

Company Law Reform

MODERN COMPANY LAW

*For a Competitive Economy
Reforming The Law
Concerning
Oversea Companies*

A Consultation Document from
The Company Law Review Steering Group

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October 1999

Executive Summary

1. This Consultation Document is one of three issued at this time by the Steering Group set up to take forward a fundamental review of company law. It sets out our detailed proposals for reforming Part XXIII of the Companies Act 1985 which regulates overseas companies (ie companies incorporated overseas which operate in the UK without incorporating here).

2. We are in parallel publishing consultation documents on company general meetings and shareholder communication (URN 99/1144) and on company formation and capital maintenance (URN 99/1145). These are being published separately because the likely readership of these documents is expected to be largely different.

The Present Situation

3. At present there are two registration regimes for overseas companies, one for “branches” and one for places of business which are not branches.

4. The regime for branches implements the requirements of the EC Eleventh Company Law Directive. The Directive does not define “branch”. But decisions of the European Court of Justice in the related area of enforcement of judgements indicate that a branch implies a place of business which has the appearance of permanency, and which has a management and is otherwise physically equipped to negotiate business with third parties directly, and whose head office is abroad.

5. The place of business regime predates the Directive requirements, and continues to apply to places of business which are not branches. A “place of business” encompasses both a presence less substantial than a branch and one where the central management and control of the company is here.

6. Overseas companies which set up either a branch or any other place of business must register certain particulars at the companies registry. The registration requirements are similar, but not identical, under the two regimes. Slightly more information is required in relation to branches than to other places of business. In particular, while both regimes require information about the overseas company itself (eg details of the company’s directors and secretary, and a copy of the company’s constitution), the branch regime requires more information to be provided

about the business established in Great Britain (eg details of the people empowered to represent the branch).

7. The requirements to file accounts also differ:

- under the branch regime, companies originating within the EC must file full accounts prepared and audited in accordance with the requirements of their “home” Member State. Companies formed outside the EC must file home state audited accounts, if any, but must otherwise file “section 700” accounts; and
- under the place of business regime, companies must file section 700 accounts.

8. The accounts required under section 700 of the Companies Act 1985 are considerably less detailed than those required for companies incorporated here. In addition, we believe that the present section 700 requirements are unsatisfactory for a number of reasons which are set out in paragraphs 40–43 of the Consultation Document.

Problems with the Current Situation

9. The existence of the two regimes gives rise to a number of problems:

- it creates some confusion and uncertainty for overseas companies wanting to establish a presence here: it is not always clear whether they should register under the branch or the place of business regime;
- the arrangements are further complicated by complex transitional provisions which apply when a company needs to transfer from the branch to place of business regime, or vice versa, and by the fact that companies may need to register separately in England and Wales and in Scotland; and
- there is no obvious reason why less information should be available in respect of some overseas companies than others: where information is needed in order to protect third parties, the need would seem to be just as relevant to businesses carried out under the place of business regime as under the branch regime.

Our Proposals

10. The responses to our last Consultation Document revealed broad support for simplifying Part XXIII, and in particular for adopting a single regime which would apply to all businesses which register at present under either the place of business or branch regimes.

11. Our proposal is therefore for a single regime based on the requirements of the Eleventh Directive. Under the proposals any overseas company establishing a place of business here would be required to file certain information at the companies registry. (Under the new regime, “place of business” would include all those businesses which at present have to register as branches.)

12. As indicated in paragraph 6 above, overseas companies registered under the existing place of business regime need to file less information than those registered under the branch regime. One effect of our proposals would therefore be to increase slightly the filing requirements for certain overseas companies, by standardising on the regime which requires greater disclosure.

13. We believe that all third parties in the UK who do business with overseas companies should have the same level of protection, without the somewhat artificial distinction between different types of overseas company which exists at present. We also believe that the slight increase in disclosure requirements for some overseas companies would be more than compensated for by the benefits of a single set of rules for all such companies – especially in terms of the greater clarity and certainty which the new regime would offer the overseas companies themselves.

14. We propose that the requirements which govern the accounts which overseas companies have to file here should be simplified and improved:

- an overseas company should be required to file the accounts and reports which its home state requires it to prepare;
- where a company is not required to file accounts in its home state, we propose either:
 - to restate the section 700 requirements in a clearer way with some modifications; or

to simplify and update the requirements based on the most important requirements of the current UK reporting regime.

This document seeks the views of consultees as to which approach would be preferable.

15. The document also sets out a number of other proposals for simplifying and standardising the rules which apply to overseas companies. In particular:

- the number of multiple registrations of places of business will be kept to a minimum: for example, where an overseas company operates here from a number of locations within a common management structure, only one registration should be required;
- companies incorporated in the Channel Islands and Isle of Man should be covered by the same provisions as other overseas companies (at present Channel Island and Isle of Man companies which register under the place of business regime have to file an annual return which is not required of other overseas companies);
- there will be no requirement for companies registered in Northern Ireland or Gibraltar (which are treated as part of the United Kingdom by the Eleventh Directive and the present branch regime) to register places of business which they establish here;
- all overseas companies subject to winding up or insolvency procedures should have to file certain information at the companies registry (at present this requirement applies in respect of branches but not other places of business);
- the requirements in the Eleventh Directive for overseas companies to disclose information on their business stationery (eg the company name, head office address and company number) should be extended to all overseas companies;
- we are inviting views on whether companies which have not registered here under Part XXIII need to register charges which they have created over property in Great Britain. At present some unregistered overseas companies do register these charges, more or less as a precautionary measure. We are inclined to the view that the law should make clear that these “precautionary” registrations are not required;

- criminal penalties should be imposed where an overseas company does not comply with the various filing requirements, but failure to comply should not prevent the company from enforcing transactions which it has entered into; and
- the registrar of companies should be able to de-register an overseas company where it is clear that the company has ceased to exist or that it no longer has a place of business here.

Introduction

1. Our first Consultation Document¹ analysed a number of key substantive issues in the reform of company law. The regulation of overseas companies was one of the areas (along with others, such as company formation and capital maintenance) where the Steering Group already had a clear view as to the likely shape of its recommendations. In Chapter 5.6 of that document we therefore set out in some detail what we saw as some of the problems with the present regime, and asked a number of questions about options for reform.

2. We are grateful to everyone who responded to that earlier consultation. The purpose of the present Consultation Document is to make detailed proposals for the reform of Part XXIII of the Companies Act 1985 (“Part XXIII”), in the light of the comments we received. We have now developed our proposals to a level of detail close to that which would be required in order to provide instructions to Parliamentary Counsel to draft clauses for a Bill.

3. We are in parallel publishing a comparable document setting out our detailed proposals on company formation and capital maintenance. We are also publishing a consultation document on company general meetings and shareholder communication.

4. Readers may find it helpful if we first explain briefly how the present proposals fit into the overall programme for the Review.

5. For each block of work in the Review, we envisage three successive stages of work. The first is to identify in very general terms the proposed position. The second stage is that reached in our February document on subjects such as overseas companies, company formation and capital maintenance, where we set out a clear position with a fair degree of detail, but well short of the degree of analysis which is required as a basis for drafting legislation. The third stage is that which is reached in relation to overseas companies in the present Consultation Document. This seeks to capture with the necessary precision and detail exactly what new legislation would need to say. We have reached a similar stage in our work on company formation and capital maintenance, and the Consultation Document which we are publishing on these subjects sets out our proposals at a similar level of detail. We continue to develop our thinking on the other topics covered by the

1: Modern Company Law for a Competitive Economy: The Strategic Framework – February 1999, URN 99/654.

Review, and we are aiming to publish a consultation document in the first quarter of next year which will indicate clearly the Steering Group's provisional conclusions on many key issues.

6. Readers may like to note that our Consultation Document on company general meetings, which is being published at the same time as this document, contains a brief account of work in hand in the Review since February, when our last Consultation Document was published.

7. The provisions on oversea companies in the present legislation are technical and complex. Our proposals aim to simplify them considerably; but even so, this inevitably remains a fairly technical subject. While our earlier Consultation Document was written with a broad readership in mind, this present document is likely to appeal to a more specialist readership. The more general reader in particular may find it helpful to focus on the summary of the proposals at the beginning of each of the substantive sections of the document, where we set out the broad aim of our proposals before embarking on more detailed discussion.

8. Like the earlier document this Consultation Document is the work of the Steering Group of the Company Law Review. It does not represent the views of any particular individual or group that has participated in the Review. Nor does it represent Government policy. The plan remains that the Government will issue a White Paper in 2001 to outline its proposals on the basis of the outcome of the Review.

9. We would welcome comments on the proposals in this Consultation Document. We are keen to allow sufficient time for consultation, in particular in representative organisations which require time to consult their membership fully. But the wider timetable means that we would welcome comments by 7 January 2000 if at all possible. Responses should be in writing and be sent to:

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10. In accordance with the code of practice on open government, comments made on this Consultation Document may be made publicly available unless consultees specifically request otherwise. Additional copies of this Document may be obtained by telephoning 0870-1502-500; the Document is also available from the Review pages on the Department's Internet site (<http://www.dti.gov.uk/cld/review.htm>).

