

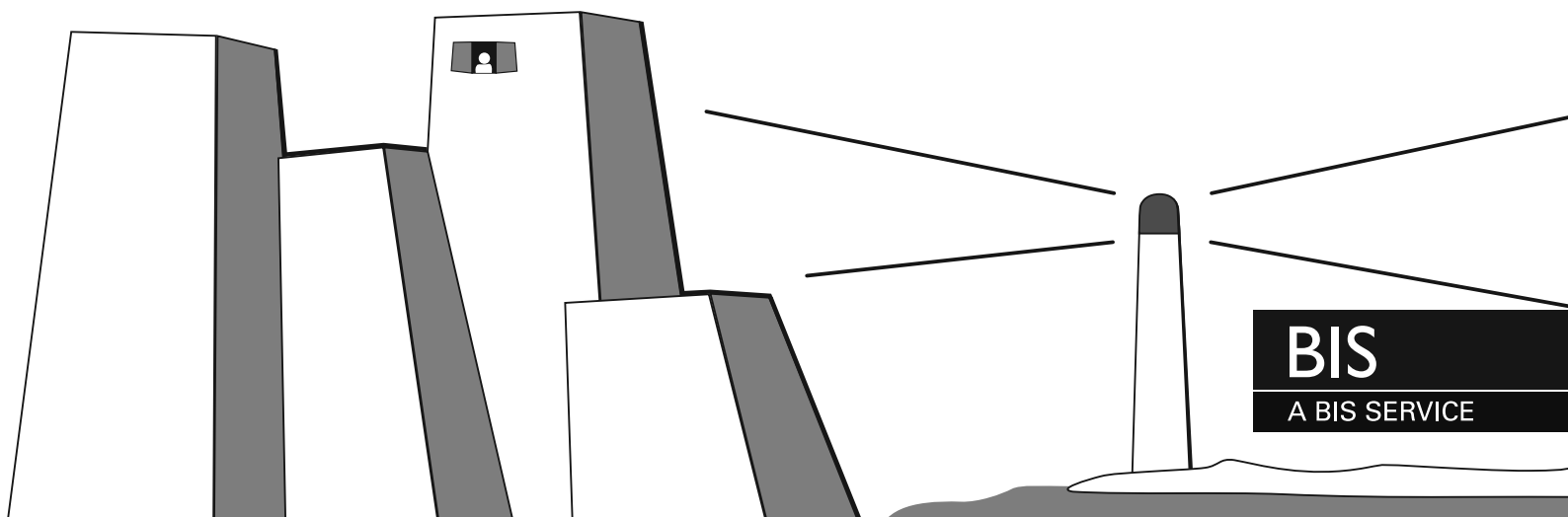
Companies Act 2006



Companies House
— for the record —

overseas companies registered in the uk

GPO1 - December 2009



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Is this guidance for you?

This guide will be relevant to you if:

- you are an overseas company thinking of opening a UK establishment;
- you are an overseas company with a UK establishment looking for basic guidance on your continuing filing and disclosure obligations; or
- you act as an adviser to an overseas company and are looking for guidance on registration and disclosure requirements in the UK.

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This is a guide only and should be read with the relevant legislation.

Companies Act 2006

Introduction

This guide explains how to register an overseas company that opens an establishment in the UK. It also provides guidance on the disclosure obligations subsequent to such a registration. It outlines the documents you must send to Companies House and some of the important rules on accounting requirements, names and trading disclosures. You will find the relevant law in the following places,

- Part 34 Companies Act 2006(sections 1044 to 1059 inclusive);
- the Overseas Companies Regulations 2009;and
- the Overseas Companies (Company Contracts and Registration of Charges) Regulations 2009.

If, after reading this guide, you are in doubt about your responsibilities, you should consider seeking professional advice.

Some provisions of the Companies Act 2006 are subject to transitional arrangements which can be found on our website.

