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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Overseas Companies Regulations 2009**

**PART 4**

**USUAL RESIDENTIAL ADDRESSES: PROTECTION FROM DISCLOSURE**

**Application and interpretation of Part**

**18.**—(1) This Part applies to an overseas company that has one or more UK establishments in respect of which it has registered particulars under Part 2.

(2) In this Part—

“credit reference agency” means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose;

“director” means a director of a company who is an individual and whose particulars have been delivered to the registrar under regulation 6(1)(d)(i);

“limited liability partnership” means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000(1) or Limited Liability Partnerships Act (Northern Ireland) 2002(2);

“permanent representative” means a permanent representative of a company whose particulars have been delivered to the registrar under regulation 7(1)(f);

“police force” means a police force within the meaning of section 101(1) of the Police Act 1996(3) (interpretation), section 50 of the Police (Scotland) Act 1967(4) (meaning of police area, etc) or section 1 of the Police (Northern Ireland) Act 2000(5) (name of the police in Northern Ireland); and

“specified public authority” means a public authority specified in Schedule 1.

**Protected information**

**19.**—(1) This Part makes provision for protecting, in the case of a director or permanent representative of a company to which this Part applies—

(a) information as to their usual residential address;

(b) the information that their service address is their usual residential address.

(2) That information is referred to in this Part as “protected information”.

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(1) 2000 c.12.  
(2) 2002 c.12 (N.I.).  
(3) 1996 c.16.  
(4) 1967 c.77.  
(5) 2000 c.32.

(3) Information does not cease to be protected information on the person ceasing to be a director or permanent representative and references in this Part to a director or permanent representative include, to that extent, a person who was formerly a director or permanent representative.

**Protected information: restriction on use or disclosure by company**

**20.**—(1) A company to which this Part applies must not use or disclose protected information about a director or permanent representative, except—

- (a) for communicating with the individual concerned,
- (b) in order to comply with any requirement in these Regulations as to particulars to be sent to the registrar, or
- (c) in accordance with regulation 26 (disclosure under court order).

(2) Paragraph (1) does not prohibit the use or disclosure of protected information with the consent of the director or permanent representative.

**Protected information: restriction on use or disclosure by registrar**

**21.**—(1) The registrar must omit protected information from the material on the register that is available for inspection where—

- (a) it is contained in a document delivered to the registrar in which such information is required to be stated, and
- (b) in the case of a document having more than one part, it is contained in a part of the document in which such information is required to be stated.

(2) The registrar is not obliged—

- (a) to check other documents or (as the case may be) other parts of the document to ensure the absence of protected information, or
- (b) to omit from the material that is available for public inspection anything registered before 1st October 2009.

(3) The registrar must not use or disclose protected information except—

- (a) as permitted by regulations 22 to 24 (permitted use or disclosure by registrar), or
- (b) in accordance with regulation 26 (disclosure under court order).

**Permitted use of protected information by the registrar: communication**

**22.** The registrar may use protected information for communicating with the director or permanent representative.

**Permitted disclosure by the registrar: disclosure to specified public authority**

**23.**—(1) The registrar may disclose protected information to a specified public authority where the conditions set out in Part 1 of Schedule 2 are satisfied.

(2) A specified public authority must deliver to the registrar such information or evidence as the registrar may direct for the purpose of enabling the registrar to determine in accordance with these Regulations whether to disclose protected information.

(3) The registrar may require such information or evidence to be verified in such manner as the registrar may direct.

(4) The specified public authority must inform the registrar immediately of any change in respect of any statement delivered to the registrar pursuant to Schedule 2 or information or evidence provided for the purpose of enabling the registrar to determine whether to disclose protected information.

#### **Permitted disclosure by the registrar: disclosure to credit reference agency**

**24.**—(1) Subject to regulation 25, the registrar may disclose protected information to a credit reference agency where the conditions set out in Part 2 of Schedule 2 are satisfied.

(2) The registrar may rely on a statement delivered by a credit reference agency under paragraph 10 of Schedule 2 as sufficient evidence of the matters stated in it.

(3) Notwithstanding paragraph (2), a credit reference agency shall deliver to the registrar such information or evidence in addition to the statement required by paragraph 10 of Schedule 2 as the registrar may direct for the purpose of enabling the registrar to determine in accordance with these Regulations whether to disclose protected information.

