

**Vrchní soud v Olomouci**

Masarykova třída 609/1  
771 11 Olomouc

**Ke sp. zn. 13 VSOL 133/2020**

V Praze dne 10. září 2020

- Žalobce a): **Ing. Lee Louda**, insolvenční správce, se sídlem Vodičkova 41, 110 00 Praha 1  
zastoupený JUDr. Dušanem Dvořákem, advokátem, ev. č. ČAK 9714, DRV Legal, s.r.o. advokátní kancelář, se sídlem Hlinky 505/118, 603 00 Brno
- Žalobce b): **Správa pohledávek OKD, a.s.**, IČO: 268 63 154, se sídlem Stonavská 2179, Doly, 735 06 Karviná  
zastoupený Tomášem Zagarem, advokátem, ev. č. ČAK 08131, se sídlem 28. října 767/12, 110 00 Praha 1
- Žalovaný č. 1: **Citibank N.A., London Branch**, se sídlem Citigroup Centre, Canada Square, Canary Wharf, Londýn, E14 5LB, Spojené království, registrační číslo: BR001018  
zastoupený JUDr. Ing. Petrem Přecechtělem, advokátem, ev. č. ČAK: 11109, BBH, advokátní kancelář, s.r.o., se sídlem Klimentská 1207/10, 110 00 Praha 1
- Žalovaný č. 2: **New World Resources N.V.**, reg. č. 34239108, BR016952, FC031882, se sídlem C/O Duff & Phelps Ltd, The Shard, 32 London Bridge Street, Londýn SE1 9SG, Velká Británie  
zastoupený JUDr. Luděk Chvostou, advokátem, ev. č. ČAK 02911, White & Case (Europe) LLP, organizační složka, se sídlem Na Příkopě 14, 110 00 Praha 1
- Žalovaný č. 3: **NWR Holdings B.V.**, se sídlem p/a Duff & Phelps Ltd, The Shard, reg. č. 61294179, 32 London Bridge Street, Londýn SE1 9SG, Velká Británie  
zastoupený Mgr. Davidem Ilczyszynem, advokátem, ev. č. ČAK 04910, White & Case (Europe) LLP, organizační složka, se sídlem Na Příkopě 14, 110 00 Praha 1
- Za účasti: **Krajské státní zastupitelství v Ostravě**, se sídlem Na Hradbách 1836/21, 729 01 Ostrava 1

**Replika žalobce b) k vyjádření žalované 1 ze dne 1. září 2020**

Přílohy: - dle textu

## I.

1. Byť do jisté míry lze rozumět nervozitě žalované 1, z které pramení její zbytečně expresivní vyjadřování, nic to však nemění na skutečnosti, že otázku procesní způsobilosti účastníka soud zkoumá kdykoliv za trvání řízení.
2. Žalobce b) si je vědom toho, že žalovaná 1 je pobočkou zahraniční právnické osoby, CITIBANK N.A., a je usazenou a registrovanou ve Spojeném království. Není pochyb ani o tom, že způsobilost zahraničních osob jiných než fyzických být účastníkem řízení v tuzemsku a procesní způsobilost těchto osob se řídí právním řádem, podle něhož taková osoba vznikla.
3. Žalovaná 1 ovšem vychází z nesprávné úvahy, že je sama zahraniční právnickou osobu (bod 24 vyjádření).

