

**LIST OF RESPONSES TO THE CONSULTATION DOCUMENT
‘REFORMING THE LAW CONCERNING OVERSEA COMPANIES’ IN
THE ORDER THEY WERE RECEIVED**

Number	Name	Date of response
1.	HM Land Registry	21/12/1999
2.	Better Regulation Task Force	22/12/1999
3.	Royal Borough of Kensington and Chelsea Council	22/12/1999
4.	B G Strand	3/11/1999
5.	D A Buskell	21/12/1999
6.	Pannell Kerr Forster	23/12/1999
7.	York Place Company Services Limited	24/12/1999
8.	The Institute of Chartered Accountants in England and Wales	24/12/1999
9.	F A G Kay	31/12/1999
10.	H W Higginson	3/1/2000
11.	Lloyds TSB Registrars	7/1/2000
12.	Association of Chartered Certified Accountants	5/1/2000
13.	Institute of Chartered Secretaries and Administrators (ICSA)	6/1/2000
14.	Law Society of Scotland	7/1/2000
15.	KPMG	7/1/2000
16.	Arthur Anderson	7/1/2000
17.	Law Society	7/1/2000
18.	Abbey National	6/1/2000
19.	Deloitte & Touche	12/1/2000
20.	Confederation of British Industry (CBI)	18/1/2000
21.	British Bankers' Association	21/1/2000
22.	Lovells	26/1/2000
23.	City of London Law Society	2/2/2000
24.	Clifford Chance	1/2/2000
25.	City of Westminster	7/3/2000

ALPHABETICAL LIST OF RESPONSES

Name	Number
Abbey National	18.
Arthur Anderson	16.
Association of Chartered Certified Accountants	12.
Better Regulation Task Force	2.
British Bankers' Association	21.
D A Buskell	5.
City of London Law Society	23.
City of Westminster	25.
Clifford Chance	24.
Confederation of British Industry (CBI)	20.
Deloitte & Touche	19.
H W Higginson	10.
HM Land Registry	1.
Institute of Chartered Secretaries and Administrators (ICSA)	13.
Institute of Chartered Accountants in England and Wales	8.
F A G Kay	9.
KPMG	15.
Law Society	17.
Law Society of Scotland	14.
Lloyds TSB Registrars	11.
Lovells	22.
Pannell Kerr Forster	6.
Royal Borough of Kensington and Chelsea Council	3.
B G Strand	4.
York Place Company Services Limited	7.

RESPONSES TO THE CONSULTATION DOCUMENT ‘REFORMING THE LAW CONCERNING OVERSEA COMPANIES’

1. Do you agree that we should base overseas company registration on the existing concept of “place of business” rather than adopting a new test?

Respondent (doc number) Comments
<p>HM Land Registry (1) Yes, it is important to maintain as much of the fundamental structure of company law as possible within the framework of change.</p>
<p>The Royal Borough of Kensington and Chelsea (3) – views supported by the City of Westminster (25) The perception of the Council, which is shared by local residents living in or nearby premises owned by companies registered overseas, is that companies registered overseas are willing and able to flout regulatory controls. Whilst regimes for the registration overseas may already exist, they do not provide sufficient deterrents for non-compliance. Valuable Council resources are wasted “tracking down” overseas companies responsible for breaches of legislation. If companies registered overseas wish to own premises in the UK, it should be readily apparent who is responsible for those premises and, if enforcement is necessary, the address for service of notices or court documents should be easily available and not open to dispute. For this reason, in the Council’s view, companies registered overseas wishing to conduct business in the UK should be subject to exactly the same regulation as those companies incorporated in this country. Only in this way can adequate protection be given to those who live in or near premises owned by such companies. If this is not accepted, the existing concept of “place of business” appears to be an appropriate base for overseas companies registration provided that it is made clear that a company which lets property automatically falls within the definition of a company having a place of business in the UK. If, for some reason, this is not possible, the proposed new regime for registration of overseas companies needs to be as extensive as it can and must be rigorously enforced, with adequate criminal sanctions to ensure compliance.</p>
<p>B G Strand (4) Yes.</p>
<p>D A Buskell (5) Agree that place of business should be used.</p>
<p>Pannell Kerr Forster (6) We believe that there should be only one type of registration of overseas companies, so the place of business and branch regimes should be merged, as suggested.</p>
<p>York Place Company Services Limited (7) Yes.</p>
<p>The Institute of Chartered Accountants in England and Wales (8) We agree that the overseas company registration should be based on the existing concept of “place of business.”</p>
<p>F A G Kay (9) No – I do not consider the definition to be wide enough.</p>
<p>H W Higginson (10) The “place of business” test is appropriate.</p>
<p>The Association of Chartered Certified Accountants (12) In our view, the separate compliance regimes for different types of overseas companies that conduct business in the UK constitute one of the areas of the Companies Act that are most in need of rationalisation by the review project. The current arrangements, whereby two different regimes exist side by side, are unsatisfactory for all concerned. From the perspective of overseas</p>

<p>companies themselves, there is unnecessary confusion as to which of the two regimes they should be subject; from the perspective of the law, there is a lack of clarity as regards the features of each regime; from the perspective of those doing business with an 'oversea' company, there is the confusion as to which set of rules apply to it and the consequence of this on the procedure for finding out information on its affairs. Accordingly, we fully support the proposal that Part XXIII should be re-structured so as to create an integrated compliance regime for oversea companies.</p> <p>We believe that the 'place of business' concept is a feasible basis for the new definition of oversea company. The definition should, however, make clear that it encompasses any place where a company purports to conduct business.</p>
<p>ICSA (13) We agree that the 'place of business' concept should be retained for registration purposes and consider that overseas companies should be treated the same whether they operate through a Branch or just a place of business.</p>
<p>The Law Society of Scotland (14) Yes.</p>
<p>KPMG (15) There should be one test of whether an oversea company should be required to register and that test should be whether it has a 'place of business' in Great Britain.</p>
<p>Arthur Anderson (16) We favour the abandonment of the place of business regime with the retention of the branch regime only insofar as it is necessary to meet the requirements of the Eleventh Directive. But if it is accepted that the new registration requirement should apply to some wider class of presence in the UK than would be caught by the existing branch regime, we agree that this should be based on the existing concept of "place of business" rather than a new test. This is for the pragmatic reason that it would cause least disruption and uncertainty.</p>
<p>The Law Society (17) Given that the Eleventh Directive requires the United Kingdom to maintain a branch registration regime (albeit without defining what a "branch" is), the real choice is between upgrading the existing place of business regime to make it equate to the branch regime, and abandoning it completely. We do not consider that it would be in the public interest to abandon the place of business regime, and in view of our previously expressed wish to avoid having two regimes we consider that the unified regime should apply the requirements of the branch regime to a company which establishes either a branch or a place of business in the UK.</p>
<p>Abbey National (18) It would seem sensible to keep the existing "place of business" test given the body of case law on this test.</p>
<p>Deloitte & Touche (19) Yes.</p>
<p>CBI (20) The proposals for rationalising the regulatory requirements for oversea companies who have a branch or place of business in the UK seems sensible and appropriate and we support them in principle.</p>
<p>British Bankers' Association (21) It is important to ensure that any changes facilitate the easy identification of all registered elements of an entity, on whatever basis they are registered. (Applies also to questions 2 and 3.)</p>
<p>Clifford Chance (24) Yes.</p>

2. If you believe that "place of business" is not an appropriate test, what would you propose instead?

Respondent (doc number) Comments
<p>F A G Kay (9) A share transfer or share registration office does not normally charge for the services it provides so it could be said it is hardly a place of business – I suggest the definition be widened to say “establishes a place of business or establishes a business presence”.</p>
<p>The Law Society (17) See Q1. We agree that, while the concept of “place of business” is not without its ambiguities, the expression has been in use for long enough for its meaning to have become sufficiently well established. To use “carrying on business” as the test would extend the regime to, for example, companies which occasionally conducted business through general agents and would lead to considerable uncertainty in relation to trading on the Internet by overseas companies.</p>

3. (a) If registration is based on “place of business”, should share transfer or registration offices be specifically included within this definition as they are in the present legislation?