The Present Situation

11. At present there are two registration regimes for overseas companies, one for “branches” and one for places of business which are not branches.

12. The regime for branches implements the requirements of the EC Eleventh Company Law Directive². The place of business regime predates the Directive requirements, and continues to apply to places of business which are not branches. A “place of business” encompasses both a presence less substantial than a branch and one where the central management and control of the company is here.

13. Overseas companies which set up either a branch or any other place of business must register certain particulars at the companies registry. The registration requirements are similar, but not identical under the two regimes. The differences between the requirements of the two regimes are set out in more detail in paragraph 33 and Annex 1.

14. The accounting requirements also differ. Under the branch regime, companies originating within the EC³ must file full accounts prepared and audited in accordance with the requirements of their “home” Member State. Companies formed outside the EC must file home state audited accounts, if any, but must otherwise file “section 700” unaudited accounts. Under the place of business regime, companies must file section 700 accounts. Details of the accounts required under section 700 of the Companies Act 1985 are set out in paragraphs 40-43 below.

15. The present law creates a somewhat artificial (and far from clear-cut) distinction between branches and other places of business.⁴ We can see no obvious reason why some overseas companies should be subject to less extensive disclosure requirements than others, when

2: 89/666/EEC. Official Journal No. L395/36 of 30.12.89, p 36-39.

3: For these purposes the EC includes Member States of the European Economic Area.

4: The main practical reason for the distinction appears to be that the Eleventh Directive was implemented using powers conferred by the European Communities Act, which allowed for the implementation of the Directive requirements but did not permit amendment of the existing, purely domestic regime. Hence the existence of the two parallel, and to some extent overlapping, regimes.

the needs of third parties, in terms of protection, are likely to be similar. The present arrangements also create complex transitional provisions when overseas companies need to transfer from one regime to the other.

16. There are a number of other relatively minor anomalies and discrepancies which we address under the appropriate subject-headings below.

European Legislative Background

17. Any reform of Part XXIII must as a minimum implement the Eleventh Directive which deals with the disclosures to be made by branches established in an EC Member State of limited companies incorporated in another Member State or non-EC country.

18. It is not proposed in this document to consider the Bank Branches Directive⁵ which establishes 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. We would expect, however, to propose similar reforms in respect of such branches as are proposed in this document for the general body of overseas companies. The general issue of how the special rules in the Companies Act 1985 applicable to banks and insurance companies are to be treated in a reformed Companies Act is being addressed separately.

Proposed Scope of New Legislation

19. Responses to the consultation revealed a high level of consensus as to the need to simplify Part XXIII, whilst retaining the key elements necessary for investor and creditor protection. Whilst there was a division of view as to whether alignment of the rules should be on the basis of the place of business or branch regimes, a substantial body of consultees was in favour of alignment of the two regimes rather than completely abandoning the place of business registration requirement. The place of business regime is also relied upon by the Inland Revenue.

5: 89/117/EEC. Official Journal No. L 44 of 16.12.89, p40-42.

20. We therefore view the key driving factors behind reform of Part XXIII as being to provide greater simplicity. We intend that, by increasing the clarity and accessibility of the rules in that Part, burdens on business will be reduced, without lessening the protections afforded to third parties in the United Kingdom who enter into legal transactions with overseas companies which have a physical presence in the United Kingdom. Overseas companies will just have one system under which to register, and as a result will not face complex questions on initial registration and subsequently as to whether their activities here amount to those of a branch or a place of business. It is proposed that the new regime for overseas companies will be laid down in subordinate legislation.

21. We propose, therefore, that in place of the current dual disclosure regime for overseas companies under Part XXIII (depending on whether they establish a place of business or a branch), there will be one regime applying to any company⁶ which is incorporated outside the United Kingdom and which establishes a place of business in the United Kingdom. That regime will derive from the Eleventh Directive.

22. Our proposal would apply to foreign companies which have a physical presence in the United Kingdom from which they conduct business. The proposed regulation does not extend to foreign companies which enter into legal transactions with people here, for example by means of electronic networks such as the Internet, but which have no physical presence here. As many consultees pointed out in their responses, the issue of regulation of those doing business through the Internet has implications going far wider than company law, and it is by no means clear in any event how the mechanics of company registration could be made applicable to overseas companies conducting business in this way. We believe that these considerations are more appropriate for other fora and that we should not attempt to address them through the law on overseas companies.

6: The Eleventh Directive applies to companies governed by the First Directive (68/151/EEC) or (for third country companies) companies of a form comparable to such companies.

Place of Business

23. It seems to us that there are considerable advantages in using an existing concept (that of “establishing a place of business”) rather than adopting a new test (eg of carrying on business) in that there is already a body of British case law on what constitutes an established place of business. Thus, it has been held that a company has an established place of business if:

- a) it has a specified or identifiable place at which it carries on business which has more than a fleeting character; and
- b) there is some visible sign or physical indication that the company has a connection with particular premises.

It is sufficient to meet the established place of business test if only activities incidental to the main business of the company are carried on there. So, for example, a company which sets up only warehouse or administrative facilities will still have established a place of business and will therefore be required to register.

24. The concept of “branch” is one of Community law, albeit not defined in the Eleventh Directive. Decisions of the European Court of Justice in relation to the 1968 Brussels Convention indicate that a branch implies a place of business which has the appearance of permanency, and which has a management and is otherwise physically equipped to negotiate business with third parties directly and whose head office is abroad (ECJ Case 33/78 *Sofamer v Saar-Ferngas*). Whether or not the Brussels Convention cases are applicable to the Eleventh Directive, it is clear that the concept of established place of business encompasses branches.

25. The present legislation (section 744 Companies Act) provides that “place of business” includes a share transfer or share registration office. The present definition arguably extends so far as to cover share transfer or share registration offices even if run by agents rather than the company itself. We believe it may be unduly onerous for share transfer or share registration offices to be specifically included within the definition of place of business where they would not otherwise fall within this definition. The issue also arises whether they should be included where they amount only to a place of business which is less than a branch (the Directive would require

us to include them where they amounted to a branch). We are inclined to the view that they should not be included unless they amount to a place of business, but that to draw a distinction between such offices which constitute a place of business and those which constitute a branch would be unduly detailed and complex.

Question 1 **Do you agree that we should base overseas company registration on the existing concept of “place of business” rather than adopting a new test?**

Question 2 **If you believe that “place of business” is not an appropriate test, what would you propose instead?**

Question 3 **(a) If registration is based on “place of business”, should share transfer or registration offices be specifically included within this definition as they are in the present legislation?**

(b) If not should they be excluded where they would amount to a place of business but not to a branch or should they be treated in the same way as any other presence of a company falls to be treated?

Jurisdiction

26. At present there are jurisdictional discrepancies between the scope of the established place of business regime and that of the branch regime. Thus the former applies to companies (both limited and unlimited) incorporated outside Great Britain which establish a place of business in Great Britain, whilst the latter, following the Eleventh Directive, applies to limited companies incorporated outside the United Kingdom and Gibraltar which have a branch in Great Britain. (Gibraltar is treated as part of the United Kingdom for the purposes of the Eleventh Directive.)

27. We propose to apply the new regime to limited and unlimited companies incorporated outside the United Kingdom which establish a place of business here. We are aware that there are uncertainties in the current regime as to what constitutes a “company”, but, given the constraints imposed upon us by EC law, and the desire to avoid further complexities, we do not propose to widen or define this concept.

28. The Company Law Review covers company law in Great Britain (ie it does not extend to Northern Ireland or Gibraltar, which have their own frameworks of company law). But, bearing in mind the coverage of the Eleventh Directive, we need to consider how to treat companies incorporated in Northern Ireland or Gibraltar which do business in England, Wales or Scotland. We also need to address the position of companies incorporated elsewhere which may establish places of business in Northern Ireland or Gibraltar as well as in Great Britain. Under our proposals there will be no requirement for companies registered in Northern Ireland or Gibraltar to register places of business which they establish in England and Wales or Scotland. (See also our proposals on the registration of separate places of business in paragraphs 48–52 below, which apply to places of business in Northern Ireland and Gibraltar, as well as in England, Wales and Scotland.)

29. Although Channel Island and Isle of Man companies are also treated as oversea companies under Part XXIII, a special regime applies to them under section 699 of the 1985 Act. If they establish branches they are treated in the same way as other branches from third countries as to the information they disclose. But if they register under the place of business regime the requirements imposed on them are slightly more onerous than those which apply to companies incorporated elsewhere. The practical effect of these additional requirements is that Channel Island and Isle of Man companies which register under the place of business regime have to file an annual return with the registrar of companies, thereby disclosing information as to the company's capital structure and details of its members. This annual return is not required of companies from other jurisdictions, nor is it required of Channel Island or Isle of Man companies which register under the branch regime.