Chapter 1 Registration

1. How do I register a UK establishment?

Within 1 month of opening a UK establishment, an overseas company must deliver to Companies House the following information:

- a completed 'Registration of an overseas company opening a UK establishment' application (Form OS IN01);
- the current registration fee (£20).

If the company is registering its first UK establishment, it must also deliver to Companies House:

- a certified copy of the company's constitutional documents (e.g. charter, statute, memorandum and articles of association etc) with a certified translation in English if the original is in a language other than English;
- a copy of the company's latest set of accounts (with a certified translation in English if the original is in a language other than English) if:
 - they are required to be filed under parent law ; or
 - the company is incorporated in an EEA state and is required by its parent law to prepare and disclose accounts but its parent law does not require such accounts to be audited or delivered.

When an overseas company registers a further UK establishment, it is not required to again deliver these documents and may instead state in the return that they have been delivered in respect of another UK establishment (giving the registered number of that establishment).

Please note if the fee is not included the documents will be rejected. Cheques should be made payable to Companies House.

Further information on the filing of constitutional documents, accounts and accounting requirements can be found in the 'Overseas Companies Regulations 2009'.

2. Where do I send the registration documents?

You can send your registration documents to any office of the registrar i.e. Cardiff, London, Edinburgh or Belfast, regardless of where in the UK the establishment is situated.

If the registration is urgent you can use our premium 'Same Day' service,(not available in London) provided all the required documents are delivered to one of our offices before 3pm (Monday-Friday). The fee for this service is £50. Please note

posted applications are subject to postal delays and we can only provide the same day registration on the day the document is received. If you send your application by post or courier you must clearly mark the envelope "Same Day Application".

3. What are certified copies of documents and certified translations?

A certified copy is a copy certified as correct and authenticated by an officer of the company, permanent representative, person authorised to accept service, administrator, administrative receiver, receiver manager, receiver or liquidator.

Constitutional documents and accounting documents delivered to Companies House may be in a language other than English but must be accompanied by a certified translation into English.

A certified translation means a translation certified to be a correct translation. It must be authenticated by the appropriate person e.g. an officer of the company; a permanent representative; a person authorised to accept service; an administrator; an administrative receiver; a receiver manager; a receiver; a liquidator. The person certifying the translation must sign at the end of the document.

4. What about the name of the company?

You may register an overseas company using its corporate name (its name under the law of the country it is incorporated), or an alternative name under which it proposes to carry on business in the UK. Once such an alternative name is registered it is treated for UK legal purposes as a company's corporate name.

There are a number of controls and restrictions which apply to your choice of name. These are explained more fully in 'The Company and Business Names (Miscellaneous Provisions) Regulations 2009' (SI2009/1085) and in our 'Incorporation and Names guide'.

The restrictions include:

- prohibitions on the use of certain words that are offensive or the use of which would constitute an offence;
- requirements for prior approval for names that include certain sensitive words or suggest a connection to HM Government or certain other public bodies;
- the prohibition of names being registered that are the same as those already on the Companies House index of company names register;
- a requirement to use only permitted characters, signs, symbols and punctuation within a name;

The application of the restrictions depends on the following circumstances;

- whether you are registering under the overseas company's corporate name;
- whether you are registering an alternative name; and
- whether the overseas company is in the EEA (European Economic Area) or not.

An EEA company is one governed by the law of an EEA State.

5. What rules apply to the names of EEA companies?

Depending on whether you are registering a corporate or alternative name the following rules apply:

- **EEA company registering its corporate name (including a change of corporate name).**

An EEA company may always register its corporate name provided only that the name is made up of permitted characters under the Company and Business Names (Miscellaneous Provisions) Regulations 2009' (SI2009/1085).

However, you are advised to check the index of company names maintained at Companies House if you want to avoid registering a corporate name which is the same as an existing company name.