Respondent (doc number) Comments
<p>HM Land Registry (1) No, this seems to be unnecessary if the office would not otherwise be classed as a place of business of that company.</p>
<p>B G Strand (4) No.</p>
<p>D A Buskell (5) Share transfer or registration offices should not be specifically included in this definition.</p>
<p>York Place Company Services Limited (7) Yes.</p>
<p>The Institute of Chartered Accountants in England and Wales (8) If a share transfer or registration office deals only with the shares of the company itself, we consider that it should be excluded from the definition of “place of business”. On the other hand, a business or agent that deals with a variety of shares should be included in the definition and treated as a “place of business”.</p>
<p>F A G Kay (9) Yes.</p>
<p>H W Higginson (10) A share transfer or registration office should be specifically included.</p>
<p>Lloyds TSB Registrars (11) We agree with the view proposed by the DTI Steering Group that a share transfer or registration office should not be included within the scope of this legislation unless they would otherwise fall under the heading of a ‘Branch’ or a ‘Place of Business’. In particular, we would strongly recommend that, for the avoidance of doubt, share transfer or registration offices run by an agent rather than by the Company itself should be specifically excluded. Not only will this area of business more properly be recorded within the accounts of the agent, but in the modern business world, where many such registration or transfer agents act on behalf of a number of companies, and seek to obtain economies of scale from so doing, a requirement to identify auditable ‘accounts’ on behalf of a specific overseas client is likely to be excessively onerous if, indeed, it is possible. We also believe that the Income and Capital Gains Tax implications of any change should be given very careful consideration.</p>

<p>The Law Society of Scotland (14) The Committee believes that there is no real justification for having share transfer or registration offices specifically included in any definition of “place of business”.</p>
<p>Arthur Anderson (16) We do not believe that share registration offices should be specifically included within the definition of “place of business” as they are in the present legislation. It is rare for an oversea company to have a share registration office in the UK which serves no other purpose. In most instances a share registration office would be run by agents and as such would probably not amount to a “place of business” unless specifically included in the definition.</p>
<p>The Law Society (17) We consider that it is artificial to include share transfer and registration offices as being necessarily within the scope of the expression “place of business”, especially when they are run by registration agents and not by the company itself: the normal “place of business” test should apply. If an entity operates a CREST regime on behalf of the company, that should also not by itself constitute a place of business.</p>
<p>Abbey National (18) We agree with the comment in paragraph 25 that the present definition is too wide and that share transfer and registration offices should not be included unless they genuinely amount to a place of business.</p>
<p>Deloitte & Touche (19) No.</p>

(b) If not should they be excluded where they would amount a place of business but not to a branch or should they be treated in the same way as any other presence of a company falls to be treated?

Respondent (doc number)	Comments
HM Land Registry (1)	We favour the simplest approach which is to treat them in the same way as any other presence of the company.
B G Strand (4)	Yes.
D A Buskell (5)	They should be included where they would amount to a place of business but not to a branch.
York Place Company Services Limited (7)	Yes.
F A G Kay (9)	They should be treated in the same way as any other presence of a company.
The Law Society of Scotland (14)	Given the desire for simplification the Committee can see no reason to make a special case for such offices and believes that they should be treated in the same way as any other presence of a company.
Arthur Anderson (16)	We consider that share registration offices should be treated in the same way as any other presence of a company in the UK. An exclusion which applied to a place of business but not a branch would result in unwarranted complexity given that the intention of the proposals is to simplify the law.
The Law Society (17)	To distinguish between share transfer and registration offices which constitute places of business and those which constitute branches would be to perpetuate the parallel regimes which

these proposals are seeking to abolish.
Abbey National (18) We agree with the comment in paragraph 25 that the present definition is too wide and that share transfer and registration offices should not be included unless they genuinely amount to a place of business.
Deloitte & Touche (19) Share transfer or registration offices should be neither specifically excluded nor specifically included but dealt with as any other presence of a company. An exception might be made where the office exists solely for the purpose of registering or transferring the overseas companies shares as it is arguably not transacting with the general public but with its members.

4. **Do you agree that the special provisions relating to Channel Island and Isle of Man companies should be abolished, with these companies being treated in the same way as other non-EC companies?**

Respondent (doc number)	Comments
HM Land Registry (1)	Yes, the law should be simplified to make all companies established overseas satisfy the same requirements. The reason for original distinction is no longer justified in the modern world.
B G Strand (4)	Yes.
D A Buskell (5)	Agree.
York Place Company Services Limited (7)	Agree. Who will be the person empowered to represent the place of business if simply a share transfer or registration office?
The Institute of Chartered Accountants in England and Wales (8)	We agree that the special provisions relating to Channel Island and Isle of Man should be abolished with these companies being treated in the same way as other non-EC companies.
F A G Kay (9)	If the Channel Islands and the Isle of Man wish to enjoy the advantages of non-EC membership they have to take the rough with the smooth – so the special provisions should be abolished.
The Association of Chartered Certified Accountants (12)	Yes.
The Law Society of Scotland (14)	Yes.
Arthur Anderson (16)	We agree that there is no reason to have special provisions for Channel Island and Isle of Man companies.
The Law Society (17)	We agree that the considerations which underlay the recommendations of the Greene Committee's report in 1925-26 (that a more onerous regime should apply to companies incorporated in the Channel Islands or the Isle of Man which establish a place of business in Great Britain than the regime which applies to other oversea companies which do so) are no longer relevant, given the relative ease with which, under modern conditions, information about such companies can be obtained; and that those special provisions should therefore be abolished, so that Island companies should be treated in the same way as other non-EC companies. However we do not agree that, as proposed in paragraphs 28 and 51, there should be no requirement for companies registered in Northern Ireland (which has its own system of law) or

Gibraltar (which also has its own system of law but is treated as part of the UK for the purposes of the Eleventh Directive) to register places of business which they establish in England or Wales or Scotland. We consider that the position would be vastly simplified if such companies were obliged to register both places of business and branches which they establish here.
Abbey National (18) It makes sense that these companies should be treated in the same way as other non-EC companies.
Deloitte & Touche (19) Yes.
Clifford Chance (24) Yes.