30. The stricter treatment under the place of business regime for companies incorporated in the Channel Islands and the Isle of Man stems from the Greene Committee on Company Law Amendment of 1925-26. The Committee observed that “companies are not infrequently found which carry on business in England or Scotland but are incorporated ... in the Channel Islands or the Isle of Man”. The recommendation that they should make the same returns as if the company were incorporated in England and Wales or Scotland was made because of the inconvenience of having to refer to a file kept in the Channel Islands or the Isle of Man. The Greene Committee recommendation was implemented in the Companies Act 1928.

31. Section 699 seems an anachronism in a modern world where it is relatively easy for companies to be incorporated in any part of the world. Furthermore it discriminates against Island companies and is an anomaly given that it only applies when an Island company establishes a place of business in Great Britain and not when it has the greater presence of a branch. We therefore propose that it should be repealed and companies incorporated in those islands should be treated in the same way as companies incorporated in other non-EC states.

Question 4 **Do you agree that the special provisions relating to Channel Island and Isle of Man companies should be abolished, with these companies being treated in the same way as other non-EC companies?**

Disclosure Requirements

32. It is proposed that the requirements for an overseas company establishing a place of business in the United Kingdom will be based on the Eleventh Directive.

Initial Disclosure

33. Annex 1 lists the initial documents which it is proposed that an overseas company will be required to deliver to the registrar of companies on registration after establishing a place of business. These documents are already required of overseas companies which register branches here. The presence of two asterisks against a requirement in the Annex indicates an additional disclosure requirement for those overseas companies which were hitherto subject to the place of business rather than the branch regime. The main change for these companies will be to require them to give information not only about the company but also about the people empowered to represent the place of business. Also, both for the company and the presence here, the company will have to give details of the extent of the authority of the directors and of the persons authorised to represent the place of business. We believe that these additional disclosure requirements are justified in order to protect third parties in the United Kingdom who are entering into legal transactions with overseas companies.

34. It is proposed that, as at present, companies should be required to deliver the documents within one month of establishing the place of business.

Disclosure of Alterations

35. It is proposed that, as at present, if there is any alteration to:

- a) the charter, statutes, memorandum and articles or other instrument of incorporation of the overseas company;
- b) the directors or secretary of an overseas company or the particulars contained in the list of the directors and secretary; or
- c) the names and addresses of the persons authorised to accept service on behalf of an overseas company;

then the alteration must be delivered to the registrar of companies.

Disclosure of Accounts

36. We propose that, both initially and annually, the overseas company will be required to file its annual accounts with the registrar ie the accounts and reports which its home state requires it to prepare, have audited and make public (and which are therefore, in the case of an EC overseas company, prepared in accordance with the EC Accounting Directives⁷ including the options under those Directives which the Member State in question has implemented).

37. This will be a change for overseas companies (whether from the EC or third countries) which hitherto have had to file accounts under section 700 of the Companies Act 1985 (see below) because they fell under the place of business rather than the branch regime. We consider that this change will in fact be welcomed by such companies and will not be an additional burden since, by filing the accounts which they have already prepared and published in their home countries, they will not have to prepare an additional set of accounts under the Companies Act.

7: Principally the Fourth Directive on individual accounts and the Seventh Directive on consolidated accounts.

38. We will also need to specify accounting requirements for those companies which do not have to file accounts in their home state. We are inviting views on two alternative proposals:

- to restate the present section 700 requirements in a clearer way with some modifications; or
- to simplify and update the requirements based on the most important requirements of the current UK reporting regime.

39. We now go on to explain the existing accounting requirements in more detail, the reasons why we believe they are unsatisfactory, and our proposals for reform.

Current Section 700 Requirements

40. At present two types of overseas company are governed by section 700:

- a) overseas companies which establish a place of business (but not a branch) in Great Britain; and
- b) overseas companies which establish a branch in Great Britain, and which are not required by the law of their incorporation to prepare and publish accounts.

41. The opening premise of section 700 is that such overseas companies will prepare the same accounts, directors' and auditors' reports as would be required if the company were a Companies Act company. This is, however, subject to significant modifications.⁸ What is more, those accounts are the accounts which were required to be drawn up by the old "special category" companies under Part VII of the Companies Act 1985 before it was amended by the Companies Act 1989 (so it is old Schedule 9 to the Companies Act which is followed rather than old Schedule 4). "Special category" companies under old section 257 were banking, shipping or insurance companies.

⁸: These modifications were effected by the Oversea Companies (Accounts) (Modifications and Exemptions) Order 1990 (S.I. 1990/440).

42. The accounts required of overseas companies and groups under section 700 are considerably less detailed than those required for Companies Act companies. In particular:

- a) no formats are prescribed for balance sheet or profit and loss account;
- b) various items are aggregated;
- c) the accounts are required to give a “true and fair view”, yet there is no requirement to disclose turnover. Also it is not clear what accounting standards, if any, are expected to be complied with (ie whether companies should comply with UK, home state or international standards);
- d) there is no disclosure of loans to, and other transactions with, directors, details of UK tax liability and turnover;
- e) there is power for the Secretary of State to direct that certain disclosures not be given; and
- f) there is no requirement for a directors’ or auditors’ report.

43. It is extremely difficult at present to work out the form and content of the accounts of overseas companies required by section 700. And, as we have explained above, the present section 700 requirements are based on requirements which used to apply specifically to banking, insurance and shipping companies, which have since been superseded and which bear little resemblance to the present accounting requirements for UK or other EC companies.

Proposals for Reform of Section 700

44. The Eleventh Directive provides (article 9) that where an overseas company from a third country does not draw up, audit and disclose accounting documents in its home state (or where those accounting documents are not “equivalent” to Fourth and Seventh Directive accounts), Member States may require branch accounts. We could therefore just insist on each branch preparing accounts. However, we do not believe that branch accounts would be helpful to those interested in overseas companies because they are likely to record only a minor part of the

company's activities, financial position and performance. Therefore, they could be misleading especially in cases where the branch only had costs and no income or vice versa. Preparation of branch accounts is also likely to be a burden for oversea companies.

45. We propose instead either:

- (i) to restate the section 700 requirements in a clearer way with some modifications. In particular the requirement to give a true and fair view would be changed to a requirement that the accounts are properly prepared in accordance with the Act. This change would be made because the requirement that the accounts should give a true and fair view seems inappropriate with respect to the accounts of oversea companies as it seems to suggest full compliance with UK GAAP. An illustrative draft of such a proposal is at Annex 2; or
- (ii) to simplify and update the requirements based on what are assessed as the most important requirements of the current UK reporting regime. In particular specific balance sheet and profit and loss items would be required to be disclosed. Again the overall requirement would be that the accounts should be properly prepared in accordance with the Act. An illustrative draft of such a proposal is at Annex 3.

46. You should note that the text attached at Annexes 2 and 3 represents only a working draft which provides an indication of how the provisions might look under each of the two options which we have put forward. In their current form the two annexes are merely illustrative and would require further work before either of them could be developed into a final format.

47. Oversea unlimited companies would continue to be treated in the same way as domestic unlimited companies. So, they would not be required to file re-stated section 700 accounts if they fell within the exemptions in section 254 Companies Act 1985.

Question 5 **Do you agree that all oversea companies should be required to file accounts prepared in accordance with the requirements of their home state, where the home state requires accounts to be prepared?**

Question 6 For those overseas companies which are not required to prepare accounts in their home state, would you prefer to see:

(a) a restatement of the present section 700 requirements as outlined in Annex 2; or

(b) a new set of simplified and updated requirements based on the present UK regime, as outlined in Annex 3?

Question 7 For whichever option you prefer in answer to Question 6, do you have comments on the proposed content of the new accounting requirements?

More Than One Place of Business

48. We propose to simplify the present registration arrangements in order to keep the number of multiple registrations of places of business to a minimum. In particular, our proposals will mean that where an overseas company operates here from a number of locations within a common management structure, only one registration should be required.

49. Under present law, if an overseas company registers a place of business anywhere in England and Wales it does not need to register any other places of business that it establishes in England and Wales. The only additional requirement is that if it establishes a place of business in Scotland it must register separately with the registrar of companies in Scotland. The converse would, of course, be true for an overseas company with a place of business in Scotland which wished to establish further places of business in England or Wales. So an overseas company has to file only one set of accounts and one set of the relevant constitutional documents in England and Wales or in Scotland, regardless of the number of places of business it has established in that part of Great Britain.