- **EEA member company registering an alternative name (including a change from corporate to alternative name).**

Registration of an alternative name by EEA companies is subject to a range of controls and restrictions. These include requiring the use of only permitted characters in the name; preventing the registration of a name the same as one on Companies House index of company names; requiring evidence of appropriate authorisation to use a sensitive word in a name or to adopt a name suggesting a connection to HM Government or certain other public bodies; and preventing the use of offensive names.

If an overseas company's application to register an alternative name does not meet all the requirements it will be rejected and the company will be asked to choose a different name.

Overseas companies wishing to change their alternative name or change their corporate name to an alternative name should file a 'Registration of change of name of overseas company as registered in the UK' (Form OS NM01). Please note a fee of £10 is payable with this form and if it is not included the document will be rejected. A 'Same Day' service is available for a fee of £50. If we receive the form OSNM01 before 3 pm (Monday-Friday) and accept the name and documents, we will issue a change of name certificate on that day. If you deliver your 'Same Day' documents by post or courier please ensure you mark the outside of the envelope clearly with

'Same Day Change of Name'.

6. What rules apply to the names of non EEA companies?

The following rules apply to corporate and alternative name registrations:

- **Non EEA company registering a corporate or alternative name (including change of name)**

Non EEA corporate or alternative name registrations are subject to a range of controls and restrictions. These include requiring the use of only permitted characters in the name; preventing the registration of a name the same as one on Companies House index of company names; requiring evidence of appropriate authorisation to use a sensitive word in a name or to adopt a name suggesting a connection to HM Government or certain other public bodies; and preventing the use of offensive names. If an overseas company's application to register a name does not meet all the restrictions it will be rejected and the company will be asked to choose a different name.

Overseas companies wishing to change their registered corporate or alternative name (including from corporate to alternative and vice versa) should do so on Form OS NM01.

7. What rules apply to the names of UK establishments?

A UK establishment can be registered with a name that is different to the UK registered company name of the overseas company. If different from the registered company name, the registered name of a UK establishment is subject to the same range of controls and restrictions as UK company names. These include requiring the use of only permitted characters in the name; preventing the registration of a name the same as one on Companies House Index of Company Names; requiring evidence of appropriate authorisation to use a sensitive word in a name or to adopt a name suggesting a connection to HM Government or certain other public bodies; and preventing the use of offensive names. If an overseas company's application to register a UK establishment's name does not meet all the restrictions, it will be rejected and the company will be asked to choose a different name.

Chapter 2

Delivery requirements

1. After registration, do overseas companies need to send other documents to Companies House?

An overseas company should notify Companies House of any changes to the original information delivered for registration as and when changes occur. This includes changes to:

- company information such as accounting requirements or the extent of the powers of directors or secretaries to represent a company;

- UK establishment name, address or the business activities;
- company constitution;
- details of directors, secretaries or persons authorised to accept service or represent the company;
- change of corporate or alternative name registered in the UK (see chapter 1, question 5).

An overseas company must deliver forms notifying the changes of particulars of the UK establishment to Companies House within 21 days of the change. In the case of a change affecting the overseas company in its parent state, the notifying form must be delivered within 21 days after the date on which notice of the alteration could have been received by post in the UK (if dispatched with due diligence). You can download the appropriate form from our website.

2. Do overseas companies need to send accounting documents to Companies House after registration?

The accounting documents an overseas company must deliver will depend on whether the company is required to prepare and disclose accounting documents under parent law (the law of the country in which the company is incorporated) or not. A fee applies to all overseas companies with a UK establishment that delivers accounting documents to Companies House.

Companies required to prepare and disclose under parent law

An EEA overseas company that is required to prepare, audit and disclose accounting documents and a non EEA company that is required to prepare, audit and disclose such documents, must, under parent law, deliver them to Companies House within 3 months from the date on which the document is required to be disclosed in accordance with its parent law.