5. **Do you agree that all overseas companies should be required to file accounts prepared in accordance with the requirements of their home state, where the home state requires accounts to be prepared?**

Respondent (doc number) Comments
HM Land Registry (1) Yes so long as the home state requires the minimum details we would require of companies who do not have to file accounts at home or any missing information is provided as supplemental information.
B G Strand (4) Yes, but must not be less than private UK company requirements for size.
D A Buskell (5) Agree.
York Place Company Services Limited (7) Prefer as for UK company in line with UK requirements otherwise yes.
The Institute of Chartered Accountants in England and Wales (8) In our view, the overseas company regime should ensure, as far as possible, a level playing field for UK subsidiaries of overseas parents and overseas companies in the area of public disclosure. Therefore, whilst we agree that overseas companies should be required to file accounts prepared in accordance with the requirements of their home state, where the home state requires accounts to be prepared, we would like to ensure that these accounts are comparable to those required for UK companies. We suggest that the overseas companies should be required to prepare accounts in accordance with the requirements of their home state, provided their home state requires accounts to give a true and fair view or a comparable requirement, such as present fairly.
F A G Kay (9) Ideally, such companies should prepare accounts to the standards demanded by the Companies Act. But accounts prepared in accordance with the requirements of the home state is better than nothing.
The Association of Chartered Certified Accountants (12) We believe that, under the proposed new regime, the standard rule should be that all companies which are deemed to be overseas companies should file accounts which are prepared on the same basis, so as to create a 'level playing field' of disclosure. This uniform regime would certainly apply even where the company concerned was not required to prepare accounts in its home state. We would favour a single disclosure framework, for all companies, along the lines suggested in Annex 3 of the Document. The advantage of this approach would be that it would be standardised, so that any overseas company would prepare and file accounts in the UK on the

<p>same basis and in accordance with rules set by the UK rather than by any other country. The standard 'oversea company' accounts should be required of all but those companies that are based in the EU: these latter would be allowed to file the accounts that they have prepared in accordance with the requirements of their home state.</p>
<p>ICSA (13) We agree that overseas companies should be required to file accounts prepared in accordance with the requirements of their home state but are concerned that there should be some minimum acceptable standard.</p>
<p>The Law Society of Scotland (14) Yes.</p>
<p>KPMG (15) As far as the preparation of accounts is concerned, we suggest that the basic requirement should be for the accounts of an oversea company to give a 'true and fair view of' or 'present fairly' the company's state of affairs and results (or an equivalent thereof). In particular, accounts prepared to UK, US or International GAAP should be acceptable. On this basis, it should not be necessary for the law to prescribe disclosures, formats or rules to be followed in the preparation of such accounts.</p>
<p>Arthur Anderson (16) We agree that where an oversea company is required to prepare, have audited and make public its annual accounts in its home state, it would be unduly burdensome to require an alternative form of accounts for UK filing. It could be argued that such accounts, prepared in accordance with local requirements which may be very different from those in the UK, are of little value to UK users. However, in this respect they are no worse than the "section 700" accounts as proposed in the Consultation Document as these need not give a true and fair view and are permitted to depart from UK GAAP in numerous respects. However, this conclusion merely reinforces our view that these requirements serve little purpose other than to ensure technical compliance with the Eleventh Directive. We also note that the provision to file the "home state" accounts applies only where the oversea company is <u>required</u> to prepare, have audited and make public its accounts. There will be instances where such accounts are in practice prepared and made public in the absence of a requirement to do so. In such cases it would be helpful to permit those accounts to be filed. While the need for the accounts to be prepared in accordance with the local law might be said to provide a safeguard as to their form and content, this is in fact illusory where the company is incorporated outside the EU and therefore subject to the Accounting Directives.</p>
<p>The Law Society (17) We agree. However, we consider that it may be appropriate for the Secretary of State to have a power to require the filing of additional information where he considers it appropriate - e.g. where the local accounting requirements are clearly inadequate.</p>
<p>Abbey National (18) Yes.</p>
<p>Deloitte & Touche (19) Differences between the treatment of UK and of overseas companies should take account of the need to attract business from overseas and avoid placing a heavier burden on UK companies than that applying to overseas companies trading here. Thus we agree that overseas companies should be required to file their home state accounts as suggested subject to a de minimis clause as to content and basis of preparation. This might be addressed by requiring that those accounts must give at least the information required by a stand alone schedule of requirements relating to those overseas companies which are not required to prepare accounts in their home state.</p>
<p>Clifford Chance (24) Yes.</p>

6. For those overseas companies which are not required to prepare accounts in their home state, would you prefer to see:

**(a) a restatement of the present section 700 requirements as outlined in Annex 2;
or**

(b) a new set of simplified and updated requirements based on the present UK regime, as outlined in Annex 3?

Respondent (doc number)	Comments
HM Land Registry (1)	We favour the simplification of the rules wherever possible.
B G Strand (4)	Option (b).
D A Buskell (5)	Option (a).
York Place Company Services Limited (7)	Option (b)
The Institute of Chartered Accountants in England and Wales (8)	We believe that a stand alone schedule should be produced for overseas companies without home state accounting requirements but that this schedule should be compatible with internationally recognised sets of accounting standards.
F A G Kay (9)	I would prefer Option (b).
H W Higginson (10)	Option (b)
The Association of Chartered Certified Accountants (12)	We would favour a single disclosure framework, for all companies, along the lines suggested in Annex 3 of the Document.
The Law Society of Scotland (14)	The Committee believes that there is an attraction in providing a stand alone set of requirements as provided in Annex 3.
KPMG (15)	As far as the preparation of accounts is concerned, we suggest that the basic requirement should be for the accounts of an overseas company to give a 'true and fair view of' or 'present fairly' the company's state of affairs and results (or an equivalent thereof). In particular, accounts prepared to UK, US or International GAAP should be acceptable. On this basis, it should not be necessary for the law to prescribe disclosures, formats or rules to be followed in the preparation of such accounts.
Arthur Anderson (16)	For those overseas companies which are not required to prepare accounts in their home state, we prefer the approach illustrated in Annex 3 of the Consultation Document (i.e. a new set of simplified and updated requirements based on the present UK regime). The approach taken in Annex 2 (i.e. a restatement of the present section 700 requirements), while arguably minimising any change from the present position, serves merely to perpetuate the requirements of the old Schedule 9 which were themselves derived from the requirements of the Companies Act 1948 prior to the 1981 amendments which implemented the Fourth Directive. Although the approach in Annex 3 does not accord with UK GAAP because the accounts will be too abbreviated to give a true and fair view, we see merit in a set of requirements which are a sub-set of the requirements applicable to UK companies. This has the advantage that an