## II.

### Rozhodné právo

4. Vznik a právní poměry pobočky právnické osoby, je nutné posoudit podle stejného práva, jakým se řídí status právnické osoby, o jejíž pobočku jde, a nikoliv podle anglického práva, jak se domnívá žalovaná 1.
5. Podle části A bod 1 žádosti CITIBANK N.A. o registraci pobočky (žalované 1) podané britskému rejstříku společností, rozhodným právem upravujícím právní poměry CITIBANK N.A. je National Bank Act of the United States of America (dále jen „zákon o národní bance“) neboli federální právo Spojených států amerických. Ustanovení sekce 25 zmíněného zákona normuje, že národní bankovní asociace s určitou výší kapitálu je s povolením Federal Reserve Board (centrální banka) a za jí stanovených podmínek oprávněna zřídit pobočku v zahraničí.
6. Podle čl. VI odst. 1 (*Establishment*) stanov (*By-Laws*) CITIBANK N.A. účinných v době vzniku žalované 1 a její registrace mohla Citibank N.A. zřizovat pobočky v zahraničí s omezeními případně plynoucími z právního řádu. Podle čl. VI odst. 2 (*Management*) stanov záležitosti zahraniční pobočky jsou vykonávány pod bezprostředním dohledem a kontrolou určeného vedoucího pracovníka a podle jim vyhlášených pravidel a regulací. Ustanovení čl. VI odst. 4 stanov (*Books, Reports and Fiscal Periods*) ukládá vedoucímu pracovníkovi nebo jiné k tomu zmocněné osobě „držet účetní knihy, které mají být kdykoliv předloženy k inspekci Asociaci“ [rozumí se CITIBANK N.A.] a „promptně oznámit Asociaci všechny obchody Asociace provedené...pobočkami“. Podle bodu druhého zakladatelské listiny (*Articles of Association*) je pak obchodní činnost CITIBANK N.A. prováděna ústředím a legálně založenými pobočkami.
7. Z toho je patrné, že pobočka CITIBANK N.A. usazená ve Spojeném království není právnickou osobou, ale umístěním majetku (obchodním usazením) této banky (právnické osoby) do jiného státu, než je ústředí banky. Pobočka hospodář s majetkem banky a obchody provedené pobočkou jdou k tíži nebo ve prospěch banky.
8. Ostatně, to, že pobočka zahraniční banky ve Spojeném království není právnickou osobou, potvrzuje i britská centrální banka (Bank of England), která prostřednictvím zvláštního úřadu, Prudential Regulation Authority, vykonává dohled nad bankami a pobočkami bank působícími ve Spojeném království. Podle bodu 2.1 a 2.3 tzv. Prohlášení o dohledu SS 1/18 z března 2018, dceřiná společnost (*subsidiary*) zahraniční banky je britskou právnickou

osobou, zatímco pobočka (branch) zahraniční banky umístěná ve Spojeném království je součástí právnické osoby inkorporované mimo Spojené království, právnickou osobou tedy není.

**Důkaz:**

- titulní strana žádosti CITIBANK N.A. o registraci pobočky spolu s výňatky ze zakladatelské listiny a stanov CITIBANK N.A. přiloženými k žádosti (příloha č. 1) dohledatelné na:  
<https://beta.companieshouse.gov.uk/company/FC001835/filing-history?page=9>
- výňatek z tisku Senátu USA č. 216, šesté funkční období, druhá schůze, 1919, (příloha č. 2) dohledatelné na:  
[https://fraser.stlouisfed.org/files/docs/historical/congressional/192002sen\\_nbact.pdf](https://fraser.stlouisfed.org/files/docs/historical/congressional/192002sen_nbact.pdf)
- výňatek z Prohlášení o dohledu SSD 1/18 Informativní sdělení Prudential Regulation Authority (příloha č. 3) dohledatelné na:  
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss118.pdf?la=en&hash=84C0A0ECDD64B6C75C96A3C368F6EE05086274E3>

### III.

#### Registrace pobočky v rejstříku společností

9. Vytvoření pobočky, podobně jako založení dceřiné společnosti, je jednou z možností (forem), jak se může zahraniční společnost usadit ve Spojeném království za účelem podnikání. Spojené království jako členský stát EU přitom implementovala evropské právo, které v souvislosti s usazováním sleduje hlavně ochranu třetích osob jednajících se zahraniční společností prostřednictvím její pobočky, a to zveřejňováním příslušných údajů o pobočce a současně o společnosti v obchodním rejstříku členských států EU (*srov.* úvodní ustanovení Jedenácté směrnice Rady ze dne 21. prosince 1989, č. 89/666/EHS, o zveřejňování poboček vytvořených v členském státě některými formami společností řídicích se právem jiného členského státu).
10. Pro dosažení cílů právní úpravy a pro zamezení jakékoli diskriminace na základě země původu společnosti, se Jedenáctá směrnice vztahuje také na pobočky usazené ve státech EU a vytvořené srovnatelnými společnostmi řídicími se právem nečlenského státu EU, tj. i amerických společností. Právní forma CITIBANK N.A. je „incorporated with limited liability“, což je stejná forma společnosti, jakou zná i anglické právo (*srov.* čl. 1 První směrnice Rady ze dne 9. března 1968, č. 68/151/EHS); jde o společnost jejíž základní kapitál je rozvržen na určitý počet akcií a společníci neodpovídají za dluhy společnosti.
11. Podle čl. 7 a násl. Jedenácté směrnice, mezi zveřejňované listiny a údaje týkající se poboček vytvořených v členském státě společnostmi, které se neřídí právem členského státu, ale které mají právní formu srovnatelnou s právními formami uvedenými v První směrnici, patří jmenování, ukončení funkce a totožnost osob, které jsou oprávněny zastupovat společnost (nikoliv tedy pobočku) vůči třetím osobám a v soudních řízeních jako statutární orgán nebo člen takového orgánu nebo jako stálý zástupce společnosti pro činnosti pobočky.
12. Spojené království naposledy implementovalo tuto úpravu v části 2 oddíl 7 odstavec 1 písm. f) až h) Regulace 2009, č. 1801, účinné od 1. října 2009 (*The Overseas Companies*

