

## **UK Company Law Review and Registration of Overseas Companies**

The UK Companies Act currently provides that any company incorporated outside of Great Britain;

- which opens a branch in the United Kingdom must register the branch with the Registrar of Companies within one month of opening the branch
- which establishes a place or places of business in United Kingdom (not being a UK branch) must register the place or places with the Registrar of Companies within one month of opening the place or places of business.

Once filed, the registered particulars must be kept up to date with changes filed within 21 days. Default fines (which accrue on a daily basis) are payable by companies, their officers and agents who fail to register such changes.

The Company Law Review process is likely to be completed in the UK during 2005 and the most significant sections of the Companies Bill have now been published.

It is not going to be the radical shake up that many hoped for. Smaller private companies will see some significant de-regulation but a general merger law, the abolition of fixed paid up capital and other more radical proposals in the review have not found their way into the draft bill. There will be some changes to the regulation of overseas companies which have activities in the UK.

The present system of dual requirements to register where overseas companies have a 'branch' or/and a 'place of business' will be simplified and there will now only be one test. This test will require a company incorporated overseas to register in the UK within one month of establishing a place of business. There is still no attempt to define what 'place of business' means. Based on current case law any overseas company which utilises an address in the UK on more than a short term and temporary basis will need to register.

For companies incorporated in states for example, like Delaware, and other states which do not require the public filing of annual financial accounts, they will have to continue to deliver modified accounts to the Registrar of Companies. The bill indicates that regulations will be made about the form of these accounts but they are likely to benefit from the simplified accounting requirements under the existing Act. The extension under the bill of the small company accounting regime which will now apply to companies with a turnover of \$6,000,000 and less and approximately \$3,000,000 and less of balance sheet total will also reduce the regulatory burden on smaller overseas companies.

Companies incorporated in countries or states, the law of which does require public filing of accounts, will have to file those accounts within three months of the obligatory filing date in the home state. The current requirement is thirteen months from the end of the financial period.

Failure to register the establishment of a place of business will expose the company, its officers and agents to penalties. Penalties will be different in scope from the

present regime (a daily default fine) because the Companies bill is introducing new categories of offence for particular types of default. The failure to register for example is a 'Type B' offence and generally the failure to file information required is a 'Type A' offence.

The penalties for Type A and Type B offences have not yet been prescribed.

Many overseas companies are not registered in accordance with the current requirements but the procedure is relatively straightforward and Companies House is becoming more aggressive in policing the existing legislation. This is likely to increase after the new bill becomes law.

Clients who conduct a business activity in the UK need to review whether they are properly registered with Companies House and, if they are registered, that the filings are up to date.

Any companies conducting business in the UK who need assistance with complying with the current or future overseas companies registration regime I will of course be happy to assist them.

In addition to advising on UK Company law and Corporate transactions Richard Howard & Co. provides incorporation and registration services to clients wishing to incorporate UK subsidiaries, register UK branches or establish associate offshore companies.

If you would like to discuss any aspect of Company law or the firm's registrar services, please contact us:

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