oversea company which chooses to prepare its accounts in accordance with UK GAAP would automatically meet the requirements for the "section 700" accounts.
<p>The Law Society (17) We do not agree with the Consultation Document proposal to require oversea companies which are not required to prepare accounts in their home state to file accounts in the UK. We would rather that the UK does nothing which makes it less competitive with, e.g. other EC countries which do not implement such a requirement. In any event, we see absolutely no point in forcing oversea companies which are not required to prepare accounts to prepare accounts and file them in the UK because there is no regulatory body such as an audit procedure or the Financial Reporting Review Panel which can say whether those accounts are properly prepared or not. What is the point of forcing oversea companies to file accounts if there is no policing of them? We consider that it is preferable for no accounts to be filed at all by such companies than that inadequate, and possibly misleading (deliberately or otherwise), accounts should be filed.</p> <p>In the case of creditors, they will be on notice that oversea companies which are from outside the EC are, like a partnership, not necessarily subject to audit requirements and will have to make their own checks. Obviously, if the oversea company wishes in particular cases to voluntarily have an audited set of accounts and give this to creditors, it can do so without the need for there to be any legal requirement in the UK.</p> <p>Consideration might be given, we suggest, to giving the Secretary of State the power to introduce requirements for non-EC companies to file accounts if in the future it is found that the regime is being abused, for example by widespread use of companies incorporated in non-EC countries which have no local accounting requirements to set up places of business or branches here through which all or a substantial part of their business is conducted.</p>
<p>Abbey National (18) Option (b).</p>
<p>Deloitte & Touche (19) We have no strong views but note that (b) would appear to have the effect of reducing the "imbalance" between UK companies and overseas companies.</p>
<p>Clifford Chance (24) We prefer option (b).</p>

7. For whichever option you prefer in answer to Question 6, do you have comments on the proposed content of the new accounting requirements?

Respondent (doc number)	Comments
HM Land Registry (1)	No.
B G Strand (4)	Branches can be as important as a plc so <u>must</u> comply to same requirements to keep a level playing field. Also to ensure multi-nationals are accountable.
D A Buskell (5)	The new accounting requirements should be as close to the home state provisions as possible, to provide benefit to regulators and information to third parties. There should be a provision that, if the home state requirements are inadequate, then the new Act should provide alternatives.
Pannell Kerr Forster (6)	Whatever law is adopted for filing of accounts needs to be gathered together in one place, for example in a standalone schedule to the Companies Act. One reason the present rules are so complicated is the way they use the <i>unamended</i> Companies Act 1985. Interpreting and understanding the rules in SI 1990/440 is, as a result, virtually impossible.

<p>The Institute of Chartered Accountants in England and Wales (8) For those oversea companies which are not required to prepare accounts in their home state or whose home state requirements are not comparable with a true and fair view, we would prefer to see a stand alone schedule containing the minimum disclosure requirements compatible with a requirement to give a true and fair view or the equivalent, such as present fairly. A minimum schedule of this nature should be capable of being used when the preparer is, for example, using UK GAAP, IAS or US GAAP. The schedule should contain a requirement to disclose compliance with a named internationally recognised set of accounting standards.</p>
<p>F A G Kay (9) In my view, the new requirements should be as near as possible to those for native companies. But as I am not an accountant I do not feel qualified to express an opinion on the detail of accounts.</p>
<p>The Law Society of Scotland (14) While it is acknowledged that the draft produced at Annex 3 is intended to be illustrative only, the Committee has concerns about the proposed period for delivering accounts. Thirteen months is considered to be too long and the Committee is of the view that the private company time scale of ten months should apply.</p>
<p>KPMG (15) See answer to question 6.</p>
<p>Arthur Anderson (16) We have not commented in detail on the contents of Annex 2 and Annex 3 because it would be more appropriate to address those issues when a decision has been reached in principle concerning which approach to take. As noted above, if the Annex 3 approach is adopted, we would wish to ensure that a company drawing up accounts in accordance with Schedule 4 to the Companies Act 1985 would automatically comply with the requirements for an oversea company.</p>
<p>Deloitte & Touche (19) The requirement needs to address the fact that the home territory accounts may not be prepared in accordance with UK accounting standards. The use of terms such as “properly prepared in accordance with this Act” would need to be interpreted in this respect.</p>
<p>Clifford Chance (24) No.</p>

8. Do you agree that oversea companies should be able to make a single registration which covers all their places of business, provided that these are under a common management structure?

Respondent (doc number) Comments
<p>HM Land Registry (1) Yes.</p>
<p>B G Strand (4) No, only for a particular country, e.g. UK.</p>
<p>D A Buskell (5) Agree.</p>
<p>York Place Company Services Limited (7) Yes. What constitutes common management structure? Does this need to be expanded?</p>
<p>The Institute of Chartered Accountants in England and Wales (8) We are generally supportive of the arrangements for registration, deregistration and administration proposed in the paper and have no detailed comments to make.</p>
<p>F A G Kay (9)</p>

<p>I agree – if the proviso is dropped. What is meant by “a common management structure”? An oversea company could have two places of business – one an office with management for sales, marketing, finance etc. and the other a storage and distribution centre. And by the very nature of their function the management for each place would need to be different.</p> <p>Anyone who has lived and worked abroad knows that inevitably from time to time there will be a visit from “A Man” or “The Man” from Head Office. So in truth all oversea operations are under a common management structure – that of the Head Office that sent them there.</p>
<p>The Association of Chartered Certified Accountants (12) Yes.</p>
<p>The Law Society of Scotland (14) Yes.</p>
<p>Arthur Anderson (16) We agree that oversea companies should be able to make a single registration which covers all their places of business, provided that these are under a common management structure.</p>
<p>The Law Society (17) Under the existing law, where an oversea company establishes more than one branch in England and Wales (or, separately, Scotland) it must register each branch individually, reference being made to the primary branch registration which includes constitutional documents etc. However, separate registration is not necessary if the various branches have a “common management structure”, a concept which is not without its ambiguities. We agree with the proposal, on the grounds that it would be consistent with the principle of unification of the two existing regimes that the same concept is applied to places of business.</p>
<p>Abbey National (18) Agreed - provided that the definition of “common management structure” takes into account economic control and decision making power.</p>
<p>Deloitte & Touche (19) The suggestions do not appear unreasonable.</p>
<p>Clifford Chance (24) Yes.</p>

9. **Should the registrar be able to de-register an oversea company where he is satisfied either that it has ceased to exist or that it no longer has a place of business here?**

Respondent (doc number)	Comments
HM Land Registry (1)	Yes, this seems a sensible measure.
B G Strand (4)	Link to licence to trade.
D A Buskell (5)	Agree.
York Place Company Services Limited (7)	Yes.
The Institute of Chartered Accountants in England and Wales (8)	We are generally supportive of the arrangements for registration, deregistration and administration proposed in the paper and have no detailed comments to make.
F A G Kay (9)	The registrar definitely needs such powers. Section 652 of the Act covers the striking off and dissolution of dormant companies and I suggest the powers required by the registrar in respect of oversea companies could be based on and similar to this section.

The Law Society of Scotland (14) Yes.
Arthur Anderson (16) We agree that the registrar should be able to de-register an overseas company where he is satisfied either that it has ceased to exist or that it no longer has a place of business here.
The Law Society (17) We agree that it is an anomaly that there is at present no power given to the Registrar to remove defunct overseas companies from the register comparable to the power which he has in relation to companies incorporated in Great Britain. We agree that the Registrar should be obliged to keep copies of the documents previously filed by the overseas company available for inspection for the same period as that applicable to companies incorporated in Great Britain which have been de-registered (any proposed amendment to the length of this period falls within other parts of the Company Law Review).
Abbey National (18) Yes.
Deloitte & Touche (19) The suggestions do not appear unreasonable.
Clifford Chance (24) Yes.

