Act.

**Delivery of accounts and reports: institutions and companies previously subject to section 700**

4.—(1) This paragraph applies to any company which—

- (a) immediately after 31st December 1992, is an institution to which Part I of Schedule 21C to the principal Act applies, and
- (b) immediately before 1st January 1993, was a company to which section 700 of that Act applies.

(2) Notwithstanding section 699B of the principal Act, sections 700 to 703 of that Act shall continue to apply in relation to any financial year of a company to which this paragraph applies beginning before 1st January 1993.

(3) Schedule 21C to the principal Act shall only have effect to require a company to which this paragraph applies to deliver accounting documents for registration if they have been prepared with reference to a period ending after the end of the last financial year of the company in relation to which sections 700 to 703 of that Act apply.

(4) In this paragraph, “financial year” has the same meaning as in section 700 of the principal Act.

5.—(1) This paragraph applies to any company which—

- (a) immediately after 31st December 1992, is an institution to which Part II of Schedule 21C to the principal Act applies, and
- (b) immediately before 1st January 1993, was a company to which section 700 of that Act applies.

(2) Paragraphs 10 and 12(1) of Schedule 21C to the principal Act shall have effect, in relation to any company to which this paragraph applies, with the insertion after “each financial year of the institution” of “ending after 31st December 1992”.

(3) Any date which, immediately before 1st January 1993, is established for the purposes of sections 224 and 225 of the principal Act, as applied by section 701 of that Act, as the accounting reference date of a company to which this paragraph applies shall, immediately after 31st December 1992, be treated as established as the accounting reference date of the company for the purposes of those sections, as applied by paragraph 11 of Schedule 21C to that Act.

(4) In their application to a company to which this paragraph applies, paragraphs 11(a) and 13(2) of Schedule 21C to the principal Act shall have effect with the substitution for “becoming an institution to which this Part of this Schedule applies” of “establishing a place of business in Great Britain”.

6.—(1) This paragraph applies to any company which—

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- (a) immediately after 31st December 1992, is a company to which Part I of Schedule 21D to the principal Act applies, and
- (b) immediately before 1st January 1993, was a company to which Chapter II of Part XXIII of that Act applies.

(2) Notwithstanding section 699B of the principal Act, sections 700 to 703 of that Act shall continue to apply in relation to any financial year of a company to which this paragraph applies beginning before 1st January 1993.

(3) Schedule 21D to the principal Act shall only have effect to require a company to which this paragraph applies to deliver accounting documents for registration if they have been prepared with reference to a period ending after the end of the last financial year of the company in relation to which sections 700 to 703 of that Act apply.

(4) In this paragraph, “financial year” has the same meaning as in section 700 of the principal Act.

7.—(1) This paragraph applies to any company which—

- (a) immediately after 31st December 1992, is a company to which Part II of Schedule 21D to the principal Act applies, and
- (b) immediately before 1st January 1993, was a company to which section 700 of that Act applies.

(2) Paragraphs 8 and 10(1) of Schedule 21D to the principal Act shall have effect, in relation to a company to which this paragraph applies, with the insertion after “each financial year of the company” of “ending after 31st December 1992”.

(3) Any date which, immediately before 1st January 1993, is established for the purposes of sections 224 and 225 of the principal Act, as applied by section 701 of that Act, as the accounting reference date of a company to which this paragraph applies shall, immediately after 31st December 1992, be treated as established as the accounting reference date of the company for the purposes of those sections, as applied by paragraph 9 of Schedule 21D to that Act.

(4) In its application to a company to which this paragraph applies, paragraphs 9(a) and 12(2) of Schedule 21D to the principal Act shall have effect with the substitution for “becoming a company to which this Part of this Schedule applies” of “establishing a place of business in Great Britain”.

### **Delivery of accounts and reports: other institutions and companies**

8.—(1) This paragraph applies to an institution to which Part I of Schedule 21C applies and to a company to which Part I of Schedule 21D applies, other than a company to which paragraphs 4 to 7 apply.

(2) Paragraph 1(2) of Schedule 21A and the provisions of Schedules 21C and 21D to the principal Act shall only have effect to require a company to which this paragraph applies to deliver accounting documents for registration if they have been prepared with reference to a period commencing on or after 1st January 1993.

### **References to enactments and continuance of law**

9.—(1) Any reference in any enactment (including any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978<sup>(16)</sup>) to any provision in Part XXIII of the principal Act as unamended by these Regulations shall be construed as including a reference to the corresponding provision inserted by these Regulations with respect to companies to which section 690A and 699A or (as the case may be) section 699AA of that Act applies, unless the context otherwise requires.

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(16) 1978 c. 30.

(2) This provision made by this paragraph is without prejudice to the operation of the Interpretation Act 1978 or to any amendments effected by Schedule 3 to these Regulations.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

**These Regulations implement, through a number of amendments to the Companies Act 1985 (“the Act”), Council Directive 89/666/89 (the “Eleventh Company Law Directive”) on the disclosure requirements in respect of branches opened by certain companies in a Member State (OJNo. L395 30.12.89, pp.36–39) and Council Directive 89/117/EEC (the “Bank Branches Directive”) on publication of annual accounting documents by credit and financial institutions (OJ No. L44 16.2.89, pp.40–42).**

**1**

**The Eleventh Company Law Directive deals with disclosures (including disclosure of accounting documents) required to be made by branches established in a Member State of limited companies incorporated in another Member State or a non-EC country. The Bank Branches Directive complements this by establishing special rules on the disclosure of accounting documents of a branch of a credit or financial institution in a Member State which has its head office outside that state.**