(4) The registrar may require such information or evidence to be verified in such manner as the registrar may direct.

(5) The credit reference agency must inform the registrar immediately of any change in respect of any statement delivered to the registrar pursuant to Schedule 2 or information or evidence provided for the purpose of enabling the registrar to determine whether to disclose protected information.

#### **Application to prevent disclosure to credit reference agency**

**25.**—(1) An application may be made to the registrar to prevent the disclosure to a credit reference agency of protected information relating to a director or permanent representative (an “application for higher protection”).

(2) An application for higher protection shall be made and determined in accordance with the provisions of Schedule 3.

(3) The registrar shall refrain from disclosing to a credit reference agency protected information relating to—

- (a) an individual in respect of whom a successful application for higher protection has been made, or
- (b) an individual in respect of whom an application for higher protection has been made where—
  - (i) the registrar has not made a determination, or
  - (ii) the registrar has made a determination rejecting the application and an appeal against that determination has been brought but has not been determined;
- (c) an individual in relation to whom an order was in force under section 723B of the Companies Act 1985<sup>(6)</sup> (confidentiality orders) immediately before 1st October 2009 and who, by virtue of paragraph 21 of Schedule 8 (transitional provisions and savings: individuals with a confidentiality order) is to be treated as having made a successful application for higher protection.

#### **Disclosure under court order**

**26.**—(1) The court may make an order for the disclosure of protected information by the company or by the registrar if—

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(6) 1985 c.6. Section 723B was inserted by section 45 of the Criminal Justice and Police Act 2001 (c.16).

- (a) there is evidence that service of documents at a service address other than the director or permanent representative's usual residential address is not effective to bring them to the notice of that individual, or
- (b) it is necessary or expedient for the information to be provided in connection with the enforcement of an order or decree of the court,

and the court is otherwise satisfied that it is appropriate to make the order.

(2) An order for disclosure by the registrar is to be made only if the company—

- (a) does not have the director or permanent representative's usual residential address,
- (b) no longer has a UK establishment and has given notice of that fact under regulation 77, or
- (c) has been dissolved.

(3) The order may be made on the application of a liquidator, creditor or member of the company, or any other person appearing to the court to have a sufficient interest.

(4) The order must specify the persons to whom, and purposes for which, disclosure is authorised.

### **Circumstances in which registrar may put address on the public record**

27.—(1) The registrar may put a director's or permanent representative's usual residential address on the public record if—

- (a) communications sent by the registrar to that individual and requiring a response within a specified period of time remain unanswered, or
- (b) there is evidence that service of documents at a service address provided in place of their usual residential address is not effective to bring them to the notice of the director or permanent representative.

(2) The registrar must give notice of the proposal—

- (a) to the director or permanent representative, and
- (b) to the company.

(3) The notice must—

- (a) state the grounds on which it is proposed to put the director's or permanent representative's usual residential address on the public record, and
- (b) specify a period within which representations may be made before that is done.

(4) The notice must be sent to the director or permanent representative at their usual residential address, unless it appears to the registrar that service at that address may be ineffective to bring it to their notice, in which case it may be sent to any service address provided in place of that address.

(5) The registrar must take account of any representations received within the specified period.

(6) What is meant by putting the address on the public record is explained in regulation 28.

### **Putting the address on the public record**

28.—(1) The registrar, on deciding in accordance with regulation 27 that a director's or permanent representative's usual residential address is to be put on the public record, shall proceed as if a return containing altered particulars had been given under Part 3—

- (a) stating that address as the director's or permanent representative's service address, and
- (b) stating that their usual residential address is the same as their service address.

(2) The registrar must give notice of having done so—

- (a) to the director or permanent representative, and

(b) to the company.

(3) If the company has been notified by the director or permanent representative of a more recent address as their usual residential address, it must notify the registrar in accordance with regulation 13 (return of alteration in registered particulars).

(4) A director or permanent representative whose usual residential address has been put on the public record by the registrar under this regulation may not register a service address other than their usual residential address for a period of five years from the date of the registrar's decision.

### **Penalty for non-compliance**

**29.**—(1) If a company fails to comply with regulation 28(3) an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to—

- (a) a fine not exceeding level 5 on the standard scale, and
- (b) for continued contravention, a daily default fine not exceeding one tenth of level 5 on the standard scale.