10. Should the legislation spell out the procedures which the registrar should follow to decide whether an overseas company still had a place of business here?

Respondent (doc number)	Comments
HM Land Registry (1)	We do not believe that this would be necessary. The legislation could give the registrar power to de-register if satisfied that this is the case.
B G Strand (4)	No.
D A Buskell (5)	Agree, but the registrar should be provided with guidelines. These could be a matter for secondary legislation.
York Place Company Services Limited (7)	Yes.
The Institute of Chartered Accountants in England and Wales (8)	We are generally supportive of the arrangements for registration, deregistration and administration proposed in the paper and have no detailed comments to make.
F A G Kay (9)	I suggest "the procedures the registrar must follow". Apart from that, the legislation should spell out the procedure – on the lines of section 652.
The Law Society of Scotland (14)	Yes. The UK model would be an appropriate starting point.
Arthur Anderson (16)	We do not believe that it is necessary for the legislation to spell out the procedures which the registrar should follow to decide whether an overseas company still has a place of business here. The reasons for this are as given in paragraph 55 of the Consultation Document.
The Law Society (17)	We consider that the legislation (which could be secondary rather than primary legislation) should prescribe the procedure which the Registrar should take before removing overseas companies from the register, and that this should include sending a recorded delivery letter to

the branch representative in the UK. We suggest also that there should be a procedure whereby the representative of a branch of an overseas company which is removed from the register can apply for it to be restored, and that a creditor of the company should be given the same right.

Abbey National (18)

We agree that the precise procedure which the registrar must follow to decide whether an overseas company still has a place of business in the UK should not be spelt out. The emphasis in the legislation should be on the retention of filed documents (available to the public), in order that an overseas company can be tracked down if necessary in the future.

Deloitte & Touche (19)

The suggestions do not appear unreasonable.

11. Do you agree that the disclosure requirements set out in Annex 4 should apply to all overseas companies subject to winding up or insolvency proceedings?

Respondent (doc number)	Comments
HM Land Registry (1)	Yes, but in this context "all" would mean an overseas company with a branch or a place of business here. We often deal with situations where an overseas company owns land or more often a charge over registered land. We presume that it would not be intended to catch these companies within the disclosure requirements, and any provision should make this clear. There are many dealings in the UK by overseas companies which do not actually have any physical presence here at all.
B G Strand (4)	Yes.
D A Buskell (5)	Agree.
York Place Company Services Limited (7)	Agree.
The Institute of Chartered Accountants in England and Wales (8)	We are generally supportive of the arrangements for registration, deregistration and administration proposed in the paper and have no detailed comments to make.
F A G Kay (9)	Yes.
The Law Society of Scotland (14)	Yes.
Arthur Anderson (16)	The disclosure requirements set out in Annex 4 in respect of winding up and insolvency proceedings are required by the Eleventh Directive for branches. We believe that they should apply to all overseas companies in the interests of consistency.
The Law Society (17)	We consider that the disclosure requirements set out in Annex 4 should apply to all overseas companies subject to winding up or insolvency proceedings (without prejudice to any compulsory winding up there may be in respect of the overseas company under section 221 of the Insolvency Act 1986). However, we consider that the list should be expanded to include details of where proofs for claims in the insolvency should be submitted and how details of claim forms can be obtained. In addition, copies of any insolvency accounts filed from time to time in the home state by the company or any liquidator or equivalent officer should be registered here.
Abbey National (18)	Yes.

Deloitte & Touche (19) The suggestions do not appear unreasonable.
Clifford Chance (24) Yes.

12. Do you agree that the stationery disclosure requirements of the Eleventh Directive (which presently apply only in respect of branches and not other places of business) should be extended to all oversea companies?

Respondent (doc number) Comments
HM Land Registry (1) See reply to question 11 above.
The Royal Borough of Kensington and Chelsea (3) – views supported by the City of Westminster (25) The Council agrees that the stationery disclosure requirements should be extended to all overseas companies. This is vital for the protection of third parties and to enable the Council and others to enforce legislation fairly effectively.
B G Strand (4) Yes.
D A Buskell (5) Agree.
York Place Company Services Limited (7) Yes.
The Institute of Chartered Accountants in England and Wales (8) We are generally supportive of the arrangements for registration, deregistration and administration proposed in the paper and have no detailed comments to make.
F A G Kay (9) Yes.
The Law Society of Scotland (14) Yes.
Arthur Anderson (16) We agree that the stationery disclosure requirements of the Eleventh Directive (which presently apply only in respect of branches and not other places of business) should be extended to all oversea companies. As for Question 11, we believe that the merits of having a single system which applies consistently to all oversea companies outweigh the disadvantage to those which will be subject to a more onerous regime.
The Law Society (17) To apply a different disclosure regime to oversea companies which established a place of business in Great Britain to that which applied to oversea companies which established a branch in Great Britain would be to perpetuate the parallel regimes which these proposals are seeking to abolish; and to exonerate oversea companies which established merely a place of business from the disclosure regime completely (which would be the only realistic alternative) would be contrary to the public interest.
Abbey National (18) Yes.
Deloitte & Touche (19) The suggestions do not appear unreasonable.
Clifford Chance (24) Yes.

13. Do you agree that restrictions on names, similar to those which apply to companies incorporated here, should continue to apply to oversea companies?

Respondent (doc number) Comments
HM Land Registry (1) Yes, this is important to avoid deliberate and inadvertent confusion.
The Royal Borough of Kensington and Chelsea (3) – views supported by the City of Westminster (25) This is essential. There are various instances where overseas companies have used names of companies already incorporated in the UK. This leads to confusion and results in wasted resources.
B G Strand (4) Yes.
D A Buskell (5) Agree.
York Place Company Services Limited (7) Yes.
The Institute of Chartered Accountants in England and Wales (8) We are generally supportive of the arrangements for registration, deregistration and administration proposed in the paper and have no detailed comments to make.
F A G Kay (9) Yes.
The Law Society of Scotland (14) Yes.
Arthur Anderson (16) We agree that restrictions on names, similar to those which apply to companies incorporated here, should continue to apply to oversea companies.
The Law Society (17) Subject (as is recognised in the Consultation Document) to necessary and appropriate changes being made to the law on company names being made as part of the Company Law Review, we agree that the powers of the Secretary of State to control the use of names here by companies incorporated here should continue to extend to the use of names here by oversea companies which establish a place of business here (subject to the freedom of establishment provisions of the EC Treaty).
Abbey National (18) Yes.
Deloitte & Touche (19) The suggestions do not appear unreasonable.
Clifford Chance (24) Yes.

14. Should the law be changed to make clear that only oversea companies which have registered under Part XXIII need register charges created over property within Great Britain?