**2**

**The branch registration regime created by these Regulations complements the existing place of business registration regime set out in Part XXIII of the Act. If a company within the scope of the Eleventh Directive establishes a place of business that is not a branch and has no other branch in the United Kingdom, it will be subject to the place of business registration regime. That regime will also remain applicable to companies not within the scope of the Eleventh Directive.**

**3**

**4. Regulation 2 and Schedule 1 implement the Bank Branches Directive by inserting new sections 699A and 699B, together with a new Schedule 21C, into the Act. Section 699A applies the new accounts disclosure requirements of Schedule 21C to a branch (as defined), established in Great Britain, of a credit or financial institution (as defined) which is incorporated outside the United Kingdom or Gibraltar and also has its head office outside these places. Section 699B disapplies the accounting disclosure requirements of sections 700 to 703, applicable to companies subject to the place of business registration regime, to any institution to which section 699A applies. Schedule 21C sets out the requirements for delivery of reports and accounts of credit and financial institutions to which the Bank Branches Directive applies. Part I of the Schedule applies to an institution which is required by its parent law to prepare and have audited accounts for its financial period, and whose principal or only branch within the United Kingdom is in Great Britain. Such institutions are required to deliver to the registrar of companies all the accounting documents (with certified translations, if necessary), which it prepares in accordance with its parent law (modified where permitted). Where the parent law does not require registration of these documents, the institution may instead make**

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the documents available for inspection at each branch of the institution in Great Britain and make copies available on request. Part II of the Schedule applies to incorporated institutions which are not required by the law of the country in which the head office resides to prepare and have audited accounts. Such an institution is required to prepare accounts and a directors' report as if it were a company to which section 700 applies (which sets out the accounting regime for companies subject to place of business registration).

5. Regulation 3 and Schedule 2 implement the Eleventh Company Law Directive. Regulation 3 inserts new section 705A into the Act, which requires the establishment and maintenance of a register of branches of overseas companies. Schedule 2 makes a number of amendments to Part XXIII of the Act, the most important of which are:

- (a) Paragraph 2 of Schedule 2 inserts new sections 690A and 690B into the Act. Section 690A imposes the branch registration requirements of the new Schedule 21A on any limited company which is incorporated outside the United Kingdom and Gibraltar and which has a branch in Great Britain. Section 690B provides that the requirements of section 691 (place of business registration regime) shall not apply to a limited company to which section 690A applies.
- (b) Paragraph 3 of Schedule 2 inserts Schedule 21A into the Act, which sets out the particulars which must be disclosed by a company registering a branch. A return must also be made in respect of any alteration to any particulars registered.
- (c) Paragraphs 4 and 5 of Schedule 2 insert section 692A and Schedule 21B into the Act which provide for certain transitional arrangements where a company moves from the place of business registration regime to the branch registration regime and vice versa.
- (d) Paragraph 6 of Schedule 2 amends section 693 of the Act by setting out certain particulars which must be disclosed about a branch and the company on the letterheads etc. used in the business of the branch. Additional particulars must be disclosed where the company is not one incorporated in an EC Member State.
- (e) Paragraph 8 of Schedule 2 inserts section 694A into the Act, which makes parallel provision for service of documents to that made by existing section 695 in respect of companies subject to the place of business registration regime.
- (f) Paragraph 10 of Schedule 2 inserts section 695A into the Act, which provides that an overseas company shall deliver documents under the branch registration regime to the registrar for that part of Great Britain where the branch is situated. If a branch is closed notice must be given of that fact to the relevant registrar.
- (g) Paragraph 13 of Schedule 2 amends Section 698 of the Act so as to provide for the interpretation of "branch" for the purposes of the branch registration regime and to provide a rule to determine in which part of the United Kingdom a branch is to be regarded as located where it comprises places of business in more than one such part.
- (h) Paragraph 18 of Schedule 2 inserts Schedule 21D into the Act. It sets out the reports and accounts which must be delivered by a company subject to branch registration in respect of a branch, other than a branch which is subject to Schedule 21C. Part I of the Schedule applies to companies which are required by their parent law to prepare, have audited and disclose accounts. Such companies must deliver to the registrar all accounting documents (modified where permitted), and certified translations where necessary, disclosed in accordance with the parent law. Delivery is not required in respect of a branch where those documents have been delivered by the company in respect of another branch in the United Kingdom and where this fact has been disclosed by the branch in its return under Schedule 21A. Part II applies to companies that do not have such requirements under their parent law. Such companies are required to prepare accounts, a directors' report and an auditors' report as if they were a company to which section 700 applies. As with Part I,



provision is made for these documents to be returned by a company in respect of more than one branch.

- (i) Paragraph 19 of Schedule 2 inserts sections 703O to 703R into the Act. These sections require particulars to be delivered in respect of winding up or other insolvency proceedings against a company which is subject to the branch registration regime. Section 703P requires a return to be made where such a company is being wound up, where a liquidator is appointed, and upon the termination of the winding up. Returns are not required, however, where winding up proceedings under Part V of the Insolvency Act 1986 have been commenced (as that Act contains separate requirements to file returns with the registrar of companies). Section 703Q requires a return where insolvency proceedings, other than that for the winding up of the company, are commenced. If the company ceases to be subject to such proceedings a further return is required.
6. Regulation 4 and Schedule 3 make a number of amendments consequential upon the implementation of the two Directives.
  7. Regulation 5 and Schedule 4 set out transitional arrangements.