*Regulations 2009*) vydané k provedení zákona o společnostech 2006 (*Companies Act 2006*). Pod pojem “establishment” Regulace 2009 zahrnuje i pobočku (*branch*) s tím, že pro definici pobočky odkazuje na Jedenáctou směrnici (část 1 bod 2 Regulace 2009)

13. Pro úplnost je nutné uvést, že úprava zveřejňování listin a údajů ohledně poboček zavedená Jedenáctou směrnicí se nezměnila ani po jejím zrušení v roce 2017 a nahrazení směrnicí Evropského parlamentu a Rady (EU) 2017/1132 ze dne 14. června 2017 o některých aspektech práva obchodních společností (čl. 37 a násl.).
14. Lze tedy uzavřít, že ani registrace v britském rejstříku společností nemohla učinit a neučinila z pobočky CITIBANK N.A. usazené ve Spojeném království zahraniční právnickou osobu.

**Důkaz:**

- Výňatek z Regulace 2009, č. 1801(příloha č. 4)

**IV.**

**Ostatní námitky žalované 1**

15. Námitka žalované 1 založená na praxi anglických soudů reprezentované dvojicí rozsudků neobstojí. Především nikde z rozsudků nelze dovodit, zda soudy slovním spojením „Citibank N.A., London branch“ skutečně rozuměly pobočku. I kdyby tomu tak bylo, posouzení otázky procesní způsobilosti pobočky americké právnické osoby anglickým soudem nevylučuje, aby si tuzemský soud učinil vlastní úvahu o procesní způsobilosti účastníka řízení za použití tuzemského zákona o mezinárodním právu soukromém, cizího rozhodného práva a tuzemského procesního práva.
16. Ani to, že žalobce a) vede řízení proti žalované 1 neznamená, že žalovaná 1 tím získala procesní způsobilost ve sporu o určení pravosti a výše přihlášených pohledávek.

**V.**

17. Se shora uvedených důvodů žalobce b) na své námitce nadále trvá.

**Správa pohledávek OKD, a.s.**

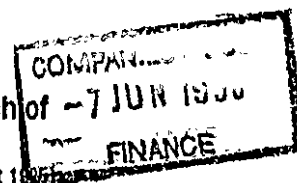
REFMIS 0015097



COMPANIES HOUSE



BR1



This form should be completed in black.

Return delivered for registration of a branch of an overseas company

(Pursuant to Schedule 21A, paragraph 1 of the Companies Act 1985)

(See note 5) Corporate name  
(name in parent state)

Business name  
(If different to corporate name)

Country of incorporation

Identity of register  
(If applicable)

Legal form  
(See note 3)

For office  
use only

CN

FC1835

BN

BR1018

CITIBANK, N.A.

UNITED STATES OF AMERICA

Office of The Comptroller of the Currency, US Department  
of Treasury. and registration no. Charter 1461

Incorporated with limited liability.

<sup>1</sup> See note 2

## PART A - COMPANY DETAILS<sup>1</sup>

\* State whether the company is  
a credit or financial institution

\* Is the company subject to Section 699A of the Companies Act 1985?

YES



NO



(1) These boxes need not be completed by companies formed in EC member states

Governing law  
(See note 4)

National Bank Act of the United States of America.

Accounting  
requirements

Period for which the company is required to prepare accounts by  
parent law. from 01 JANUARY to 31 DECEMBER

Period allowed for the preparation and public disclosure of accounts  
for the above period three months

# CITIBANK, N.A.

CHARTER NO. 1461

## *Articles of Association*

### AS AMENDED EFFECTIVE SEPTEMBER 24, 1985

FIRST. The name and title of this Association shall be Citibank, N.A.; the Association in conjunction with its said legal name may also continue to use, as a trade name, its former name First National City Bank.

SECOND. The Head Office shall be in the City of New York, State of New York. The general business of this Association, and its operations of discount and deposit, shall be conducted at its Head Office and its legally established branches.

THIRD. The Board of Directors shall consist of such number of individuals, not less than five nor more than twenty-five, as from time to time shall be determined by a majority of the votes to which all shareholders are at the time entitled.