Accounting documents will include the accounts of the company for a financial period; any annual report of the directors; any auditor's report on the accounts and director's report.

The accounting documents must be accompanied by a statement containing the following information:

- the legislation under which the accounts have been prepared and, if applicable, audited;
- whether the accounts have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) and the organisation which issued the principles;
- whether the accounts have been audited and if so whether they were audited in accordance with Generally Accepted Auditing Standards and the

organisation that issued them; and

- if there has been no audit, whether the company is required to have its accounts audited.

A failure to deliver the accounting documents and accompanying statement to Companies House by the due date is a criminal offence committed by every person who was a director before the end of the 3 month delivery period.

Companies not required to prepare and disclose under parent law

Some overseas companies may not be required to prepare and disclose accounting documents under parent law. However, the company still has a duty to prepare, sign and deliver accounts to Companies House. There are detailed requirements for such accounts in the Overseas Companies Regulations 2009 and these include the following;

- calculation of a financial year (normally 12 months), accounting reference period and accounting reference date;
- individual or group overseas company accounts must be prepared in accordance with the company's parent law, (provided the content of such accounts meets the requirements set out in the Overseas Companies Regulations 2009) or in accordance with international accounting standards (IAS) or the requirements detailed in the Overseas Companies Regulations 2009
 - the accounts must be approved by the board of directors and signed on behalf of the board by a director on the company's balance sheet; and
 - the directors of the company must deliver accounts to Companies House within 13 months of the end of the relevant accounting reference period unless it is the company's first accounting reference period and adapted rules apply. Further information is included in the Overseas Companies Regulations 2009.

Please note, an annual document processing fee of £30 should be sent with each set of accounts. If the fee is not included the documents will be returned.

3. Do overseas companies need to register charges?

All overseas companies that have registered at Companies House must register specified charges created by the company over property situated in the UK. Either the overseas company or the person taking the charge should send a 'Particulars of a mortgage or charge by an overseas company' (Form OS MG01) to Companies House with a certified copy of the instrument (if any) within 21 days of the charge being created with the registration fee of £13. Further information about registration of charges can be found in the 'Overseas Companies (Company Contracts and Registration of Charges) Regulations 2009. Please note, if the fee is not included the form will be rejected.

Specified charges requiring registration include:

- a charge on land or any interest in land;
- a charge created or evidenced by an instrument that would require registration as a bill of sale;
- a charge for the purposes of securing any issue of debentures;
- a charge on uncalled share capital of a company;
- a charge on calls made but not paid;
- a charge on book debts of a company;
- a floating charge on the company's property or undertaking;
- a charge on a ship or aircraft, or any share in a ship;
- a charge on goodwill or on any intellectual property.

Chapter 3

Disclosure requirements

1. Must company information be displayed at its business premises?

An overseas company that carries on business in the UK should continuously display a sign with its company name (the name registered at Companies House) and the country in which it is incorporated continuously at:

- every location in the UK at which it carries on business (unless it is primarily used for living accommodation or if the company's activities are likely to attract violent objections);
- the service address of every person resident in the UK authorised to accept service of documents on behalf of the company.

The company must display the sign with its company name and country of incorporation:

- in characters that can be read with the naked eye.
- In such a way that visitors to that office, place or location may easily see it.
- so that it can be seen at any time, i.e. not only during business hours;
- continuously, but if the location is shared by six or more companies, each such company is only required to display its registered name for at least fifteen continuous seconds at least once in every three minutes.

2. What details must the company show on its business communications and

web site?

