



Circular No 9 @ Aug 11

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

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

- **Part X Registration** applies to all 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.
- **Re-domiciliation** See our Circular No 22

What is a place of business?

A place of business is a premise 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 companies who cannot register as a branch because they are

- Incorporated in the United Kingdom.
- They are not Limited
- Their activity 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, such as the extension of a public body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be 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 can a Foreign Company Register under Part X of the Companies Act?

Under Section 358 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 this 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 authorized to accept on behalf of the company service of process and any notices required to be served on the company."

What are the Duties of the Company once it is registered as a Part X Company?

- (1) Under Section 359, "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 a period of 3 month after the date on which notice of the alterations could in due course of post and if dispatched with due diligence have been received in Gibraltar, deliver to the Registrar for registration a return containing the particulars of the alteration.

(2) Annual Returns

Since 1 June 1993 all Part X Companies must file an Annual Return. The reasons for this are the following: -

- (a) Under Section 153 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 as amended by Section 2(b) of the Companies (Amendment) Act1992 states as follows:

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

How can a Foreign Company Register Under Part XIV (branch) of the Companies Ordinance?

Within one month of establishing a branch in Gibraltar you must deliver to the Register 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. 388 (1)(a)

Part B- Branch Details pursuant to Sec. 388 (1) (b) **&**

- List of the names and addresses of all persons resident in Gibraltar authorized 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 390(e)

- List of the names and usual residential address of all persons authorized to represent the Company as permanent representatives of the Company for the business of the branch. Sec (f) (g) (h)

Part C- Details of Directors and Secretary Sec 389 (1) (d)

Part D- Documents to be provided Sec 388(2) Sec 392

- 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 the Company is one to which Part 1 of Schedule 12 applies the following documents are also provided Sec 393

- Copies of the latest accounting document prepared in relation to a financial period of the Company to have been publicly disclosed in accordance with the law of the country in which it is incorporated before the end of the period allowed for compliance with Sec 388 in respect of the branch or, if earlier, the date on which the Company complies with Sec 388 in respect of the branch.

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 it having been made. See Section 394 of the Companies Act
- (2) **Annual Returns** Under Section 153 of the Act, every company having a share capital shall at least once in every year make an Annual Return.

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 some 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
 - (b) a Solicitor or Barrister practicing in Gibraltar

Difference Between a Foreign Company Registered Under Part X or Part XIV and a Company Re-domiciled in Gibraltar Under Section 365 of the Companies Act

A foreign company registered under Part X 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 X 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 17 and 19b of the Companies Act apply to a foreign company registered in Gibraltar under Part X.

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

Section 17 and 19b apply to a Part X company since 1 June 1993, when the definition of "a company" in the Act was expanded to include a Part X company.

NB This Circular outlines the registration requirements, you are advised to consult a legal adviser for detailed guidance.

Companies House Gibraltar
1st Floor
The Arcade
30-38 Main Street
PO Box 848
Gibraltar

Tel (350) 200 78193
Fax (350) 200 44436
Email mail@companieshouse.gi
 www.companieshouse.gi