
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Overseas Companies Regulations 2009

PART 8

RETURNS IN CASE OF WINDING UP ETC

Application of Part

68. This Part applies to an overseas company that has one or more UK establishments.

Return in case of winding up

69.—(1) Where a company to which this Part applies is being wound up, it must deliver to the registrar a return containing the following particulars—

- (a) the company's name;
- (b) whether the company is being wound up by an order of a court and if so, the name and address of the court and the date of the order;
- (c) if the company is not being so wound up, as a result of what action the winding up has commenced;
- (d) whether the winding up has been instigated by—
 - (i) the company's members,
 - (ii) the company's creditors, or
 - (iii) some other person (stating the person's identity); and
- (e) the date on which the winding up became or will become effective.

(2) The return must be delivered not later than—

- (a) if the winding up began before the company had a UK establishment, one month after the company first opens a UK establishment;
- (b) if the winding up begins when the company has a UK establishment, 14 days after the date on which the winding up begins.

(3) Where the company has more than one UK establishment the obligation to deliver a return under this regulation applies in respect of each of them, but a return giving the registered numbers of more than one UK establishment is regarded as a return in respect of each establishment whose number is given.

(4) No return is required under this regulation in respect of winding up under the Insolvency Act 1986⁽¹⁾ or the Insolvency (Northern Ireland) Order 1989⁽²⁾.

(1) 1986 c.45. Section 117(7) (High Court and County Court jurisdiction) was amended by regulations 3 and 6 of the Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002 (S.I. 2002/1240).

(2) S.I. 1989/2405 (N.I. 19).

Returns to be made by liquidator

70.—(1) A person appointed to be the liquidator of a company to which this Part applies must deliver to the registrar a return containing the following particulars—

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

(2) The period allowed for delivery of the return required by paragraph (1) is—

- (a) if the liquidator was appointed before the company had a UK establishment (and continues in office at the date of the opening), one month after the company first opens a UK establishment;
- (b) if the liquidator is appointed when the company has a UK establishment, 14 days after the date of the appointment.

(3) The liquidator of a company to which this Part applies must—

- (a) on the termination of the winding up of the company, deliver a return to the registrar stating the name of the company and the date on which the winding up terminated;
- (b) on the company ceasing to be registered in circumstances where ceasing to be registered is an event of legal significance, deliver a return to the registrar stating the name of the company and the date on which it ceased to be registered.

(4) The period allowed for delivery of the return required by paragraph (3)(a) or (b) is 14 days from the date of the event.

(5) Where the company has more than one UK establishment the obligation to deliver a return under this regulation applies in respect of each of them, but a return giving the registered numbers of more than one UK establishment is regarded as a return in respect of each establishment whose number is given.

(6) No return is required under this regulation in respect of a liquidator appointed under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989.

Return in case of insolvency proceedings etc (other than winding up)

71.—(1) Where a company to which this Part applies becomes subject to insolvency proceedings or an arrangement or composition or any analogous proceedings (other than proceedings for winding up of the company), it must deliver to the registrar a return containing the following particulars—

- (a) the company's name;
- (b) whether the proceedings are by an 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 an order of a court, as a result of what action the proceedings have been commenced;
- (d) whether the proceedings have been commenced by—
 - (i) the company's members,
 - (ii) the company's creditors, or
 - (iii) some other person (giving the person's identity);
- (e) the date on which the proceedings became or will become effective.

(2) The period allowed for delivery of the return required by paragraph (1) is—

- (a) if the company became subject to the proceedings before it had a UK establishment, one month after the company first opens a UK establishment;
 - (b) if the company becomes subject to the proceedings when it has a UK establishment, 14 days from the date on which it becomes subject to the proceedings.
- (3) Where a company to which this Part applies ceases to be subject to any of the proceedings referred to in paragraph (1) it must deliver to the registrar a return stating—
- (a) the company's name, and
 - (b) the date on which it ceased to be subject to the proceedings.
- (4) The period allowed for delivery of the return required by paragraph (3) is 14 days from the date on which it ceases to be subject to the proceedings.
- (5) Where the company has more than one UK establishment the obligation to deliver a return under this regulation applies in respect of each of them, but a return giving the registered numbers of more than one UK establishment is regarded as a return in respect of each establishment whose number is given.
- (6) No return is required under this regulation in respect of—
- (a) a company's becoming or ceasing to be subject to a voluntary arrangement under Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989, or
 - (b) a company's entering administration under Part 2 and Schedule B1 of that Act or becoming or ceasing to be subject to an administration order under Part 3 of that Order.

Penalties for non-compliance

- 72.—(1) If a company fails to comply with regulation 69(1) or 71(1) or (3) within the period allowed for compliance, an offence is committed by—
- (a) the company, and
 - (b) every person who immediately before the end of that period was a director of the company.
- (2) A liquidator who fails to comply with regulation 70(1) or (3)(a) or (b) within the period allowed for compliance commits an offence.
- (3) A person who takes all reasonable steps to secure compliance with the requirements concerned does not commit an offence under this regulation.
- (4) A person guilty of an offence under this regulation is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.

Notice of appointment of judicial factor

- 73.—(1) Notice must be given to the registrar of the appointment in relation to a company to which this Part applies of a judicial factor (in Scotland).
- (2) The notice must be given by the judicial factor.
 - (3) The notice must specify an address at which service of documents (including legal process) may be effected on the judicial factor.
 - (4) Notice of a change in the address for service may be given to the registrar by the judicial factor.
 - (5) A judicial factor who has notified the registrar of the appointment must also notify the registrar of the termination of the appointment.

Offence of failure to give notice

74.—(1) A judicial factor who fails to give notice of the appointment in accordance with regulation 73 within the period of 14 days after the appointment commits an offence.

- (2) A person guilty of an offence under this regulation 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.