Every overseas company must include the company's name in all forms of business correspondence and documentation used for carrying on business activities in the UK, whether in hard copy or electronic, including:

- business letters, notices and other official publications;
- business emails;
- bills of exchange, promissory notes, endorsements and order forms;
- cheques purporting to be signed by or on behalf of the company, order forms;
- orders for money, goods or services purporting to be signed by or on behalf of the company;
- bills of parcels, invoices and other demands for payments, receipts, and letters of credit;
- applications for licenses to carry on a trade or activity, bills of parcel; and
- websites;

An overseas company must also state the following particulars on all business letters, order forms and websites that are used in carrying on business in the UK:

- the company's country of incorporation;
- the identity of the registry, if any, in which the company is registered in its country of incorporation;
- if applicable, the number with which the company is registered in that registry;
- the location of its head office;
- the legal form of the company;
- whether the liability of the members of the company is limited, whether the company is limited;
- if applicable, whether the company is being wound up or is subject to other insolvency proceedings; and
- if there is a reference to the amount of share capital on business letters, order forms or websites, the reference must be shown as paid up share capital.

In addition, if the overseas company has registered a UK establishment at Companies House, then it must state where the UK establishment is registered and its registered number on:

- (a) business letters,
- (b) order forms, and
- (c) websites

The disclosure of all this information must be in characters that can be read with the naked eye.

3. Do overseas companies have to display directors' names on business letters?

If a company decides to include the name of a director or directors (other than in the text or as a signatory) on business letters it must disclose the names of all the directors. In the case of a body corporate or legal person, it must disclose its corporate or firm name.

The disclosure of this information must be in characters that can be read with the naked eye.

Chapter 4 Insolvency, winding up and closure

1. What happens if an overseas company is subject to insolvency proceedings?

If an overseas company has a UK establishment and is being wound up under laws outside the UK it must send a 'Notice of winding up of an overseas company (Form OS LQ03) to Companies House. If the winding up began before the company opened a UK establishment, it must deliver the form no later than 1 month after the company first opened the establishment. Otherwise the company has 14 days after the date on which the winding up begins to deliver the form.

Depending on the nature of the winding up or other insolvency proceedings there are further notification requirements to Companies House. These are detailed below.

An overseas company can be wound up under the provisions of UK law (Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989), but such circumstances are outside the scope of this guidance.

Appointment of a liquidator

A person appointed as the liquidator of a company must file a 'Notice of appointment of a liquidator of an overseas company (Form OS LQ01) containing the following particulars:

- name and address;
- date of the appointment, and
- a description of such of the person's powers, if any, as are derived otherwise than from the general law or the company's constitution.

If the liquidator was appointed before the company had a UK establishment, this

form must be delivered to Companies House 1 month after the company first opens a UK establishment. If the company has a UK establishment, the liquidator must notify Companies House within 14 days of his appointment.

On termination of the winding up or on the company ceasing to be registered which has legal significance, the liquidator must file a 'Notice of termination of winding up of an overseas company' (Form OS DS02) to Companies House. The form must be delivered within 14 days of either event.

Insolvency proceedings (other than winding up)

Where a company becomes subject to insolvency proceedings (other than winding up), it must send a 'Notice by an overseas company which becomes subject to proceedings relating to insolvency' (Form OS LQ02) to Companies House. If the insolvency proceedings began before the company opened a UK establishment, it must deliver the form no later than 1 month after the company first opened the establishment. If the company has a UK establishment, the company has 14 days after the date on which the insolvency proceedings began to deliver the form.

When a company ceases to be subject to insolvency proceedings, it must file a 'Notice by an overseas company on cessation of proceedings relating to insolvency' (Form OS LQ04) stating when the company ceased to be subject to proceedings. It must deliver the form no later than 14 days from the date on which it ceases to be subject to the proceedings.

Notice of appointment of a judicial factor in Scotland

If a judicial factor is appointed, he must file an 'Appointment of judicial factor (Scotland) for an overseas company' (Form OS AP06) notice giving the particulars to Companies House within 14 days of his appointment. He must also give notice of any change in the address for service by filing a 'Change of service address for a judicial factor (Scotland) of an overseas company' (Form OS CH08). If the appointment of a judicial factor is terminated he must file a 'Termination of appointment of judicial factor (Scotland) of an overseas company' (Form OS TM04).