Respondent (doc number) Comments
HM Land Registry (1) The law should be made clearer on this point. It should state if registration is required or not where the company is not registered under Part XXIII. So far as the Land Registry is

<p>concerned, there appears to be no need for registration of charges by such companies over registered (or unregistered land) to be registered at the Companies Registry. Persons dealing with the land would be bound by the charges only if they were appropriately protected on the land registry or by registration at the Land Charges Department. The Land Registry would check the constitution of the company to establish what limitations existed by way of duration of the company and powers of the directors and consider making appropriate notes to the register of title accordingly.</p>
<p>D A Buskell (5) Agree.</p>
<p>York Place Company Services Limited (7) I think there should be an obligation for all overseas companies to register any charges over UK property. This indebtedness information could be invaluable to a creditor irrespective of whether or not the charge is registered by a registered or unregistered company pursuant to Part XXIII.</p>
<p>The Institute of Chartered Accountants in England and Wales (8) We are generally supportive of the arrangements for registration, deregistration and administration proposed in the paper and have no detailed comments to make.</p>
<p>F A G Kay (9) If an overseas company has purchased property in Great Britain and given a charge over that property which would normally require registration with the registrar it is almost inevitable that it has established a business presence or a place of business in this country – companies do not (or should not) buy properties except, directly or indirectly, for the purpose of profit. I suggest all such charges should be registerable and if the overseas company itself is not registered under Part XXIII then the registrar should tell the company it should register - pronto.</p>
<p>H W Higginson (10) An unregistered overseas company should continue to be required to register charges over property in Great Britain.</p>
<p>The Law Society of Scotland (14) Yes. The Committee is of the view that the present position is confused and efforts should be made to clarify the law in this area. There is an additional difficulty, which is not referred to in the Consultation Paper but which highlights the need for the confusion to be cleared up. In relation to a charge created by a foreign company over property situated in England, section 409 requires registration only if the company has an “established” place of business in England and Wales. Section 691 similarly requires registration under Part XXIII only if the foreign company “establishes” a place of business in Great Britain. In the case of a foreign company creating a charge over property in Scotland, however, section 424 does not require that its place of business be “established” in Scotland. The difference in the wording of sections 409 and 424 in this respect should be eliminated.</p>
<p>Arthur Anderson (16) We agree that the law should be changed to make clear that only overseas companies which have registered under Part XXIII need register charges created over property within Great Britain.</p>
<p>The Law Society (17) In our 1999 Memorandum, we drew attention to the confusion which had arisen as a result of the Slavenburg case, and the potential disincentive to inward investment which this created. We stated in that Memorandum “The remedy to this absurdity lies in the (unimplemented) provisions of the Companies Act 1989 which introduce the concept of a “registered overseas company” (i.e., an Oversea Company which has duly delivered documents... under section 691 and has not subsequently given notice...under section 694(4) that it has ceased to have an established place of business” in Britain) and restrict registration of charges to “registered overseas companies””. We therefore welcome this proposal, but point out that the reference to giving notice under section 694(4) will need amendment if the proposal to allow the registrar to</p>

strike off defunct overseas companies referred to above is implemented. As to the question of whether this change would have an impact on creditors (as posed in paragraph 66 of the Consultation Document), if the law were changed so as to make Slavenburg registrations unnecessary, the slight anomaly would remain that, if an overseas company were in breach of its branch registration requirements and a charge created by it over assets here was therefore not registered, a misleading picture would be created for creditors trying to check whether the company had created security here. The solution may lie in effective enforcement measures, as referred to in response to question 15.

Abbey National (18)

The proposal gives rise to concerns about whether or not a foreign company has registered. This could be allayed by companies stating on their registration documents that they are registered under Part XXIII.

Deloitte & Touche (19)

The suggestions do not appear unreasonable.

British Bankers' Association (21)

What is proposed would simplify the administrative process, but gives rise to the concerns about the ability to ascertain whether or not a foreign company has registered. Perhaps a way of addressing this would be for companies to state on their registered documents that it is registered under Part XXIII? (It is understood that this matter is being addressed elsewhere and that there will be a further opportunity to consider the issues.)

The City of London Law Society (23) supported by Lovells (22)

We support the proposal that section 409 be amended to provide that a charge on property in England and Wales created by a company incorporated outside Great Britain be registrable under section 409 only in cases where a search conducted on the date that charge is created would show that the charging company is registered under Part XXIII. At present the decision in *Slavenburg's Bank (NV) v International Natural Resources Limited* creates a trap for the unwary chargee. A chargee should not face the risk of his security becoming void because the company has failed to register under Part XXIII. It is often difficult for the chargee to determine whether the foreign company has an established place of business in England and Wales. In our experience, the current case law leads to a substantial number of security documents being presented under the Slavenburg procedure out of an abundance of caution, in circumstances where this is almost certainly not necessary.

Company Charges

An alternative procedure which avoids the necessity to apply to the court to sanction the delivery of prescribed particulars of a charge out of time should be introduced. We suggest that this is one respect in which the changes proposed by the Companies Act 1989 might be brought into force, namely, that the charge should not be automatically void (see the prospective new sections 399(1) and 400 of Companies Act 1985 as introduced by the Companies Act 1989).

We also suggest that, in addition to the filing of a memorandum of satisfaction or part release, provision should be made for the filing and recording by the Registrar of Companies of a statutory form of release of registered charges executed by the holder of the charge. This is already required in Scotland. Dual signature of a Form M403 would be evidence of the matters declared in the relevant form. However it should be noted that:

- (a) the Registrar of Companies is not obliged to enter on the register a memorandum of the satisfaction or part release (section 403(1) says "may enter" and not "shall enter");
- (b) Form 403(1)(a) does not indicate that the charge is released (only that the debt has been satisfied), which would be of particular relevance in the case of an "all money" charge.

A procedure for the registration of statutory forms of release would assist prospective purchasers or chargees of assets to verify that those assets have been released from a prior charge. Although the position is relatively straightforward in the case of registered land, it is

<p>less easy to verify the position in relation to other types of asset. Section 416 requires a company, when acquiring any property subject to a charge, to register the charge. However, there is no mechanism for recording on the register a transfer by the original chargee of the benefit of a registered charge. This appears to be a lacuna which should perhaps be filled.</p> <p>Many practitioners take the precaution of registering general assignments of book debts by partnerships (for the purpose of section 344 of the Insolvency Act 1986) as if they were bills of sale. The whole bills of sale legislation requires an overhaul.</p>
<p>Clifford Chance (24) Yes.</p>

15. Do you agree that failure to comply with disclosure obligations should not prevent an overseas company from enforcing transactions, and that criminal penalties should be imposed instead?

