

2007 No. 1949

EUROPEAN COMMUNITIES

**The European Grouping of Territorial Cooperation Regulations
2007**

<i>Made</i>	- - - -	<i>9th July 2007</i>
<i>Laid before Parliament</i>		<i>10th July 2007</i>
<i>Coming into force</i>	- -	<i>1st August 2007</i>

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

PART 1
GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the European Grouping of Territorial Cooperation Regulations 2007.

(2) These Regulations come into force on 1st August 2007.

Interpretation

2.—(1) In these Regulations—

“the 1985 Act” means the Companies Act 1985(c);

“the 1986 Act” means the Insolvency Act 1986(d);

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989(e);

“the EC Regulation” means Regulation (EC) No 1082/2006 of the European Parliament and of the Council on a European grouping of territorial cooperation(f);

(a) S.I. 2007/193.

(b) 1972 c.68.

(c) 1985 c.6.

(d) 1986 c.45.

(e) S.I. 1989/2405 (N.I.9).

(f) O.J. No L210, 31.7.2006, p.19.

“EGTC” means a European grouping of territorial cooperation formed under the EC Regulation;

“the Insolvency Rules” means in the case of a UK EGTC with its registered office in England and Wales the Insolvency Rules 1986(a), in the case of a UK EGTC with its registered office in Scotland the Insolvency (Scotland) Rules 1986(b), or in the case of a UK EGTC with its registered office in Northern Ireland the Insolvency Rules (Northern Ireland) 1991(c);

“UK EGTC” means an EGTC which has its registered office in the United Kingdom.

(2) In any provision of an enactment applied to a UK EGTC by virtue of these Regulations—

“articles” means the statutes of a UK EGTC;

“board of directors” means the assembly of a UK EGTC, and all the directors of a UK EGTC if more than one, and if only one, the director of a UK EGTC ;

“company” means a UK EGTC;

“director” or “past director” of a company means a director or former director of a UK EGTC, a member or former member of the assembly of a UK EGTC or any other person who has or has had control of management of a UK EGTC’s business;

“officer” means a director or a member of the assembly of a UK EGTC, or a member of any other organ of a UK EGTC provided for in its statutes;

“registered office” means the office specified in the convention of an EGTC to be its registered office;

“ordinary resolution”, “written resolution” and “general meeting” mean the procedures of a UK EGTC set out in its statutes which most closely correspond to those things as provided for in the 1985 Act,

and other expressions used in these Regulations and defined by section 744 of the 1985 Act or, in relation to insolvency, by the 1986 Act or the 1989 Order have the meanings assigned to them by those provisions.

PART 2

PROVISIONS RELATING TO ARTICLES 4, 5, 11, 12, 13 and 14 OF THE EC REGULATION

Establishment of an EGTC (Article 4(3) of the EC Regulation)

3. A body falling within one of the categories set out in Article 3(1) of the EC Regulation which by virtue of any enactment is restricted in its ability to be a member of a company shall be restricted to the same extent in its ability to be a member of an EGTC.

Acquisition of legal personality (Article 5(1) of the EC Regulation)

4.—(1) For the purposes of Article 5(1) of the EC Regulation the statutes referred to in article 9 of the EC Regulation shall be published—

- (a) in the case of a UK EGTC with a registered office in England and Wales, in the London Gazette;
- (b) in the case of a UK EGTC with a registered office in Scotland, in the Edinburgh Gazette;
- (c) in the case of a UK EGTC with a registered office in Northern Ireland, in the Belfast Gazette.

(a) S.I. 1986/1925.
(b) S.I. 1986/1915.
(c) S.R. 1991 No 364.

(2) This regulation is subject to regulation 8.

Competent authority and court (Articles 4(4), 13(1) and 14(1) of the EC Regulation)

5.—(1) The Secretary of State shall be the competent authority for the purpose of receiving the notifications and documents under article 4(2) of the EC Regulation.

(2) The Secretary of State shall be the competent body for the purpose of prohibiting under article 13 of the EC Regulation any activity carried on in the United Kingdom by an EGTC where such an activity is in contravention of any enactment or rule of law providing for public policy, public security, public health or public morality, or in contravention of the public interest of the United Kingdom.

(3) The High Court (in Scotland, the Court of Session) shall be the competent court for the purpose of ordering the winding up of a UK EGTC under article 14(1).

Budget (Article 11 of the EC Regulation)

6.—(1) Subject to paragraph (2) a UK EGTC shall comply with Part 7 of the Companies Act 1985(a) (accounts and audit), as modified by Part 1 of the Schedule to these Regulations, as if it were a company which qualifies as a small company under section 247 of that Act and is not an ineligible company under section 247A.

(2) A UK EGTC does not have to comply with the requirements in Part 7 to deliver accounts and reports to the registrar.

(3) A UK EGTC shall—

- (a) make its latest accounts available for inspection at its registered office by any person, without charge and during business hours;
- (b) supply a copy of those accounts to any person on request at a price not exceeding the administrative cost of making and supplying the copy.

(4) The members of a UK EGTC shall appoint an auditor in accordance with the decision-making procedures contained in the statutes of that UK EGTC.

