



GUIDANCE NOTE 9

Foreign Companies doing business in Gibraltar or from Gibraltar-Part XII and Part XIV (Branch) Registration

A Foreign Company can carry on business in Gibraltar or from Gibraltar, provided that it registers under Part XII or Part XIV of the Companies Act.

Part XII Registration applies to all overseas companies incorporated outside Gibraltar which establish a place of business within Gibraltar

Part XIV (Branch) Registration applies to any limited company which:-

- (a) is incorporated outside the **United Kingdom** and **Gibraltar**; and
- (b) has a branch in Gibraltar.

Part XIII- Re-domiciliation — See our Circular No 22

▪ What is a place of business?

A place of business is premises where there is a physical or visible indication that the company may be contacted there. An overseas company also has to register if it habitually conducts business from a particular location in Gibraltar even if there is no physical sign of the company's connection with it.

Registration as a place of business is for a company that cannot register as a branch because:

- It is incorporated in the United Kingdom;
- It is not a limited company;
- Its activities are not sufficient to define it as a branch.

▪ What is a branch?

The concept of branch, agency or other establishment implies a place of business which has the appearance of permanency, has a management and is materially equipped to negotiate business with third parties, so that the latter, although aware of the existence of a legal link with the parent body, (the head office of which is abroad), do not have to deal directly with such parent body but may transact business at the place of business constituting the extension as defined in Council Directive 89/666/EEC.

▪ **How may a Foreign Company Register under Part XII of the Companies Act?**

Under section 432 of the Act, a Company incorporated outside Gibraltar which establishes a place of business in Gibraltar must within one month of commencing business deliver to the Registrar the following documents for Registration: -

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors of the company, containing such particulars with respect to the directors as are by the Act required to be contained with respect to directors in the register of the directors of a company;
- (c) the names and addresses of some one or more persons resident in Gibraltar authorised to accept on behalf of the company service of process and any notices which are required to be served on the company;
- (d) a recent Certificate of Good Standing in relation to the company and a certified true copy of the company's Certificate of Incorporation;
- (e) a list of the company's current members; and
- (f) in accordance with section 168(10) of the Act, if the company has an existing mortgage or charge, particulars of the charge (as more fully set out under section 172(1) of the Act).

▪ **What are the Duties of the Company once it is registered as a Part XII Company?**

- (1) Under section 433, "if in the case of any company to which this Part applies any alteration is made in -
- (a) the charter, statutes or memorandum and articles of the company or any such instrument as aforesaid; or
 - (b) the directors of the company or the particulars contained in the list of the directors: or
 - (c) the names or addresses of the persons authorized to accept service on behalf of the company,
- the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the particulars of the alteration.

(2) Annual Returns

All Part XII Companies must file an Annual Return. The reasons for this are the following: -

- (a) Under section 188 of the Act, every company having a share capital shall at least once in every year make an Annual Return.

(b) The definition of "company" contained in section 2 of the Act states as follows:

"Company" means a company formed and registered under this Act or the former Companies Act, or, in the case of a company formed outside Gibraltar, registered under this Act or the former Companies Act;"

▪ **How may a Foreign Company Register Under Part XIV (Branch) of the Companies Act?**

Within one month of establishing a branch in Gibraltar you must deliver to the Registrar of Companies:-

Completed "**Form of Application for Registration of a Branch under Part XIV**" containing the following list of documents:-

Part A- Company Details pursuant to Sec. 445 (1)(a)

Part B- Branch Details pursuant to Sec. 445 (1) (b) **and**

- List of the names and addresses of all persons resident in Gibraltar authorised to accept on the Company's behalf service of process in respect of the business of the branch and of any notices required to be served on the Company in respect of the business of the branch Sec 447(e).
- List of the names and usual residential address of all persons authorised to represent the Company as permanent representatives of the Company for the business of the branch. Sub-sections 447 (f), (g) and (h).
- In accordance with section 168 (10) of the Act, if the company has an existing mortgage or charge, particulars of the charge (as more fully set out under section 172 (1) of the Act).

Part C- Details of Directors and Secretary Sec 446 (1) (d).