50. But where an overseas company establishes more than one branch in England and Wales it must register each branch separately. The same requirement applies to branches established in Scotland. Thus where a company already has a branch in Great Britain, it must, within one month of establishing the further branch, deliver a return to the registrar stating where the other

branch is registered and its registered number. It should also contain a statement to the effect that the constitutional documents of the company are included in the material registered in respect of that other branch. Where that other branch is in the same part of Great Britain, provided that the company has delivered particulars to the registrar with respect to that branch (and, in the event of any alteration in those particulars, has delivered a return of those alterations in the prescribed form), the company may, by referring in its return to the fact that the particulars have been filed in respect of that other branch and by giving the number with which the other branch is registered, require the registrar to treat those particulars as if they had been filed in respect of that branch. If the branch is moved to another part of Great Britain, the company is treated as having opened a branch and is subject to the registration requirements mentioned above.

51. In order to minimise burdens on companies, while still maintaining an appropriate level of disclosure, we propose to adopt for all places of business the concept presently contained in Companies House Guidance notes that where an overseas company operates here from a number of locations within a common management structure only one registration need be effected. Companies will not have to register separate places of business provided they are under a common management structure. This will apply to all places of business which come under a common management structure wherever they are located within the United Kingdom or Gibraltar (which, as explained in paragraph 26 above, is treated as part of the United Kingdom for the purposes of the Eleventh Directive). This means that companies will not have to register places of business separately in the different jurisdictions of England and Wales, Scotland, Gibraltar or Northern Ireland (provided the various locations come under a common management structure).

52. Where a number of places of business established by an overseas company are not under a common management structure, registration will still be required for each place of business.

Question 8 Do you agree that overseas companies should be able to make a single registration which covers all their places of business, provided that these are under a common management structure?

De-registration

53. It is proposed to give the registrar an additional power of de-registration where he is satisfied either that an overseas company has ceased to exist, or that it no longer has a place of business here.

54. The present legislation provides for overseas companies to tell the registrar when they no longer have a branch or place of business here. But practical problems can arise when they fail to do so. Even though it may be clear that the overseas company has ceased to exist, or no longer has a place of business here, there is no provision for the registrar to de-register them (“De-registration” in this context means that the particulars on the register relating to an overseas company would indicate that the company no longer had a place of business in the jurisdiction either because it had ceased to operate here, or because the overseas company had ceased to exist under the law of its incorporation – see paragraph 56).

55. Overseas companies may therefore remain on the register long after they have ceased to do business here. We believe that it would be sensible in these circumstances if the registrar were able to de-register them. For companies which are incorporated in Great Britain, the Companies Act (section 652) already provides for the registrar to strike defunct companies off the register. The Act lays down the exact procedure which he must follow (first a letter to the company enquiring whether it is carrying on business or in operation; then a second letter by registered post; then a notice which must be sent to the company and published in the Gazette, announcing his intention to strike the company off the register). We envisage that the registrar would follow a similar (but not necessarily identical) procedure before de-registering an overseas company. However, de-registering a place of business does not have such far-reaching consequences as striking off a domestic company. When a domestic company is struck off the register it is automatically dissolved and any property it may have is deemed to be *bona vacantia* and belongs to the Crown. De-registering an overseas company on the grounds that it no longer has a place of business here does not affect the status of the overseas company. We therefore incline to the view that it is not necessary for the legislation to stipulate the precise procedure which the registrar should be required to follow before de-registering an overseas company.

56. We propose that where the registrar has de-registered a place of business, the documents previously filed with the registrar should continue to be available on the public register for a reasonable period afterwards, to assist creditors or others who may need to trace the overseas company. The principles here would be similar to those which apply where a company incorporated here is struck off the register.

Question 9 **Should the registrar be able to de-register an overseas company where he is satisfied either that it has ceased to exist or that it no longer has a place of business here?**

Question 10 **Should the legislation spell out the procedures which the registrar should follow to decide whether an overseas company still had a place of business here?**

Winding Up

57. Annex 4 to this Consultation Document sets out disclosures to be made when an overseas company is subject to winding up or insolvency proceedings. These are required by the Eleventh Directive. They therefore apply to branches but are not at present required for those companies which are only subject to the place of business regime. We are of the view that these disclosures are important in giving valuable information to all third parties here dealing with an overseas company that is subject to insolvency proceedings, and propose that they should apply to all overseas companies.

Question 11 **Do you agree that the disclosure requirements set out in Annex 4 should apply to all overseas companies subject to winding up or insolvency proceedings?**

Stationery Disclosure and Names Regulation

58. Under Part XXIII, a company which registers a place of business must state its name and country of incorporation on all letter paper, bill heads, notices and other official publications

of the company. The company must also “conspicuously exhibit” its name and country of incorporation at every place where it carries on business in Great Britain. If the liability of the members of the company is limited, notice of that fact must be stated on all the company’s business stationery, and must be affixed on every place where it carries on business in Great Britain.

59. Additional publicity requirements are imposed on companies to which the Eleventh Directive applies in that a company which registers a branch must show the place of registration and the registration number of the branch. Also, every company which is from outside the EC must show:

- a) in the case of a company which is not incorporated in a Member State, the legal form of the company, the location of its head office, and (if applicable) the fact that it is being wound up; and
- b) in the case of a company which is not incorporated in a Member State and which is required by the law of its country of incorporation to be registered, the identity of the registry in which the company is registered in its country of incorporation, and the number with which it is registered.

60. We propose to extend these additional requirements to all overseas companies which establish a place of business here.

61. We are essentially concerned here with the content of the disclosure requirements for overseas companies. There may be other disclosure issues which are not specific to overseas companies (eg as to the disclosures to be made by a company in its electronic communications). These more general disclosure issues will be dealt with separately in the Company Law Review.

62. In addition to publicity requirements, there is, under section 694, a system of regulation of the names of overseas companies based on the system of regulation of Companies Act companies (Part I, Chapter II Companies Act). Whilst the Secretary of State cannot compel a foreign company to change its corporate name, the section empowers him to prevent trading here under that name and to approve another which is then treated as if it were the corporate name.

So, for example, the Secretary of State could prevent an overseas company from trading here under the same name as a company which has been registered here, or under a name which it would not have been granted permission to use if it were registered here. (The operation of this provision is subject to the freedom of establishment provisions of the EC Treaty.) Subject to any more general proposals for reform of the law on company names which may emerge from the Company Law Review, we propose to retain this provision.

Question 12 Do you agree that the stationery disclosure requirements of the Eleventh Directive (which presently apply only in respect of branches and not other places of business) should be extended to all overseas companies?

Question 13 Do you agree that restrictions on names, similar to those which apply to companies incorporated here, should continue to apply to overseas companies?

Service of Documents

63. Under the present law section 695 contains procedural rules relating to the service of documents on overseas companies which have an established place of business in Great Britain, and section 694A contains parallel provisions for companies subject to the branch registration regime. Under our proposals it will no longer be necessary for there to be two such provisions.

Charges

64. Under the current law the regime applicable to charges created by Companies Act companies is extended to charges created by overseas companies over property within Great Britain (section 409 in respect of England and Wales, and section 424 in respect of Scotland). There is no express statement that an overseas company must have registered under Part XXIII before such charges are registrable and the cautious line has been that it is not necessary for a Part XXIII registration to have been made before the obligation to register arises⁹.

⁹: See *NV Slavenburg's Bank v Intercontinental Natural Resources* [1980] 1 All ER 955.

65. The Companies Act 1989 contained sections changing this regime. These have never been brought into force. Under the 1989 Act provisions it would have been made clear that only overseas companies which had in fact registered under Part XXIII would be required to register charges over property within Great Britain. This would enable the registrar of companies to close the “Slavenburg register” which has been maintained in order to record cautious filings of particulars of charges created by unregistered overseas companies.

66. We believe there is merit in taking forward this reform. But before reaching a firm conclusion, we would welcome views on whether there are any disadvantages in adopting this proposal. We would particularly welcome views on whether it would have an impact on creditors.

67. Other issues arising on the registration of charges by overseas companies which also arise in relation to companies incorporated in Great Britain are being considered in that wider context by Working Group G and we shall be consulting on them separately in due course.

Question 14 Should the law be changed to make clear that only overseas companies which have registered under Part XXIII need register charges created over property within Great Britain?

Forms

68. New forms will need to be prescribed which reflect the proposed abolition of the present distinction between the “branch” and “place of business” regimes and the proposed changes to the filing requirements.

Enforcement

69. We have considered whether an overseas company which has not complied with its disclosure obligations under a reformed Part XXIII should be prevented from enforcing transactions entered into by it. But in our view this would be disproportionate. Instead we propose that criminal penalties should be imposed on those representing the place of business in Great Britain or otherwise participating in the management of the place of business.

Question 15 Do you agree that failure to comply with disclosure obligations should not prevent an overseas company from enforcing transactions, and that criminal penalties should be imposed instead?

Transitional Provisions

70. There will need to be transitional provisions to ensure:

- (a) that information already registered with the registrar of companies does not have to be re-registered, but can be carried across into the new regime;
- (b) that those overseas companies that have already registered places of business under Part XXIII need only file the necessary additional information within a specified timescale. It is envisaged that there will be a special form for this purpose; and
- (c) that an appropriate period will be allowed for compliance with the new accounting requirements.