Respondent (doc number)
Comments
<p>HM Land Registry (1) This seems to be an appropriate sanction. It would also give comfort to third parties dealing with the company that those dealings would be unaffected by such failures, therefore enabling the third party to assume, without the need for enquiry in appropriate cases, that the disclosure obligations had been met.</p>
<p>The Royal Borough of Kensington and Chelsea (3) – views supported by the City of Westminster (25) Failure to comply with the disclosure obligations should be an offence with the possibility of a substantial fine. Resources need to be in place so that if a breach of the disclosure obligations is reported, by for example a Council seeking to enforce legislative provisions against the company, the matter is investigated and where appropriate those responsible prosecuted for the failure.</p>
<p>B G Strand (4) Withdraw trading licences and VAT registration.</p>
<p>D A Buskell (5) Agree.</p>
<p>York Place Company Services Limited (7) Yes.</p>
<p>The Institute of Chartered Accountants in England and Wales (8) We are generally supportive of the arrangements for registration, deregistration and administration proposed in the paper and have no detailed comments to make.</p>
<p>F A G Kay (9) I think this is just and reasonable.</p>
<p>The Law Society of Scotland (14) Although it might be possible to distinguish between registration at all and compliance with disclosure obligations (which is clearly an ongoing responsibility) the Committee believes that it would be inappropriate to punish overseas companies for failure to recognise when either a branch or a place of business has been established. The Committee agrees that criminal penalties should be imposed instead.</p>
<p>Arthur Anderson (16) We agree that to prevent an overseas company enforcing transactions entered into it would be a disproportionate penalty for failure to comply with disclosure obligations and that criminal penalties on those representing the place of business would be a better sanction.</p>
<p>The Law Society (17)</p>

As companies incorporated in Great Britain are not deprived of enforcement rights simply because they have failed to comply with disclosure requirements, we see no reason why overseas companies should be. However, given the infrequency with which the criminal sanctions available to the courts under the Companies Acts are enforced against companies incorporated here, we wonder whether criminal sanctions are appropriate, as their lack of use may give rise to their falling into disrepute. There may be a case for imposing civil (purely financial) penalties on overseas companies (particularly for failure to file accounts), given that they are, by virtue of their registration, within the jurisdiction of the UK courts, and/or for permitting the Secretary of State to petition for winding up of the branch assets as the sanction for failure to comply with the registration and disclosure requirements.

Abbey National (18)

Agreed, although we question whether criminal penalties are the appropriate sanction.

Deloitte & Touche (19)

The suggestions do not appear unreasonable.

Clifford Chance (24)

Yes, although it may be difficult to enforce criminal penalties on representatives or managers of the overseas business if they are outside the UK.

16. Following the introduction of a new regime for overseas companies, what would you consider to be a reasonable timescale for overseas companies to:

(i) file any necessary additional information?

Respondent (doc number)
Comments
HM Land Registry (1)
We have no views on what would constitute a reasonable timescale in this situation. It would be possible to provide for a defence to a criminal charge if it can be shown in particular case that a longer period was required and that it was not possible to comply with the time limits set down. This would enable a shorter period for compliance to be specified as the general rule. The period in respect of (i) and (ii) could well be different.
B G Strand (4)
Same as for UK plc.
D A Buskell (5)
6 months.
York Place Company Services Limited (7)
3 months.
The Institute of Chartered Accountants in England and Wales (8)
We consider that different timescales would be reasonable for different aspects when the new regime is introduced. We believe that one year should be allowed for overseas companies to file any necessary additional information.
F A G Kay (9)
Whatever timescale is set, there are going to be some companies who do not meet the deadline. A week is a long time in politics but a year, 18 months or two years is not all that long in the life of a company. I would recommend a generous timescale be set because however long the period eventually all are going to be gathered in the net. For filing any addition information I would allow six or nine months.
H W Higginson (10)
3 months.
The Law Society of Scotland (14)
A distinction can be drawn here between companies already registered whether as having a

branch or a place of business and those companies which have not registered at all. Provided sufficient advance publicity is given to the new proposals, the Committee can see no reason to have any extended period for complying with registration requirements so far as new registrations are concerned. In the case of companies already registered as having a branch or a place of business, the Committee would suggest that the obligation to comply with new accounting requirements should apply to accounts made up to any period ending after the commencement date. If that were done, then the timescale for filing other additional information required (given the proposal to have a special form, which presumably would be sent out to the companies concerned) should be reasonable but not protracted. In the Committee's view, three months would be sufficient.

Arthur Anderson (16)

On introduction of the proposed new regime, the additional information which will have to be filed by a company which was previously subject to the place of business regime (as highlighted in Annex 1 to the Consultation Document) should not be difficult to prepare and submit. The main difficulty will be in communicating the requirements to the overseas company and ensuring that this task is given priority. We recommend that a relatively short period, for example six months, should be allowed to meet the new requirements.

The Law Society (17)

We consider that there should be an interval of at least 6 months between the introduction of the legislation requiring companies which had merely established a place of business here to file the same information as those which had established branches here and the coming into effect of that legislation.

Deloitte & Touche (19)

One year.

Clifford Chance (24)

6 months.

(ii) **comply with new accounting requirements?**

Respondent (doc number) Comments
B G Strand (4) Same as for UK plc.
D A Buskell (5) 18 months.
York Place Company Services Limited (7) Next accounting reference date or within next eighteen months, whichever is the later.
The Institute of Chartered Accountants in England and Wales (8) We believe that overseas companies should be given two years to comply with the new accounting requirements.
F A G Kay (9) The time limit to comply with new accounting requirements is more difficult because it depends at what stage in a financial year the new requirements come into effect. If an overseas company's financial year end coincided with the introduction of the new requirements a period of 10 months would be enough – because that is all the home based companies get. But if an overseas company is three or four months into its financial year when the new requirements are introduced it will need 8 or 9 months to get to its year end plus the basic 10 months for preparing and filing its accounts – a maximum of 19 months. I suggest, therefore, the period allowed to comply with new accounting requirements should be 21 months with the registrar having power for, say, three years, to sanction late filing to cover extenuating circumstances.

H W Higginson (10) 18 months.
Arthur Anderson (16) With regard to accounts, the new requirements are for most purposes a relaxation of existing requirements. In particular some companies which previously had to file "section 700" accounts under the place of business regime will now be permitted to file their "home state" audited accounts. Even for those companies which will in future produce "section 700" accounts there should be relatively little change but this will depend on the exact form of the requirements finally agreed. The Annex 2 approach largely perpetuates the existing requirements while the Annex 3 approach would involve a little more change. Either way, we believe that companies should be able to adapt to the new requirements relatively quickly and only a short transitional period to cover accounts in the course of preparation should be necessary.
The Law Society (17) We see no reason to distinguish between accounting and other information in this respect.
Deloitte & Touche (19) Two years. Not all companies will be subject to new accounting requirements as they may be able to simply file the accounts produced for home state purposes.
Clifford Chance (24) 12 months.

Other Comments

Respondent (doc number)	Comments
HM Land Registry (1)	The Land Registry is involved in registering overseas companies as owners of registered land or charges over registered land, and also with the subsequent dealings with those interests. Our main concern is that the law is certain and straightforward as to the registration requirements imposed on overseas companies operating in the UK. Generally we are not concerned about the manner in which the necessary certainty is achieved. We are however concerned that the rules are as simple and straightforward for overseas companies to follow as possible to minimise the risk of error, which of itself creates difficulties. We are also concerned that third parties can readily ascertain if a particular overseas company should have been so registered in any situation where their rights and/or liabilities may be affected by such registration. Where possible, a third party should be entitled to assume a state of affairs exists without having to make an enquiry. Where such enquiry is needed, the requirement to investigate should be obvious to the person affected and that enquiry should be easy and cheap to make.
The Institute of Chartered Accountants in England and Wales (8)	Whilst we support improving an area of law that is unduly complex, we note that the paper does not address future developments in international commerce. In particular, companies incorporated in other jurisdictions can deal with customers and suppliers in the UK through the internet without having a physical presence in the UK. While it may be difficult, if not impossible, to regulate internet companies, it seems odd that such companies have not been considered as part of a document reviewing the law concerning overseas companies.
F A G Kay (9)	If there could be a little law which said that no foreign registered company could carry on business or establish a business presence in England and Wales or in Scotland unless it was done through a (subsidiary) company incorporated here there would be three immediate benefits – (1) any overseas company operating in England and Wales or in Scotland would be subject to our Companies Act just like any other company incorporated here, (2) we could get rid of the small chunk of the Act devoted to the registration of overseas companies, and (3) any

uncertainty about the distinction between a place of business and a branch would disappear. I appreciate it is likely there would be many considerations to take into account but it does seem to be a simple solution – perhaps too simple.