(5) The auditor of a UK EGTC must be a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989(b) and who is not ineligible by virtue of section 27 of that Act.

Insolvency and winding up (Article 12(1) of the EC Regulation)

7. A UK EGTC shall be wound up as an unregistered company under Part 5 of the 1986 Act, or in the case of a UK EGTC with a registered office in Northern Ireland, under Part 6 of the 1989 Order, and the provisions of—

- (a) that Act (or in the case of Northern Ireland, that Order), and
- (b) the Insolvency Rules,

shall apply to that UK EGTC with the modifications set out in Parts 2 and 3 of the Schedule to these Regulations.

(a) 1985 c.6.
(b) 1989 c.40.

PART 3

EXERCISE OF MEMBER STATE OPTIONS UNDER THE EC REGULATION

Prohibition of members with limited liability (Article 12(2) of the EC Regulation)

8. A UK EGTC may not be formed with a member which has limited liability.

PART 4

SUPPLEMENTAL PROVISIONS RELATING TO THE EFFECTIVE APPLICATION OF THE EC REGULATION

Application of the Company Directors Disqualification Act 1986

9. Where a UK EGTC is wound up as an unregistered company under Part 5 of the 1986 Act, or in the case of a UK EGTC with a registered office in Northern Ireland, under Part 6 of the 1989 Order, the provisions of the Company Directors Disqualification Act 1986(a) (“the 1986 Act”), or in the case of Northern Ireland, the Company Directors Disqualification (Northern Ireland) Order 2002(b), shall apply to a UK EGTC as if it were a company as defined by section 22(2)(b) of that Act, or as the case may be, by article 2(2) of that Order.

Penalties

10. Where an enactment referred to in regulation 6, 7 or 9 provides a penalty for an offence which would exceed the limit in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972, the limit in that paragraph shall apply to that penalty.

9th July 2007

Stephen Timms
Minister of State for Competitiveness and Consumer Affairs
Department for Business, Enterprise and Regulatory Reform

(a) 1986 c.46.
(b) S.I. 2002/3150 (N.I.4).

SCHEDULE

Regulations 6 and 7

PART 1

MODIFICATIONS TO PART 7 OF THE COMPANIES ACT 1985

1. In this Part of this Schedule, references to section numbers are to those in the 1985 Act.
2. In section 224 (accounting reference periods and accounting reference date) the references to “incorporated” and “incorporation” shall have effect as references to the publication in the Gazette of the statutes of a UK EGTC pursuant to these Regulations.
3. Section 225 (alteration of accounting reference date) does not apply.
4. Subsections (2) and (6) of section 245B (application to court in respect of defective accounts or reports) do not apply.
5. Section 249A (exemptions from audit) does not apply.

PART 2

MODIFICATIONS TO THE INSOLVENCY ACT 1986 AND THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989

6. Sections 117(2) to (5) (county court jurisdiction), 118 (proceedings taken in the wrong court), 119 (proceedings in county court) and 120(3) and (5) (sheriff court jurisdiction) of the 1986 Act do not apply.
7. In section 221(1) of the 1986 Act and article 185(1) of the 1989 Order (winding up of unregistered companies) after the words “all the provisions” there shall be added the words “of Regulation (EC) No 1082/2006 of the European Parliament and of the Council and”.

PART 3

MODIFICATIONS TO THE INSOLVENCY RULES

8. Any requirement in the Insolvency Rules to provide the registrar of companies with information in relation to the winding up of an unregistered company, shall not apply where such a company is a UK EGTC.
9. In rule 4.21 of the Insolvency Rules 1986^(a) and rule 4.021 of the Insolvency Rules (Northern Ireland) 1991^(b) (transmission and advertisement of order) the court is required to serve two copies of the winding-up order on the official receiver.

(a) S.I. 1986/1925.
(b) S.R. 1991 No 364.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision supplementing Regulation (EC) No 1082/2006 of the European Parliament and of the Council on a European grouping of territorial cooperation (O.J. No L210, 31.7.2006, p.19) (“the EC Regulation”) for the effective application of the EC Regulation in the United Kingdom.

The EC Regulation provides for the creation of a new form of body corporate, the European grouping of territorial cooperation (“EGTC”). It will be governed by the EC Regulation. An EGTC formed in the United Kingdom will also be governed by these Regulations.

Although directly applicable in the territory of the Community, the EC Regulation obliges each Member State to make arrangements in relation to a prospective member of an EGTC which is formed under its law and in relation to an EGTC the registered office of which is on its territory. The Regulations therefore:

- (a) make provision as to the establishment of an EGTC and a UK EGTC (regulations 3, 4 and 5(1));
- (b) contain provisions about what accounts and insolvency provisions are to apply to a UK EGTC (regulations 6 and 7);
- (c) contain provisions needed to achieve the effective application of the EC Regulation (regulations 5(2) and (3), 9 and 10).

The EC Regulation also enables Member States to exercise options set out in the EC Regulation. Regulation 8 exercises the option in Article 7(3) of the EC Regulation.

An Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or the voluntary sector.

A Transposition Note is available from the Company Law and Governance Directorate, Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London, SW1H 0ET. A copy has also been placed in the libraries of both Houses of Parliament.

STATUTORY INSTRUMENTS

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