Question 16 Following the introduction of a new regime for overseas companies, what would you consider to be a reasonable timescale for overseas companies to:

- (i) file any necessary additional information?
- (ii) comply with new accounting requirements?

Summary of Questions for Consultation

1. Do you agree that we should base overseas company registration on the existing concept of “place of business” rather than adopting a new test?
2. If you believe that “place of business” is not an appropriate test, what would you propose instead?
3.
 - (a) If registration is based on “place of business”, should share transfer or registration offices be specifically included within this definition as they are in the present legislation?
 - (b) If not should they be excluded where they would amount to a place of business but not to a branch or should they be treated in the same way as any other presence of a company falls to be treated?
4. Do you agree that the special provisions relating to Channel Island and Isle of Man companies should be abolished, with these companies being treated in the same way as other non-EC companies?
5. Do you agree that all overseas companies should be required to file accounts prepared in accordance with the requirements of their home state, where the home state requires accounts to be prepared?
6. For those overseas companies which are not required to prepare accounts in their home state, would you prefer to see:
 - (a) a restatement of the present section 700 requirements as outlined in Annex 2;
or
 - (b) a new set of simplified and updated requirements based on the present UK regime, as outlined in Annex 3?
7. For whichever option you prefer in answer to Question 6, do you have comments on the proposed content of the new accounting requirements?

8. Do you agree that overseas companies should be able to make a single registration which covers all their places of business, provided that these are under a common management structure?
9. Should the registrar be able to de-register an overseas company where he is satisfied either that it has ceased to exist or that it no longer has a place of business here?
10. Should the legislation spell out the procedures which the registrar should follow to decide whether an overseas company still had a place of business here?
11. Do you agree that the disclosure requirements set out in Annex 4 should apply to all overseas companies subject to winding up or insolvency proceedings?
12. Do you agree that the stationery disclosure requirements of the Eleventh Directive (which presently apply only in respect of branches and not other places of business) should be extended to all overseas companies?
13. Do you agree that restrictions on names, similar to those which apply to companies incorporated here, should continue to apply to overseas companies?
14. Should the law be changed to make clear that only overseas companies which have registered under Part XXIII need register charges created over property within Great Britain?
15. Do you agree that failure to comply with disclosure obligations should not prevent an overseas company from enforcing transactions, and that criminal penalties should be imposed instead?
16. Following the introduction of a new regime for overseas companies, what would you consider to be a reasonable timescale for overseas companies to:
 - (i) file any necessary additional information?
 - (ii) comply with new accounting requirements?

Note:

- a) **The Eleventh Directive derivation is given in square brackets after each requirement.**
- b) **** indicates where a disclosure requirement will be new for companies establishing places of business which are not branches.**

1. A return in a prescribed form containing the following particulars about the overseas company:

- (a) the corporate name and legal form of the company [art.2.1(d)] (**);
- (b) if the company is registered in the country of its incorporation, the identity of the register in which it is registered and its registration number [art. 2.1(c)] (**);
- (c) a list of the directors of the company, with the following information about each (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 [art.2.1(e)];

- (d) in the case of each director which is a corporation or Scottish firm, the following information:

 - (i) its corporate or firm name, and
 - (ii) its registered or principal office;
- (e) information concerning the company secretary comprising:

 - (i) (in the case of an individual) his name, any former name, and his usual residential address, and
 - (ii) 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 sub-paragraph (i).

Note: the following definitions are currently provided:

- (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 before the marriage.

2. A return in a prescribed form containing the following particulars about the place of business (**):

- (a) the address of the place of business [art.2.1(a)];
- (b) the date on which it was opened;
- (c) the business carried on at it [art.2.1(b)];
- (d) if different from the name of the oversea company, the name in which that business is carried on [art.2.1(d)];
- (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 carried on at the place of business and of any notices required to be served on the company in respect of its business;
- (f) a list of the names and usual residential addresses of any persons authorised to represent the company as permanent representatives of the company for the activities of the place of business [art.2.1(e)];
- (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.

3. The returns described in paragraphs 1 and 2 must be accompanied by the following documents:

- (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) [art.2.2(b)];
- (b) if any of those documents is not in English, a certified translation into English [art.4]; and

- (c) a copy of the company's latest accounting documents [art.2.1(g)] (**the nature of the disclosure will be different for companies whose established place of business falls short of a branch).

Additional Disclosure Requirements for Companies from Third Countries

4. Companies incorporated outside the EC are also required to disclose particulars of the law of the third country and of the company's principal place of business, its objects and the amount of its subscribed capital if these are not given in the company's constitutional documents [art.8]. If the company proposes to satisfy UK accounts filing requirements by filing accounts prepared in its home state, it must supply details of its financial reporting period and the period following its end during which accounts are required to be prepared for public disclosure.

Member State Options Not Exercised

5. When the Eleventh Directive was implemented the Government decided not to implement the following optional requirements to disclose:

- (a) the signature of those appointed to represent the company in respect of the branch, and of liquidators involved in the winding up of the company [art 2(2)(a)]; and
- (b) an attestation from the company's register that the company exists [art.2(2)(c)].

General Requirements (CA 1985 (unamended))

- S257(4)
1. Subject as follows, a reference in any enactment or other document to section X or X of this Act or to Schedule X is, in relation to overseas companies accounts, to be read as a reference to section X or X or Schedule X (as the case may require); but this is subject to any contrary context.
- S258 replaced by current requirement of S226 but “properly prepared” rather than “true and fair view”.
2. (1) The directors of every overseas company shall prepare for each financial year of the company:
- (a) a balance sheet as at the last day of the year, and
- (b) a profit and loss account.
- Those accounts are referred to in this Part as the company’s “individual accounts”.
- (2) A company’s individual accounts shall comply with the provisions of Schedule X as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.
- (3) The individual accounts shall be properly prepared in accordance with the provisions of this Act.
- S258(5) replaced by new S230(1) and (4)
- (4) The following provisions apply with respect to the individual profit and loss account of a parent company where:
- (a) the company is required to prepare and does prepare group accounts in accordance with this Act, and
- (b) the notes to the company’s individual balance sheet show the company’s profit or loss for the financial year determined in accordance with this Act.
- (c) The exemption conferred by this section is conditional upon its being disclosed in the company’s annual accounts that the exemption applies.

S229 replaced by new 227 and 228
NB: 229(2) no longer to apply.
“Subsidiary” extended to more than companies.

“Properly prepared” rather than “true and fair view”

S229(3) replaced by new 229

3.
 - (1) If at the end of a financial year an overseas company is a parent company the directors shall, as well as preparing individual accounts for the year, prepare group accounts.
 - (2) Group accounts shall be consolidated accounts comprising:
 - (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and
 - (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.
 - (3) A company’s group accounts shall comply with the provisions of Schedule X as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts.
 - (4) A company’s group accounts shall be properly prepared in accordance with the provisions of this Act.
4.
 - (1) Subject to the exceptions authorised or required by this section, all the subsidiary undertakings of the parent company shall be included in the consolidation.
 - (2) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material but two or more undertakings may be excluded only if they are not material taken together.
 - (3) In addition, a subsidiary undertaking may be excluded from consolidation where:
 - (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking or
 - (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or

- (c) the interest of the parent company is held exclusively with a view to subsequent resale and the undertaking has not previously been included in consolidated group accounts prepared by the parent company.

The reference in paragraph (a) to the rights of the parent company and the reference in paragraph (c) to the interest of the parent company are, respectively, to rights and interests held or attributed to the company in the absence of which it would not be the parent company.

- (4) Where all the subsidiary undertakings of a parent company fall within the above exclusions, no group accounts are required.

S239

- 5. For the purposes of this Part, a company's accounts for a financial year are to be taken as comprising the following documents:

- (a) the company's profit and loss account and balance sheet; and
- (b) where the company has subsidiaries and section 3 applies, the company's group accounts.

S238

- 6. (1) A company's balance sheet, and every copy of it which is delivered to the registrar of companies, shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that one.

- (2) If a copy of the balance sheet:

- (a) is delivered to the registrar without being signed as required by this section, or
- (b) not being a copy so delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signatures or signature, as the case may be, the company and every officer of it who is in default is liable to a fine.

CA85 (As amended)
S701

- 7. (1) Section X to X (financial year and accounting reference periods) apply to an overseas company, subject to the following modifications.

(2) For the references to the incorporation of the company substitute references to the company establishing a place of business in Great Britain.

(3) Omit section X (restriction on frequency with which current accounting reference period may be extended).

S702

8. (1) An overseas company shall in respect of each financial year of the company deliver to the registrar copies of the accounts prepared in accordance with section 2 and where required section 3.

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

(2) In relation to an overseas company the period allowed for delivering accounts is 13 months after the end of the relevant accounting reference period.

This is subject to the following provisions of this section.