Part D- Documents to be provided Sec 445(2), Sec 449.

- A certified copy of the charter, statutes or memorandum and articles of the Company (or other instrument constituting or defining the Company's constitution); and
- If any of the documents listed above is not in English, a certified translation of such document;

AND the following documents must also accompany the application:

- a recent Certificate of Good Standing in relation to the company;
- a certified true copy of the company's Certificate of Incorporation;
- a list of the company's current members.

The requirement to file accounts upon registration

Applications for registration of a branch by EU companies: Such companies should always file accounts with their application as they would fall under Part 1 of Schedule 26 of the Companies Act 2014. This Part relates to companies which are required to also file accounts in their home State.

Application for registration of a branch by non-EU companies: Companies incorporated outside of the EU will also have to file accounts with their application if their parent law requires them to file accounts in their home State. Such companies will be caught by Paragraph 1(1) of Part 1 of Schedule 26.

Therefore any companies required to disclose their accounts under their parent law will be required to submit their accounts when applying to register the branch.

Any other company which does not fall under Part 1 of Schedule 26 will fall under Part 2 of Schedule 26; such companies are those which are not required to publicly disclose their accounts in their home State. As such they are not required to submit their accounts upon registration of the branch but are given the period of 13 months after the end of the relevant accounting reference period to do so.

Format of accounts: what must be delivered?

Companies which fall under Part 1 of Schedule 26 are required to deliver copies of the accounts which are delivered in accordance with the company's parent law. Therefore the Registrar accepts copies of the accounts which are delivered in the company's home State even if the format of the accounts is different to those which would be prepared under Gibraltar law, as long as they conform to the laws of the company's home State. If the accounts are not in the English language a certified English translation must be attached to the copy.

Companies falling under Part 2 of Schedule 26 will be required, in respect of each financial year of the company, to prepare the like accounts and directors' report, and cause to be prepared such an auditor's report as would be required if the company were a company to which s.288 of the Companies Act 2014 applied. If their accounts would not be in the English language a certified English translation must also be attached to the copy

▪ **What are the Duties of the Company once it is registered as a Part XIV branch?**

- (1) **Any alterations** made to any of the Particulars lodged with the Registrar must be made within 21 days of such alterations having been made. See section 451 (3) of the Companies Act.
- (2) **Annual Returns** Under section 188 of the Act, every company having a share capital shall at least once in every year make an Annual Return.
- (3) **Accounts** If the company is required to disclose their accounts in their home state these are to be delivered to the Registrar within one month of opening, or if they are not required to disclose their accounts in their home state they are to be delivered within 13 months after the end of the relevant accounting reference period.

Certifying Documents that need to be lodged with the Registry

Certified means:

- (1) duly certified as a true copy by an official of the Government to whose custody the original is committed; or
- (2) duly certified as a true copy by a Notary Public of such dominion or place; or
- (3) duly certified as a true copy on oath by an officer of the company before a Commissioner for Oaths.

Certified Translation means:

- (1) certified by one of the above named persons; or
- (2) if translated in Gibraltar, the translation must be certified by: -
 - (a) a Commissioner for Oaths; or
 - (b) a Solicitor or Barrister practicing in Gibraltar

- **Difference Between a Foreign Company Registered Under Part XII or Part XIV and a Company Re-domiciled in Gibraltar Under s442 of the Companies Act**

A foreign company registered under Part XII or Part XIV will always remain a foreign company, but a company re-domiciled in Gibraltar will become a Gibraltar Company once it is registered in Gibraltar.

A foreign company will always remain registered in its country of origin.

- **Name of a Foreign Company Registered Under Part XII or Part XIV of the Companies Act**

Ordinarily, the foreign company will be registered in Gibraltar with exactly the same name that it has in the country of incorporation.

However, it is important to note that the provisions of sections 27 and 30 of the Companies Act apply to a foreign company registered in Gibraltar under Part XII.

This means that if the Registrar considers the name undesirable, he can refuse to register the company, or request it to change its name.

- **Guidance Only**

This Circular is intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, we recommend that you seek professional advice.

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