

Summary: Intervention & Options

Department /Agency:

**Business, Enterprise and
Regulatory Reform**

Title:

**Impact Assessment of the draft Overseas Companies
(Registration of Charges) Regulations 2009**

Stage: consultation

Version: 1

Date: 1 March 2009

Related Publications: The draft Overseas Companies Regulations 2008, published June 2008;
Implementation of Companies Act 2006 Consultative Document Feb 2007

Available to view or download at:

<http://www.berr.gov.uk/bbf/co-act-2006/> & www.berr.gov.uk/consultations/page37980.html

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What is the problem under consideration? Why is government intervention necessary?

Without Government intervention, those who deal with overseas companies in the UK via their establishment may be prevented from accessing accurate information about them or from filing charges related to them, and might have placed upon them an unacceptable admin burden. The current regime is sub-optimal.

What are the policy objectives and the intended effects?

The principal objective is that third parties, including potential lenders and creditors, can discover whether an overseas company's UK assets have been used to secure its borrowing. The secondary objective is that the registration requirements be clear to those taking security over such assets.

What policy options have been considered? Please justify any preferred option.

- A. Abolition
- B. Introducing a single UK regime.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 2011 (as part of the consideration of changes to regime for UK companies)

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option: **B**

Description: **Introducing a Single UK regime**

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Single UK regime would reduce duplicate checks undertaken by creditors, etc with savings of potentially £1 million per annum.
	One-off	Yrs	
	£	10	
	Average Annual Benefit (excluding one-off)		
	£ 1 million		Total Benefit (PV) £ 8.32 million
Other key non-monetised benefits by 'main affected groups' Under the 2006 Act, overseas companies who no longer need to register shares where there is no UK registered establishment would benefit by around £11 million per annum. This benefit accrues to companies outside the UK, .			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		UK	
On what date will the policy be implemented?		1/10/09	
Which organisation(s) will enforce the policy?		Companies House	
What is the total annual cost of enforcement for these organisations?		£	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		Yes/No	
What is the value of the proposed offsetting measure per year?		£	
What is the value of changes in greenhouse gas emissions?		£	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

BACKGROUND

The law relating to registration of companies' charges

1. Charges are the security that companies provide lenders. Under the Companies Act 1985 (the 1985 Act), companies incorporated in England & Wales are required to register almost all charges, regardless of the location of the secured assets. The main exceptions are for financial collateral arrangements and charges where the lender is a central Bank. Charges must be registered within 21 days of their creation. The main sanction for failure to register a registrable charge within the specified time period is that in the event of the company's insolvency the charge is invalid against a liquidator or administrator or any creditor. In addition, if a company acquires property subject to a charge, then it must register that charge. Criminal sanctions apply to a company that fails to meet the registration requirements. Similar provisions apply to companies incorporated in Scotland and Northern Ireland. These rules are retained in the Companies Act 2006 (the 2006 Act), which applies them to companies incorporated in the United Kingdom, including the UK subsidiaries of overseas companies.
2. The 1985 Act applies the rules for registration of charges created by companies incorporated in England & Wales to charges over property in England and Wales created by overseas companies with an establishment in England and Wales. They also apply to charges on property in England and Wales acquired by such a company. Overseas companies with establishments in Scotland and Northern Ireland are similarly regulated.
3. In 2007/08 there were 33,216 registrations of charges over property in England and Wales by overseas companies without a registered establishment in that jurisdiction, ie Slavenburg registrations. It is estimated that the figure is about 35,000 for the UK. There are about 8,000 overseas companies with a registered establishment in England & Wales; nearly 10,000 in the UK. There is no figure available for the number of charges registered by them. The registration fee is £13 but the total cost of registration is probably about £300 because of legal costs etc .
4. The current provisions will be replaced from 1 October 2009. For UK companies, there will not be any substantive change to the existing provisions; rather it is intended to make various changes in 2011 or later using powers in the Act. For overseas companies which have a registered UK "establishment" (a new concept which will include both current branches and places of business), the 2006 Act provides for Regulations setting out the regime for registration of charges largely by way of applying and modifying the provisions for UK companies.

Problems with the existing requirements for overseas companies

5. The principal problem with the existing regime is that the requirement to register charges applies to all overseas companies with an established place of business in England and Wales – whether or not that company is registered at Companies House. A special register (the "Slavenburg" register) makes compliance possible but the information is not easily accessible or useful to third parties. The 2006 Act removes this problem by restricting the requirement to register charges to overseas companies that are themselves registered. This will bring annual cost savings of about £11 million to those companies no longer required to register their charges (assuming 35,000 such charges at a cost of £300 each). These benefits are expected to accrue solely to companies outside of the UK.
6. There are also problems because
 - it is not clear where various intangible assets are located;;
 - the location of the assets covered by a floating charge may change;

- the rules do not deal with property located overseas when the charge is created but which is subsequently brought into the UK: and
- under the 11th Company Law Directive, the disclosure requirements relating to secured borrowing by EEA overseas companies is permitted only insofar as it relates to the validity of the borrowing.

OPTIONS

7. **Abolition:** it would be possible not to require overseas companies to register the particulars of any charges that they create over their UK assets. The benefit of this approach would be the cost-savings for these overseas companies associated with registration. Assuming 10 per cent of overseas companies with registered establishments in the UK create a charge in any year, this would yield savings of about £300,000. The primary consequence of abolition would be the loss of important information to potential lenders and creditors about the credit-worthiness of those overseas companies with a registered UK establishment. It would also facilitate fraud involving an overseas company securing borrowing on the basis of assets that it has already charged. This risk would reduce the ability of those overseas companies with a registered UK establishment to use their UK assets to secure borrowing: the extra costs of borrowing are certain to exceed the cost-saving from not being required to register the charge.

8. **Single UK regime.** Branches of overseas companies are currently required to register charges over assets in the UK jurisdiction in which they have an established place of business. Replacing the current separate regimes for England & Wales, Scotland and Northern Ireland would make the procedures clearer for those registering charges. It would make it much easier for third parties to discover the extent of the encumbrances over a registered overseas companies' UK assets. Assuming that each check costs £50, that there are about 100,000 a year relating to overseas companies of which 20 percent are multiple checks on a single overseas company, the single regime would bring savings of about £1 million a year. There would be no transitional costs.

9. Further rationalisation of the current requirements would only be sensible if implemented at the same time as similar changes to the requirements for UK companies. Otherwise lenders would have to change their procedures twice and operate two regimes in the short interim. The costs and benefits have not therefore been assessed.

10. There may be instances where it is not immediately clear where assets are located. The 1985 Act provides no guidance. It is not intended to address this issue separately from consideration of the complete regime for registration of company charges (see preceding paragraph). However this is a particularly significant issue where the overseas company is a bank.

Mandatory Specific Impact Tests

11. We have considered the three mandatory impact tests (gender, race, disability) and the recommended option is unlikely to have any discriminatory effects.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes
Disability Equality	Yes/No	Yes
Gender Equality	Yes/No	Yes
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

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