FOURTH. The regular annual meeting of the shareholders for the election of directors and the transaction of whatever other business may be brought before said meeting shall be held at the Head Office, or such other place as the Board of Directors may designate, on the day of each year specified therefor in the By-Laws of the Association, but if no election shall be held on that day it may be held on any subsequent day according to the provisions of law; and all elections shall be held according to such lawful regulations as may be prescribed by the Board of Directors.

FIFTH. The amount of capital stock which the Association shall have authority to issue is \$800,000,000 divided into 40,000,000 shares of capital stock of the par value of \$20 each; but the capital stock may be increased or decreased from time to time, in accordance with the provisions of law. No holder of shares of the capital stock shall have any preemptive or preferential right of subscription to any shares of any class of stock of the Association, whether now or hereafter authorized, or to any securities or obligations convertible into or carrying any right to purchase stock of the Association, issued or sold, nor any right of subscription to any thereof other than such, if any, as the Board of Directors, in its discretion, may from time to time determine and at such price as the Board of Directors may from time to time fix.

The Association, at any time and from time to time, may authorize and issue debt obligations whether or not subordinated without the prior approval of shareholders.

SIXTH. The Board of Directors (a majority of whom shall be a quorum to do business) shall appoint one of its members to be Chairman of the Association, who shall be the Chief Executive Officer of this Association and who shall perform such duties as may be designated by it. The Board of Directors shall have the power to appoint one of its members to be President of this Association, who shall perform such duties as may be designated by it. The Board of Directors shall have the power to appoint such other officers and employees as in its judgment may be required to transact the business of the Association.

The Board of Directors shall have the power to define the duties of the officers and employees of the Association; to fix the salaries to be paid to them; to dismiss them; to require bonds from them and to fix the penalty thereof; to regulate the manner in which any increase of the capital of the Association shall be made; to manage and administer the

the absence of the Chairman and the President, the Vice Chairman, Chairman of the Executive Committee shall exercise the powers and duties of the Chairman related to meetings of the Board of Directors and the Executive Committee and at meetings of the shareholders.

SECTION 4. *Vice Chairmen.* The Board of Directors may appoint one or more Vice Chairmen of the Association. In the absence of the Chairman, the President and the Vice Chairman, Chairman of the Executive Committee, and, in the order of their appointment to the office, the Vice Chairmen shall exercise the powers and duties of the Chairman related to meetings of the Board of Directors and the Executive Committee and meetings of the shareholders. Each Vice Chairman shall have general executive powers as well as the specific powers conferred by these By-Laws. Each of them shall also have such powers and duties as may from time to time be assigned to him by the Board of Directors, the Chairman, the President or the Vice Chairman, Chairman of the Executive Committee.

SECTION 5. *The Sector Executives.* The Board of Directors may appoint one or more Sector Executives of the Association. Each Sector Executive shall have general executive powers as well as the specific powers conferred by these By-Laws. Each of them shall also have such further powers and duties as may from time to time be assigned to him by the Board of Directors, the Chairman or the President.

SECTION 6. *Senior Executive Vice Presidents.* The Board of Directors may appoint one or more Senior Executive Vice Presidents of the Association. Each Senior Executive Vice President shall have general executive powers as well as the specific powers conferred by these By-Laws. Each of them shall also have such powers and duties as may from time to time be assigned to him by the Board of Directors, the Chairman, the President, or any Vice Chairman.

## ARTICLE V DOMESTIC BRANCHES

SECTION 1. *Location.* The Board of Directors shall have plenary power to establish, to discontinue, or, from time to time to change the location of, any domestic branch, subject to such limitations as from time to time may be provided by law.

SECTION 2. *Management.* Subject to the general supervision and control of the Board of Directors, the Chairman and the President, the affairs of the domestic branches shall be under the immediate supervision and control of such officer as the Board, the Chairman or the President may designate and subject to such rules and regulations as such officer shall promulgate from time to time; and such officer is authorized to assign to any domestic branch such officers, agents, and employees as he may deem necessary to conduct the business thereof, and to reassign them as he may find proper.

## ARTICLE VI FOREIGN BRANCHES

SECTION 1. *Establishment.* The Board of Directors shall have plenary power to establish, to discontinue, or, from time to time, to change the location of, any branch in a foreign country or in a dependency of the United States of America, subject to such limitations as from time to time may be provided by law.

SECTION 2. *Management.* Subject to the general supervision and control of the Board of Directors, the Chairman and the President, the affairs of the foreign branches shall be under the immediate supervision and control of such officer as the Board, the Chairman or the President may designate and subject to such rules and regulations as such officer shall promulgate from time to



time; and such officer is authorized to assign to any foreign branch such officers, agents, and employees as he may deem necessary to conduct the business thereof, and to reassign them as he may find proper.