The Association of Chartered Certified Accountants (12)

May wish to consider whether the term ‘oversea company’ remains satisfactory in the context of the project’s aim of modernising UK company law.

KPMG (15)

Equally, if not more important, is the matter of the redress available to UK creditors of the oversea company, a matter which is not addressed in the consultation document but which needs consideration.

Arthur Anderson (16)

In our response to the earlier Consultation Document “Modern company law for a competitive economy: the strategic framework” we commented as follows: “*The present regime for oversea companies and branches is generally recognised to be unsatisfactory. We accept that some of the difficulties stem from the EC Eleventh Directive. However we would welcome a regime which involved much easier registration. This is an area in which we would see considerable benefits in the company law and tax regimes being harmonised. In our experience, most overseas companies setting up in the UK do so by way of a UK subsidiary rather than a “branch” office. We believe that little of value would be lost by the abandonment or simplification of the place of business registration requirement.*”

We therefore favour the abandonment of the place of business regime and the retention of the branch regime only insofar as it is necessary to meet the requirements of the Eleventh Directive. As noted in paragraph 23 of the Consultation Document, it is sufficient to meet the established place of business test if only activities incidental to the main business of the company are carried on there. In consequence, a company which sets up only a warehouse or administrative facilities will have established a place of business and be required to register. We doubt whether the mere presence of a warehouse in the UK should result in a registration requirement and the consequent need to file accounts and other documents.

However, we note that the proposals in the Consultation Document have been framed on the basis that “a substantial body of consultees was in favour of the alignment of the two regimes rather than completely abandoning the place of business registration requirement”. Our responses to the specific questions in the Consultation Document are based on acceptance of this premise with which we strongly disagree.

We also note that the development of both e-commerce and interpretation of EU law may lead to the wider use of “branches” as a way of doing business in or with the UK. The implications of e-commerce are being considered separately by the Company Law Review and are also being addressed by the Inland Revenue and Customs and Excise. Our overriding concern is that the regime for oversea companies should be kept as straightforward as possible so that it is able to adapt to changing circumstances without the need for new primary legislation.

The Law Society (17)

Annex I requirements: consistently with our stance with regard to disclosure of particulars of directors of UK companies, we consider that it should not be necessary for the residential addresses of directors of oversea companies to be disclosed, merely their office addresses.

Deloitte & Touche (19)

Any difference between the treatment of overseas companies and UK incorporated companies needs to take account of the need to attract inward investment, the need to avoid driving UK companies overseas to less regulated jurisdictions and the need not to shackle unfairly UK companies trading in the UK with a heavier compliance burden than that applying to overseas companies trading here.

In practice compliance with Part XXIII will be difficult to police. As noted in the Strategic Framework Consultation Document, the advent of electronic commerce (not just the internet but also shopping channels on satellite tv etc.) obviates the need for a physical presence in a

particular country in order to do business. The key imperative here would be to avoid giving the UK customer a false sense of security that the overseas entity, with which he/she is trading, is regulated in the same way as a UK company.

British Bankers' Association (21)

What is proposed in Section 63 (Services of Documents) seems sensible.

STATISTICAL BREAKDOWN OF RESPONSES TO SPECIFIC QUESTIONS IN THE CONSULTATION DOCUMENT 'REFORMING THE LAW CONCERNING OVERSEA COMPANIES'

Question number/proposition	Agree	Disagree	Number commenting
1. Do you agree that we should base overseas company registration on the existing concept of "place of business" rather than adopting a new test?	16	1	21
	Number in favour	Number opposed	Number commenting
3(a). If registration is based on "place of business", should share transfer or registration offices be specifically included within this definition as they are in the present legislation?	3	9	13
	Agree	Disagree	Number commenting
4. Do you agree that the special provisions relating to Channel Island and Isle of Man companies should be abolished, with these companies being treated in the same way as other non-EC companies?	13	0	13
	Agree	Disagree	Number commenting
5. Do you agree that all overseas companies should be required to file accounts prepared in accordance with the requirements of their home state, where the home state requires accounts to be prepared?	13 ¹	1	15
	Option (a)	Option (b)	Number commenting
6. For those overseas companies which are not required to prepare accounts in their home state, would you prefer to see: (a) a restatement of the present section 700 requirements as outlined in Annex 2; or (b) a new set of simplified and updated requirements based on the present UK regime, as outlined in Annex 3.	1	9	15
	Agree	Disagree	Number commenting
8. Do you agree that overseas companies should be able to make a single registration which covers all their places of business, provided that these are under a common management structure?	11 ²	1	13
	Number in favour	Number opposed	Number commenting
9. Should the registrar be able to de-register an overseas company where he is satisfied either that it has ceased to exist or that it no longer	10	0	12

has a place of business here?			
	Agree	Disagree	Number commenting
11. Do you agree that the disclosure requirements set out in Annex 4 should apply to all oversea companies subject to winding up or insolvency proceedings?	11	0	12
	Agree	Disagree	Number commenting
12. Do you agree that the stationery disclosure requirements of the Eleventh Directive (which presently apply only in respect of branches and not other places of business) should be extended to all oversea companies?	13	0	14
	Agree	Disagree	Number commenting
13. Do you agree that restrictions on names, similar to those which apply to companies incorporated here, should continue to apply to oversea companies?	13	0	14
	Number in favour	Number opposed	Number commenting
14. Should the law be changed to make clear that only oversea companies which have registered under Part XXIII need register charges created over property within Great Britain?	9	3	15
	Agree	Disagree	Number commenting
15. Do you agree that failure to comply with disclosure obligations should not prevent an oversea company from enforcing transactions, and that criminal penalties should be imposed instead?	10 ³	0	14
16. Following the introduction of a new regime for oversea companies, what would you consider to be a reasonable timescale for oversea companies to:			
(i) file any necessary additional information?	There were 12 comments and the proposed timescale ranged from 3 months to 1 year.		
(ii) comply with new accounting requirements?	There were 10 comments and the proposed timescale ranged from 6 months to 2 years.		

Notes

¹ 8 of whom agreed subject to the accounts meeting a minimum acceptable standard.

² 2 of whom supported the proposal but subject to the meaning of 'common management structure'.

³ 3 of whom agreed that failure to comply with disclosure obligations should not prevent an oversea company from enforcing transactions but questioned whether criminal penalties were the appropriate sanction.