2. What if the company closes a UK establishment?

If an overseas company closes a UK establishment that is registered at Companies House, it must file a 'Notice of closure of a UK establishment of an overseas company' (Form OS DS01). Once this document has been registered by Companies House, the company is no longer obliged to deliver documents in respect of that UK establishment.

Chapter 5 Quality of documents

1. What happens to the documents I send to Companies House?

We scan the documents and forms you deliver to us to produce an electronic image. We then store the original, paper documents and use the electronic image as the

working document.

When a customer searches the company record, they see the electronic image reproduced on-line. So it is important not only that the original is legible, but that it can also produce a clear copy.

This chapter sets out some guidelines to follow when preparing a document for filing at Companies House.

2. How should I set out documents?

Paper documents

Generally, every paper document sent to Companies House must state in a prominent position the registered name and number of the company. There are a few exceptions to this rule, which are set out in the published registrar's rules. Paper documents should be on A4 size, plain white paper with a matt finish. The text should be black, clear, legible, and of uniform density. Letters and numbers must be clear and legible so that we can make an acceptable copy of the document. The following guidelines may help:

Please note: currently, overseas company forms and documents cannot be filed electronically.

When you fill in a form please:

- use black ink or black type;
- use bold lettering (some elegant thin typefaces and pens give poor quality copies);
- don't send a carbon copy;
- don't use a dot matrix printer; and
- remember - photocopies can result in a grey shade that will not scan well.

When you complete other documents, please remember:

- the points already made relating to completing forms;
- to use A4 size paper with a good margin;
- to supply them in portrait format (that is with the shorter edge across the top); and
- to include the company number and name.

3. Where can I find out more about this?

For further guidance on print requirements please email your enquiry or telephone 0303 1234 500

Chapter 6 Further information

1. How do I deliver information to Companies House?

For full details of all the ways of delivering documents to Companies House, electronically or on paper, please refer to the registrar's rules on the subject which appear on our website.. For more information and registration details please visit our website.

If you are delivering documents by post, courier, Document Exchange Service (DX) or in Scotland LP (Legal Post in Scotland) and would like a receipt, Companies House will provide an acknowledgement if you enclose a copy of your covering letter with a pre-paid addressed return envelope. We will barcode your copy letter with the date of receipt and return it to you in the envelope provided.

Please note: an acknowledgement of receipt does not mean that a document has been accepted for registration at Companies House.

Please Note: Companies House does not accept any statutory documents by fax.

2. Do I have to pay to file documents at Companies House?

You do not have to pay a fee for many of the documents that you have to send to Companies House, but some do require a fee. For full details you should refer to our website.

3. Can I file documents in other languages?

As a general rule the law requires that companies deliver documents sent to Companies House in English. There are exceptions as detailed below. Companies can deliver the following documents in other languages if the document is accompanied by a certified translation into English:

- certified copy of the constitution;
- copies of accounting documents; and
- charge instruments (or copy charge instruments).

In addition overseas companies may also file certified voluntary translations of any document that is required to be delivered to Companies House. The voluntary translation must relate to a document delivered to Companies House on or after 1 January 2007. Voluntary translations can only be filed in an official language of the European Union and must be accompanied by Form VT01.

4. Where do I get forms and guidance?

This is one booklet in a series of Companies House guides which provide a simple guide to the Companies Act.

All statutory forms and guidance are available, free of charge from Companies House. The quickest way to get them is through our website at www.companieshouse.gov.uk or by telephoning 0303 1234 500.

You can also obtain forms from company law stationers, accountants, solicitors and company formation agents.

how to contact us

contact centre: **0303 1234 500**

(For training and quality purposes your call may be monitored)

mini-com: 029 2038 1245

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8 Laganbank Road, Belfast, BT1 3BS.
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For the most up to date version of this booklet please visit our website at:

www.companieshouse.gov.uk



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