(3) 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 establishing a place of business in Great Britain.

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

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

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

S703

9. (1) If the requirements of section 7(1) are not complied with before the end of the period allowed for delivering accounts, or if the accounts 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.

Profit and Loss Account – CA 1985 (unamended)

Schedule 9

1. The profit and loss account should show under separate headings:
- (a) the amount charged for depreciation, renewals or diminution in value of fixed assets;
 - (b) the amount of the interest on loans of the following kinds made to the company, namely, bank loans, overdrafts and other loans which, not being bank loans or overdrafts:
 - (i) are repayable otherwise than by instalments and fall due for repayment before the expiration of the period of five years beginning with the day next following the expiration of the financial year; or
 - (ii) are repayable by instalments the last of which falls due for payment before the expiration of that period;
- and the amount of the interest on loans of other kinds so made.
- (c) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;

Para 14

- (d) the amount, if material, set aside to provisions other than provisions for depreciation, renewals, or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;
- (e) the amounts respectively of income from listed investments and income from unlisted investments;
- (f) the aggregate amount of the dividends paid and proposed;
- (g) the effect of any amount relating to any preceding financial year included in any item; and
- (h) the amount of the remuneration of the auditors. For the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

Para 15
Amended. Now
similar to Schedule 4.

Para 16
Audit not necessary
but keep.

Para 18

2. The following matters shall be stated by way of note, if not otherwise shown in the profit and loss account:

- (a) if depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be;
- (b) any special circumstances which affect liability in respect of taxation of profits, or capital gains for the financial year or liability in respect of taxation of profits or capital gains for succeeding financial years;
- (c) the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account and notes; and
- (d) the effect of any transactions that are exceptional by virtue of size or incidence and any change in accounting policy.

Amended now
similar to Schedule 4.

Balance Sheet – CA85 (unamended)

- Schedule 9
- Para 2
- Para 4 excluding (3)
- Para 4(3) – extended to all accounting policies not just fixed assets.
- Para 7
- Para 2(c)
- Para 10(1)(a) and (3)
1. The authorised share capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities.
 2. (1) The reserves, provisions liabilities and assets shall be classified under headings appropriate to the company’s business provided that:
 - (a) where the amount of any class is not material, it may be included under the same heading as some other class; and
 - (b) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.(2) Fixed assets, current assets and assets that are neither fixed nor current shall be separately identified.
 - (3) The accounting policies adopted by the company in determining the amounts to be included in respect of items shown in the balance sheet and in determining the profit and loss of the company shall be stated (including such policies with respect to the depreciation and diminution in value of assets).
 3. The aggregate amounts respectively of reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings provided that this paragraph shall not require a separate statement of either of the said amounts which is not material.
 4. The balance sheet shall show under separate headings:
 - (a) the amount of the share premium account;
 - (b) the aggregate amounts respectively of the listed investments and unlisted investments. The listed investments shall be subdivided, where necessary, to distinguish the investments as respects which there has, and those as respects which there has not, been granted a listing on a recognised stock exchange;

Para 10(1)(b) and (2)

(c) the aggregate amount of goodwill, patents and trade marks; and

Para 10(1)(d) and (4)

(d) the aggregate amount of bank loans and overdrafts and the aggregate amount of loans made to the company which:

- (i) are repayable otherwise than by instalments and fall due for repayment after the expiration of the period of five years beginning with the day next following the expiration of the financial year; or
- (ii) are repayable by instalments any of which fall due for payment after the expiration of that period; not being, in either case, bank loans or overdrafts.

In relation to each loan (other than a bank loan or overdraft), there shall be stated by way of note (if not otherwise stated) the terms on which it is repayable and the rate at which interest is payable thereon.

Provided that if the number of loans is such that, in the opinion of the directors, compliance with the foregoing requirement would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms on which the loans are repayable and the rates at which interest is payable thereon.

5. If not otherwise shown the following shall be shown in the notes:

Para 2(a)
Para 2(b)

- (a) any part of the issued capital that consists of redeemable shares, the earliest and latest dates on which the company has power to redeem those shares, whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or of the shareholder and whether any (and, if so, what) premium is payable on redemption;
- (b) any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;

Para 13(2)

(c) the number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the option, that is to say:

(i) the period during which it is exercisable;

(ii) the price to be paid for shares subscribed for under it;

Suggested
replacement for Para
13(3)

(d) the number, description and amount of any shares in the company beneficially held by the company, its subsidiaries or their nominees;

Para 13(5)

(e) the amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrears;

Para 8

(f) (1) there shall also be shown unless the amount involved is not material:

(i) where the amount of the reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and

(ii) where:

(a) the amount of the reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or

(b) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof;

the application of the amounts derived from the difference.

(2) where the heading showing the reserves or any of the provisions aforesaid is divided into sub-headings, this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof;

Para 11 (g) where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured;

Para 13(6) (h) particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured;

Para 12 "books" replaced by "accounting records" (i) where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records of the company shall be stated;

Para 2(d) (j) particulars of any redeemed debentures which the company has power to re-issue;

Para 9 (k) if an amount is set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation, it shall be stated;

Para 13(14) (l) if a sum set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation has been used during the financial year for another purpose, the amount thereof and the fact that it has been so used;

Para 10(1)(e) (m) the aggregate amount which is recommended for distribution by way of dividend;

Para 13(7) (n) the general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material;

Para 13(8)

(o) where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for and, where practicable, the aggregate amount or estimated amount, if it is material, of capital expenditure authorised by the directors which has not been contracted for;

Para 13(9)

(p) in the case of fixed assets under any heading whose amount is required to be arrived at in accordance with paragraph X of this Schedule (other than unlisted investments) and is so arrived at by reference to a valuation, the years (so far as they are known to the directors) in which the assets were severally valued and the several values, and, in the case of assets that have been valued during the financial year, the names of the persons who valued them or particulars of their qualifications for doing so and (whichever is stated) the bases of valuation used by them;

Para 13(10)

(q) if there are included amongst fixed assets under any heading (other than investments) assets that have been acquired during the financial year, the aggregate amount of the assets acquired as determined for the purpose of making up the balance sheet, and if during that year any fixed assets included under a heading in the balance sheet made up with respect to the immediately preceding financial year (other than investments) have been disposed of or destroyed, the aggregate amount thereof as determined for the purpose of making up that balance sheet;

Para 13(11)

(r) of the amount of fixed assets consisting of land, how much is ascribable to land of freehold tenure and how much to land of leasehold tenure, and, of the latter, how much is ascribable to land held on long lease and how much to land held on short lease;

Para 13(13)

(s) the aggregate market value of the company's listed investments where it differs from the amount of the investments as stated and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value;

Para 6

(t) in the case of unlisted investments consisting in equity share capital of other bodies corporate (other than any whose values as estimated by the directors are separately shown, either individually or collectively or as to some individually and as to the rest collectively, and are so shown either as the amount thereof, or by way of note), the matters referred to below shall be shown:

(i) the aggregate amount of the company's income for the financial year that is ascribable to the investments;

(ii) the amount of the company's share before taxation, and the amount of that share after taxation, of the net aggregate amount of the profits of the bodies in which the investments are held, being profits for the several periods to which accounts sent by them during the financial year to the company related, after deducting those bodies' losses for those periods (or vice versa);

(iii) the amount of the company's share of the net aggregate amount of the undistributed profits accumulated by the bodies in which the investments are held since the time when the investments were acquired after deducting the losses accumulated by them since that time (or vice versa); and

(iv) the manner in which any losses incurred by the said bodies have been dealt with in the company's accounts;

Para 13(12)

(u) if in the opinion of the directors any of the current assets have not a value, on realisation in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion;

Para 3

(v) so far as they are not written off:

(i) the preliminary expenses;

- (ii) any expenses incurred in connection with any issue of share capital or debentures;
- (iii) any sums paid by way of commission in respect of any shares or debentures;
- (iv) any sums allowed by way of discount in respect of any debentures; and
- (v) the amount of the discount allowed on any issue of shares at a discount;

Para 13(16)

- (w) the basis on which foreign currencies have been converted into sterling, where the amount of the assets or liabilities affected is material;

Para 13(18)

- (x) the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet other than any item the amount for which is shown:

- (i) in pursuance of sub-paragraph (q) of this paragraph, or
- (ii) as an amount the source or application of which is required by sub-paragraph (f) of this paragraph to be shown.

Para 5
(Valuation rules)

- (y) (1) The method of arriving at the amount of any fixed asset shall, subject to the next following sub-paragraph, be to take the difference between:

- (a) its cost or, if it stands in the company's accounting records at a valuation, the amount of the valuation; and
- (b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value;

(2) The foregoing sub-paragraph shall not apply:

- (a) to assets the replacement of which is provided for wholly or partly:
 - (i) by making provision for renewals and charging the cost of replacement against the provision so made; or

("books" replaced by
"accounting records")

- (ii) by charging the cost of replacement direct to revenue; or
- (b) to any listed investments or to any unlisted investments of which the value as estimated by the directors is shown either as the amount of the investments or by way of note; or
- (c) to goodwill, patents or trade marks.

