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New Overseas Companies Regulations

SI 2009/1801 "The Overseas Companies Regulations" come into force on 1 October 2009. They replace the previous regime contained in Part 23 and Schedules 21A to D of the Companies Act 1985.

The new Regulations simplify the previous initial registration requirements for overseas companies that carry on business in the UK through a place of business by combining the previous "branch" and "place of business" regimes into a single regime for a "UK Establishment". The details that have to be registered with the Registrar of Companies within 1 month of opening a UK establishment are largely those that were applicable to opening a branch with the following additional requirements:

- details where accounts are filed (if applicable)
- if not EU registered, address and principal place of business in home country, objects of company and issued share capital.
- country or state of usual residence of directors, the extent of their authority to represent the company and whether they can exercise those powers singly.
- copy of latest accounts with a certified translation (if not in English)
- if not incorporated within EU, the law under which the company was incorporated and its period end.
- details of persons authorised to represent the company as permanent representatives, whether they are authorised to accept service, the extent of authority to represent the company and whether powers can be exercised alone.
- details of business carried on

It is not expected that the above will result in much additional cost.

Where the Overseas Company is not required to publicly file accounts under the law of its parent state ("parent law"), it must file annual accounts at Companies House prepared in accordance with its parent law, IFRS or section 396 or 404 of Companies Act 2006 (depending on whether or not group accounts are required). Group Accounts will be required if they would be required if the company was a UK company **except** where accounts under parent law are filed and parent law does not require group accounts.

The accounts must be filed with the Registrar of Companies within 13 months after the end of the relevant accounting period. The normal penalties for late filing will apply.

Future of UK GAAP

Following the publication of the International Financial Reporting Standard for Small and Medium-sized entities ("IFRS for SMEs"), the Accounting Standards Board ("ASB") is proposing to replace UK GAAP with this standard. The FRSSE will be retained for small entities. This change is expected to first apply to 31 December 2012 year-ends.

ASB envisages that UK GAAP under the proposals would be:

Framework	Accounting regime	Type/Nature of Entities	Implications for
IFRS	IFRS (EU Adopted)	EU listed-consolidated AIM	
UK GAAP	IFRS (EU Adopted)	Publicly accountable inc.100% owned publicly accountable subsidiaries	Investment Trusts; Building societies; Friendly societies; Subsidiaries with listed debt
	IFRS for SMEs	Large and Medium NPAEs (Non- Publicly Accountable Entities)	NPA groups NPA entities NPA subsidiaries
	FRSSE	Small	

Under the proposals all entities will have the option (similar to the current arrangements, with the exception of charitable companies) to voluntarily adopt a high tier.

Going Concern and Liquidity Risk for SMEs

The Financial Reporting Council (“FRC”) is revising its guidance on going concern.

Considering whether the going concern basis is appropriate in preparing financial statements involves reaching a reasoned conclusion based on the specific facts and circumstances affecting the company at the time the financial statements are approved (not the date to which they are prepared). It is acknowledged that the extent of procedures required for smaller companies is less than would be appropriate for larger more complex companies.

Within groups, the need for, and availability of, financial support from parents and other group companies (and therefore their financial position) will need to be taken into account by individual subsidiaries when assessing their own position.

Directors need to evaluate fully all the relevant facts and circumstances, but must do so in a balanced way to decide what disclosures, if any, are necessary. A specific example given is where a lender has a policy of not providing confirmation that borrowing facilities will continue to be available; a lack of confirmation would not automatically require any disclosure.

The going concern assessment is made at the time the financial statements are approved and does not give any certainty or guarantee as to future events. Once the accounts are approved there is no need to revisit going concern if, for example, a major customer becomes unexpectedly insolvent 2 months later.

Directors need to consider which factors are relevant to their company; the revised guidance expects at least a budget, trading estimate, cash flow forecast or other similar analysis to be prepared covering a period of at least 12 months from the date of approval of the accounts.

In addition, the revised guidance contains a list of specific areas which medium and large companies should consider (even if the directors conclude that they are not relevant to the company’s circumstances) including

- the company’s market and its relative strength and market share;
- the company’s borrowing requirements;
- the matching of cash inflows and outflows (including known off-balance sheet liabilities);

- contingent liabilities; and
- risk and risk management, such as exchange rate risks and counterparty risks arising from the failure of key suppliers or customers.

Reliance on websites

In a recent High Court case (*Patchett v SPATA*), it was held that a website can owe a duty of care to its visitors. However, it was also held that this duty can be avoided by the use of suitable disclaimers. In this case, the disclaimer was as simple as a statement telling visitors to seek further information before they relied on what was on the website.

The judgement stated that it was assumed that web-users examine all pages of the website and hence the disclaimer can be anywhere on the website – it does not need to be on every page. Whilst the ruling does not require it, it is recommended that any disclaimer should be clear and an effort should be made to bring it to the user's attention.

Suitable wording could be "These pages contain general information only. Nothing in these pages constitutes advice. You should consult us on any specific issue you have. Whilst every effort is made to ensure the information on this website is correct we cannot warrant it and therefore any use you may make of the content is entirely at your own risk and we can accept no responsibility whatsoever for any use you may make of information on this website."

Illustrative Examples of Charity Auditor Reports

The Auditing Practices Board ("APB") has issued Bulletin 2009/3 which updates the example auditors reports in Bulletin 2009/1 for the effect of the Companies Act 2006.

As a result, guidance on the wording of auditors reports for charities are given in the following documents.

Accounting Period	Source of Guidance
Beginning on or after 6 April 2008	Bulletin 2009/3 "Auditors Reports – Supplementary Guidance for Auditors of Charities with accounting periods commencing on, or after, 6 April 2008"
Beginning between 1 April 2008 and 5 April 2008 inclusive (i.e. for 31 March 2009 year ends)	Bulletin 2009/1 "The Auditor's Reports - Supplementary Guidance for Auditors of Charities with 31 March 2009 year ends"
Earlier Accounting Periods	Practice Note 11 "The Audit of Charities in the UK"

The main illustrative examples apply as follows. Examples 3 and 4 relate to Scottish Charities and Examples 7 and 8 relate to charitable company groups:

Type of Charity	Audit requirement		Accounts drawn up under		Address to Members or Trustees?
	Companies Act 2006	Charities Act 1993 S43	Companies Act 2006	Charities Act 1993 S42	
Charitable company. (unless Trustees of small charitable company elect not to be audited under the Companies Act 2006) (Example 1)	√		√		Members
Small charitable company audited under the Charities Act 1993. (Example 2)		√	√		Trustees
Non-company charity (Example 5)		√		√	Trustees

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