



# ***Overseas Companies: Setting up a “UK Establishment”***



## Introduction

There are many options available to an overseas company that wants to trade in the UK. The overseas company could simply trade from overseas within the UK or you might need to appoint an agent or a distributor. If you need a physical presence in the UK you may decide that you need to incorporate a subsidiary company.

Another option available to an overseas company is to register a 'UK establishment'. This is a place of business or branch of an overseas company within the UK. A company who chooses to set up a UK establishment has to comply with the Overseas Companies Regulations 2009 ("the Regulations"). This fact sheet intends to provide an overview of the requirements under those Regulations.

However the decision on how to enter the UK market will be influenced by a combination of factors: marketing, operational, immigration and tax. So you need to take the time to properly brief experienced UK advisers.

## Registering with Companies House

An overseas company carrying on business in the UK will need to register with Companies House if it has a *physical establishment* within the UK. If there is no physical presence in the UK then registration is not required. For example, a company director who comes to the UK on business for a week will not need to register as a UK establishment.

An overseas company has one month following the opening of UK establishment to register. The particulars of the company and the establishment must be registered with Companies House using Form OS IN01. A fee is payable (currently £20). If the company is registering its first UK establishment, it should also deliver constitutional documents and in some cases accounts information.

A UK establishment can be registered using the overseas company name or using an alternative name. However, the Companies Act 2006 provides restrictions on the

company name that you may use. These include controls on the use of words that may be sensitive or offensive and the prohibition of names being registered that are the same as, or are "too like" the name of, a company already registered. Please see the following Everyman Legal fact sheet for more information: "Challenging a Company Name".

## Filing requirements after registration

Once a UK establishment has been registered, the overseas company should notify Companies House of any changes to the information sent on registration. Much in the same way a UK company is obliged to, an overseas company should, amongst other things, notify Companies House of changes to directors and secretaries, the company name and address and any amendments to the company's constitution or share capital.

The appropriate overseas company's forms can be accessed via the Companies House website and begin with the prefix "OS". Some of these forms require a fee.

## Disclosure requirements

Part 7 of the Regulations sets out the trading disclosures applicable to overseas companies carrying on business in the UK. The company's name and country of incorporation should be displayed at the service address of the persons authorised to accept service of documents on behalf of the company and at every location in the UK where it carries on business (unless the address is primarily residential). This information should be displayed continuously and in a place and form that visitors can easily see.

Further, the company's name must be included on all business correspondence and documents used for carrying on business in the UK. This includes business letters, e-mails, websites, receipts, order forms and promissory notes. Regulation 63 also requires that business letters, order forms and websites contain the place the establishment is registered and the establishment's registered number.

If the overseas company was originally incorporated outside the European Economic Area there are additional obligations to include the following information on business letters, order forms and websites:

- the original country of incorporation;
- the identity of the registry in which the company is registered in that country;
- the number the company is registered with at that registry;
- the location of the company's head office;
- the legal form of the company;
- whether the liability of the company's members are limited; and
- if applicable, the fact the company is being wound up or is subject to other insolvency proceedings; and
- the company's paid up share capital where the company refers to their share capital in the document.

## Annual Accounts

The Regulations make a distinction, in terms of accounts obligations, between companies that are required to disclose their accounts under their parent law and companies that are not.

Where an overseas company is required to deliver accounts information under its parent law, it is also required to deliver copies of those same accounts documents to Companies House.

For an overseas company incorporated in an European Economic Area state, there is no requirement to deliver accounts to Companies House where the company is not required by its parent law to deliver accounting records.

Companies incorporated outside the EEA that are not required to disclose accounting documents under parent law have a duty under the Companies Act 2006 to prepare accounts for the company for each financial year and deliver these to Companies House. These must be prepared for the company as a whole; it is not enough to simply produce accounts for the UK establishment.



The overseas company can choose to follow one of three accounting frameworks: that of its parent law, the framework introduced by the 2006 Act for overseas company's individual accounts (section 396) or International Accounting Standards. The parent law framework can only be used if the accounts would contain all the information required under section 396 of the 2006 Act.

For further information please contact James Hunt on 0845 868 0960 or [james.hunt@everymanlegal.com](mailto:james.hunt@everymanlegal.com)



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# Do you need more information?

For more information contact:



**James Hunt**

Location: Oxfordshire  
Direct Dial: +44(0)845 868 0962  
[james.hunt@everymanlegal.com](mailto:james.hunt@everymanlegal.com)



**Rob Jonckheer**

Location: Oxfordshire  
Direct Dial: +44(0)845 868 0963  
[rob.jonckheer@everymanlegal.com](mailto:rob.jonckheer@everymanlegal.com)



**Stephen Evans**

Location: Birmingham  
Direct Dial: +44(0)796 393 1830  
[stephen.evans@everymanlegal.com](mailto:stephen.evans@everymanlegal.com)



**Ed Burrell**

Location: Oxfordshire  
Direct Dial: +44(0)845 868 0964  
[ed.burrell@everymanlegal.com](mailto:ed.burrell@everymanlegal.com)

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