(3) For the assets under each heading whose amount is arrived at in accordance with sub-paragraph (1) of this paragraph, there shall be shown:

- (a) the aggregate of the amounts referred to in paragraph (a) of that sub-paragraph; and
- (b) the aggregate of the amounts referred to in paragraph (b) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with the said sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2)(a) of this paragraph, there shall be stated:

- (a) the means by which their replacement is provided for; and
- (b) the aggregate amount of the provision (if any) made for renewals and not used.

(z) (1) There shall be shown the aggregate amount of the directors' emoluments.

(2) This amount:

- (a) includes any emoluments paid to or receivable by a person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary of it or otherwise in connection with the management of the affairs of the company or any subsidiary of it; and

(b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments.

(3) For the purposes of this paragraph “emoluments”, in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance (insofar as those sums are charged to United Kingdom income tax), any contributions paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash.

Para 28

(aa) (1) There shall be shown the aggregate amount of directors or past directors’ pensions.

(2) This amount does not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions under it are substantially adequate for the maintenance of the scheme; but, subject to this, it includes any pension paid or receivable in respect of any such services of a director or past director as are mentioned in paragraph z(2) whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person.

(3) The amount shown shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions.

(bb) (1) There shall be shown the aggregate amount of any compensation to directors or past directors in respect of loss of office.

Para 29

(2) This amount:

(a) includes any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of it, of any other office in connection with the management of the company’s affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary of the company; and

(b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices;

(3) References to compensation for loss of office include sums paid as consideration for or in connection with a person's retirement from office.

Para 30

(cc) (1) The following applies with respect to the amounts to be shown under subparagraphs (z), (aa) and (bb).

(2) The amount in each case includes all relevant sums paid by or receivable from:

(a) the company; and

(b) the company's subsidiaries; and

(c) any other person.

(3) The amount to be shown under paragraph bb shall distinguish between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

Para 31

(dd) (1) The amounts to be shown for any financial year under paragraphs (z), (aa) and (bb) are the sums receivable in respect of that year (whenever paid) or, in the case of sums not receivable in respect of a period, the sums paid during that year.

(2) But where any sums paid by way of expenses allowance are charged to United Kingdom income tax after the end of the relevant financial year those sums shall, to the extent to which the liability is released or not enforced or they are charged as mentioned above (as the case may be), be shown in a note to the first accounts in which it is practicable to show them and shall be distinguished from the amounts to be shown apart from this provision.

Para 32 (ee) where it is necessary to do so for the purpose of making any distinction required by the preceding paragraphs in an amount to be shown in compliance with this Schedule, the directors may apportion any payments between the matters in respect of which these have been paid or are receivable in such manner as they think appropriate; and

Section 231(4) (ff) it is the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for purposes of paragraph (z) to (bb) above; and this applies to persons who are or have at any time in the preceding 5 years been officers, as it applies to directors.

A person who makes default in complying with this sub-section is liable to a fine.

Special Provisions where the Company is a Parent or Subsidiary Company

Schedule 9

Modifications of and Additions to Requirements as to Company's Own Accounts

- Para 19
6. (1) This paragraph applies where the company is a parent company.
- (2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and:
- (a) the references in this Schedule to the company's investments (except those in paragraph 5(q) shall not include investments in its subsidiaries required by this paragraph to be separately set out; and
- (b) paragraph (1)(a) and paragraph 2(a) shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

NB: 1(a) and 2(a) as in the p/l a/c

(3) There shall be shown by way of note the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in the case of which the subsidiary is concerned as personal representative or in the case of which it is concerned as trustee and neither the company nor any subsidiary thereof is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(4) Where group accounts are not submitted, the notes to the accounts shall show:

- (a) the reasons why subsidiaries are not dealt with in group accounts;
- (b) the net aggregate amount, so far as it concerns members of the parent company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa):
 - (i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and
 - (ii) for their previous financial years since they respectively became the parent company's subsidiary;
- (c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa):
 - (i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and
 - (ii) for their other financial years since they respectively became the parent company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

(5) Paragraphs (b) and (c) of the foregoing sub-paragraph shall apply only to profits and losses of a subsidiary which may properly be treated in the parent company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the parent company or any other of its subsidiaries shall not (for the purposes of those paragraphs) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where:

(a) the company is itself the subsidiary of another undertaking; and

(b) the shares were acquired from that undertaking or a subsidiary of it;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(6) Where group accounts are not submitted the notes shall show, in relation to the subsidiaries (if any) whose financial years did not end with that of the company:

(a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and

(b) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

Para 20

7. (1) The balance sheet of a company which is a subsidiary of another undertaking, whether or not it is itself a parent company, shall show the aggregate amount of its indebtedness to all undertakings of which it is a subsidiary or a fellow subsidiary and the aggregate amount of indebtedness of all such undertakings to it, distinguishing in each case between indebtedness in respect of debentures and otherwise, and the aggregate amount of assets consisting of shares in fellow subsidiaries.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another undertaking if both are subsidiaries of the same undertaking but neither is the other's.

Consolidated accounts of parent company and subsidiaries

- Para 21
8. Subject to the following paragraphs of this Part of this Schedule the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the parent company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the parent company think necessary.
- Para 22
9. Subject as aforesaid the consolidated accounts shall, in giving the said information, comply so far as practicable, with the requirements of this Act as if they were the accounts of an actual overseas company.
- Para 24
10. Paragraph 9 above is without prejudice to any requirement of this Act which applies (otherwise than by virtue of paragraph 8 or 9) to group accounts.
- Para 25
11. In relation to any subsidiaries of the parent company not dealt with by the consolidated accounts:
- (a) sub-paragraphs (2) and (3) of paragraph 6 of this Schedule shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and
 - (b) there shall be included the notes required by sub-paragraph (4) of that paragraph where there are no group accounts, but as if references therein to the parent company's accounts were references to the consolidated accounts.
- Para 26
12. In relation to any subsidiary (whether or not dealt with by the consolidated accounts), whose financial year did not end with that of the company, there shall be included in the notes the information required by sub-paragraph (6) of paragraph 6 of this Schedule where there are no group accounts.

Interpretation of Schedule

Para 32

13. (1) For the purposes of this Schedule, unless the context otherwise requires:

- (a) the expression “provision” shall, subject to sub-paragraph (2) of this paragraph, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;
- (b) the expression “reserve” shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability or any sum set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation;

and in this paragraph the expression “liability” shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where:

- (a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets; or
- (b) any amount retained by way of providing for any known liability; is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

Para 33

14. For the purposes aforesaid, the expression “listed investment” means an investment as respects which there has been granted a listing on a recognised stock exchange, or on any stock exchange of repute outside Great Britain and the expression “unlisted investment” shall be construed accordingly.

- Para 34 15. For the purposes aforesaid, the expression “long lease” means a lease in the case of which the portion of the term for which it was granted remaining unexpired at the end of the financial year is not less than fifty years, the expression “short lease” means a lease which is not a long lease and the expression “lease” includes an agreement for a lease.
- Para 35 16. For the purposes aforesaid, a loan shall be deemed to fall due for repayment, and an instalment of a loan shall be deemed to fall due for payment, on the earliest date on which the lender could require repayment or, as the case may be, payment if he exercised all options and rights available to him.
- Para 36 17. In the application of this Schedule to Scotland, “land of freehold tenure” means land in respect of which the company is the proprietor of the dominium utile or, in the case of land not held on feudal tenure, is the owner; “land of leasehold tenure” means land of which the company is the tenant under a lease; and the reference to ground-rents, rates and other outgoings includes a reference to feu-duty and ground annual.

Schedule 5

- Para 33 18. (1) The following applies for the interpretation of paragraphs 5(z) to 5(ee)
- (2) A reference to the company’s subsidiary:
- (a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company’s nomination (direct or indirect) of any other body corporate, includes (subject to the following sub-paragraph) that body corporate, whether or not it is or was in fact the company’s subsidiary, and
- (b) for purposes of paragraph 5(z) to 5(aa) (including any provision of this Part referring to paragraph 5(z) is to a subsidiary at the time the services were rendered, and for purposes of paragraph 5(bb) to a subsidiary immediately before the loss of office as director.

(3) The following definitions apply:

- (a) “pension” includes any superannuation allowance, superannuation gratuity or similar payment;
- (b) “pension scheme” means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and
- (c) “contribution”, in relation to a pension scheme, means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

Supplementary

Para 34 “books and papers” replaced by “accounting records”

- 19 This Part of this Schedule requires information to be given only so far as it is contained in the company’s accounting records or the company has the right to obtain it from the persons concerned.

1. (1) The directors of every oversea company shall prepare for each financial year of the company:
 - (a) a balance sheet as at the last day of the year, and
 - (b) a profit and loss account.

Those accounts are referred to in this Part as the company's "individual accounts".
 - (2) A company's individual accounts shall comply with the provisions of Schedule X as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.
 - (3) The individual accounts shall be properly prepared in accordance with the provisions of this Act.
 - (4) The following provisions apply with respect to the individual profit and loss account of a parent company where:
 - (a) the company is required to prepare and does prepare group accounts in accordance with this Act, and
 - (b) the notes to the company's individual balance sheet show the company's profit or loss for the financial year determined in accordance with the Act.
 - (5) The exemption conferred by this section is conditional upon its being disclosed in the company's annual accounts that the exemption applies.
2. (1) If at the end of a financial year an oversea company is a parent company the directors shall, as well as preparing individual accounts for the year, prepare group accounts.

- (2) Group accounts shall be consolidated accounts comprising:
 - (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and
 - (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.
 - (3) A company's group accounts shall comply with the provisions of Schedule X as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts.
 - (4) The group accounts shall be properly prepared in accordance with the provisions of this Act.
- 3.
- (1) Subject to the exceptions authorised or required by this section, all the subsidiary undertakings of the parent company shall be included in the consolidation.
 - (2) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material; but two or more undertakings may be excluded only if they are not material taken together.
 - (3) In addition, a subsidiary undertaking may be excluded from consolidation where:
 - (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or
 - (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or
 - (c) the interest of the parent company is held exclusively with a view to subsequent resale and the undertaking has not previously been included in consolidated group accounts prepared by the parent company.

The reference in paragraph (a) to the rights of the parent company and the reference in paragraph (c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company in the absence of which it would not be the parent company.

(4) Where all the subsidiary undertakings of a parent company fall within the above exclusions, no group accounts are required.

4. (1) An overseas company's individual accounts shall be signed on behalf of the board by a director of the company.

(2) The signature shall be on the company's balance sheet.

(3) Every copy of the balance sheet which is circulated, published or issued, shall state the name of the person who signed the balance sheet on behalf of the board.

(4) The copy of the company's balance sheet which is delivered to the registrar shall be signed on behalf of the board by a director of the company.

(5) If a copy of the balance sheet:

(a) is circulated, published or issued without the balance sheet having been signed as required by this section or without the required statement of the signatory's name being included, or

(b) is delivered to the registrar without being signed as required by this section, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

5. (1) Sections X to X (financial year and accounting reference periods) apply to an overseas company, subject to the following modifications.

(2) For the references to the incorporation of the company substitute references to the company establishing a place of business in Great Britain.

(3) Omit section X (restriction of frequency with which current accounting reference period may be extended).

6. (1) An overseas company shall in respect of each financial year of the company deliver to the registrar copies of the accounts prepared in accordance with section 1 and section 2.

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

(2) In relation to an overseas company the period allowed for delivering accounts and reports is 13 months after the end of the relevant accounting reference period.

This is subject to the following provisions of this section.

(3) 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 establishing a place of business in Great Britain.

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

(5) If for any special reason the Secretary of State thinks fit he may, on an application before the expiry of the period otherwise allowed, by notice in writing in an overseas company extend that period by such further period as may be specified in the notice.

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

7.
 - (1) If the requirements of section 6(1) are not complied with before the end of the period allowed for delivering accounts, or if the accounts 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.

SCHEDULE

1. The balance sheet shall show at least the following information:

- Fixed assets
- Intangible assets
- Tangible assets
- Investments
- Current assets
- Stocks
- Debtors
- Investments
- Cash at bank and in hand
- Creditors: amounts falling due within one year
- Net current assets (liabilities)
- Total assets less current liabilities
- Creditors: amounts falling due after more than one year
- Provisions for liabilities and charges
- Capital and reserves
- Called up share capital
- Reserves.

2. The profit and loss account shall show at least the following information:
 1. Turnover
 2. Interest payable less interest receivable
 3. Profit or loss on ordinary activities before taxation
 4. Tax on profit or loss on ordinary activities
 5. Profit or loss on ordinary activities after taxation
 6. Profit or loss for the financial year
 7. Dividends
 8. Transfers to/from reserves.
3. The method of arriving at the amount of any fixed asset shall be to take the difference between:
 - (a) its cost or, if it stands in the company's accounting records at a valuation, the amount of the valuation; and
 - (b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value.
4. Unless shown in the balance sheet or profit and loss account at least the following additional information shall be disclosed in the notes to the accounts:
 - (a) the accounting policies adopted by the company in determining the amounts to be included in respect of items shown in the balance sheet and in determining the profit or loss of the company including, if applicable, the accounting standards applied;
 - (b) the amount of depreciation and other amounts written off fixed assets;

- (c) where any amount is transferred (i) to or from any reserves or (ii) to any provisions for liabilities and charges or (iii) from any provision for liabilities and charges otherwise than for the purpose for which the provision was established the information mentioned in the following sub-paragraph shall be given in respect of the aggregate of reserves or provisions included in the same item;

That information is:

- (i) the amount of the reserves or provisions as at the date of the beginning of the financial year and as at the balance sheet date respectively;
 - (ii) any amounts transferred to or from the reserves or provisions during that year; and
 - (iii)** the source and application respectively of any amounts so transferred;
- (d) (i) in respect of each item shown under “creditors” in the company’s balance sheet there shall be stated the aggregate of the following amounts, that is to say:
- (a) the amount of any debts included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of the period of five years beginning with the day next following the end of the financial year; and
 - (b) in the case of any debts so included which are payable or repayable by instalments the amount of any instalments which fall due for payment after the end of that period;
- (ii)** in respect of each item shown under “creditors” in the company’s balance sheet there shall be stated:
- (a) the aggregate amount of any debts included under that item in respect of which any security has been given by the company; and
 - (b) an indication of the nature of the securities so given;

- (e) (i) particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person including, where practicable, the amount secured;

(ii) the following information shall be given with respect to any other contingent liabilities not provided for:

 - (a) the amount or estimated amount of that liability;
 - (b) its legal nature; and
 - (c) whether any valuable security has been provided by the company in connection with that liability and if so, what;
- (f) (i) where any amount relating to any preceding financial year is included in any item in the profit and loss account, the effect shall be stated;

(ii) particulars shall be given of any extraordinary income or charges arising in the financial year;

(iii) the effect shall be stated of any transactions that are exceptional by virtue of size or incidence though they fell within the ordinary activities of the company;
- (g) (i) in respect of every item shown in a company's balance sheet, profit and loss account and notes the corresponding amount for the financial year immediately preceding that to which the balance sheet or profit or loss account or note relates shall also be shown;

(ii) where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account or note relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts;
- (h) the aggregate amount of the directors' emoluments;

- (i) group accounts shall comply so far as practicable with the provisions of this schedule as if the undertakings included in the consolidation were a single company;
- (ii) the consolidated balance sheet and profit and loss account shall incorporate in full the information contained in the individual accounts of the undertakings included in the consolidation, subject to the adjustments, if any, as may be appropriate in accordance with generally accepted accounting principles or practice;
- (j) (i) the following information shall be given where at the end of each financial year the company has subsidiary undertakings:

 - (ii) the name of each subsidiary undertaking shall be stated;
 - (iii) there shall be stated with respect to each subsidiary undertaking:

 - (a) if it is incorporated outside Great Britain, the country in which it is incorporated;
 - (b) if it is unincorporated, the address of its principle place of business;
- (k) (i) where the company is a subsidiary undertaking, the following information shall be given with respect to the company (if any) regarded by the directors as being that company's ultimate parent company;

 - (ii) the name of that company shall be stated;
 - (iii) if known to the directors, there shall be stated if that company is incorporated outside Great Britain, the country in which it is incorporated;
 - (iv) in this paragraph "company" includes any body corporate;

[NB this will be a new reporting obligation for companies with place a of business but not for those with a branch]

1. Oversea companies which are being wound up, or are subject to other insolvency proceedings or an arrangement or composition or other analogous proceedings, will have to deliver the following information to the registrar (currently required by sections 703P and Q) within 14 days of the winding up beginning or of the company otherwise becoming subject to relevant proceedings:
 - a) the name of the company;
 - b) whether the winding-up or other 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 if so who;
 - e) the date on which the proceedings became or will become effective.
2. A liquidator must deliver to the registrar, within 14 days of his appointment, a return containing the following information:
 - 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.

3. If the winding up terminates, the company ceases to be registered in circumstances where this is an event of legal significance, or the company ceases to be subject to another type of insolvency or composition proceeding, then within 14 days of that event the liquidator must send the registrar a return stating the name of the company and the date on which the winding up terminated, the company ceased to be registered or ceased to be subject to the proceedings.

4. The company and liquidator have to deliver returns in respect of each place of business which the company has in Great Britain (unless more than one place of business is specifically covered by the return giving the number of more than one place of business).