SECTION 3. *Custody of Funds.* The funds of each branch shall be kept in the custody of the officer, manager, or other agent-in-charge thereof, or in such depositories as he may select, subject to the approval of such officer as may have supervision over the foreign branches of the Association.

SECTION 4. *Books, Reports, and Fiscal Periods.* At each branch, the officer, manager or other agent-in-charge thereof shall keep or cause to be kept, full and regular books of account, which shall at all times be open to inspection by the Association, through its proper officers or accountants or by the proper officers of the Government of the United States of America. All the transactions of the Association at the several branches shall be reported promptly to the Association by the officer, manager or other agent-in-charge thereof. Such officer as may have supervision over the foreign branches of the Association, may from time to time specify with respect to each branch the fiscal periods for ascertainment or remittance of profits and, generally, for its accounting purposes.

## ARTICLE VII

### FIDUCIARY POWERS

SECTION 1. *Establishment.* All fiduciary powers of the Association shall be exercised, subject to such regulations as the Comptroller of the Currency shall from time to time establish, through one or more trust departments as the Board of Directors shall from time to time determine. Any such trust department may constitute, or may be a part of, a major administrative unit of the Association as established and defined from time to time by the Board of Directors, the Chairman or the President, and each such

equipment, so long as all members participating in such meetings can hear one another. Each such committee shall keep minutes of its meetings, and such minutes shall be submitted at the next regular meeting of the Board of Directors, and any action taken by the Board with respect thereto shall be entered into the minutes of the Board. Committees composed of non-members of the Board may also be appointed to consult with the members regularly or from time to time under such rules as the Board may determine but in no event may such Committees have the power of final decision in matters concerning the business of the Association.

## ARTICLE IV

### OFFICERS AND AGENTS

SECTION 1. *Chairman.* The Board of Directors shall appoint one of its members to be Chairman of the Association. The Chairman shall be the Chief Executive Officer of the Association, and shall have general executive powers as well as the specific powers conferred by these By-Laws. He shall be Chairman of the Board, and shall preside at meetings of the Board of Directors and the Executive Committee and at meetings of the shareholders.

SECTION 2. *President.* The Board of Directors may appoint one of its members to be President of the Association. The President shall have general executive powers as well as the specific powers conferred by these By-Laws. In the absence of the Chairman, the President shall exercise his powers and duties and shall preside at meetings of the Board of Directors and the Executive Committee and at meetings of the shareholders.

SECTION 3. *The Vice Chairman, Chairman of the Executive Committee.* The Board of Directors may appoint a Vice Chairman, Chairman of the Executive Committee of the Association. The Vice Chairman, Chairman of the Executive Committee shall have general executive powers as well as the specific powers conferred by these By-Laws on him and on a Vice Chairman. In



66<sup>TH</sup> CONGRESS : : : 2<sup>D</sup> SESSION

DECEMBER 1, 1919-JUNE 5, 1920

# SENATE DOCUMENTS

VOL. 6

WASHINGTON : : GOVERNMENT PRINTING OFFICE : : 1920

**THE NATIONAL-BANK ACT**  
**AS AMENDED**

**THE FEDERAL RESERVE ACT**

AND

**OTHER LAWS RELATING TO  
NATIONAL BANKS**

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Compiled under the direction of the Comptroller of the Currency

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**FEBRUARY, 1920**



**WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1920**

SENATE RESOLUTION 298.

Reported by Mr. Moses.

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IN THE SENATE OF THE UNITED STATES,

*February 6, 1920.*

*Resolved*, That there be printed one thousand five hundred copies of the national banking act as amended to date for the use of the Senate document room.

Attest:

GEORGE A. SANDERSON,  
*Secretary.*

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amount of capital and surplus of the applying bank, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to it proper, and may grant or refuse the application accordingly: *Provided*, That no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by State law of State banks, trust companies, and corporations exercising such powers."

**209. Power of national bank to act as insurance agent or as broker or agent in making or procuring loans on real estate.**

Act Sept. 7,  
1916, 39 Stat.  
L. 752, amend-  
ing sec. 13 of  
Fed. Res. Act.

That in addition to the powers now vested by law in national banking associations organized under the laws of the United States any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent; and may also act as the broker or agent for others in making or procuring loans on real estate located within one hundred miles of the place in which said bank may be located, receiving for such services a reasonable fee or commission: *Provided, however*, That no such bank shall in any case guarantee either the principal or interest of any such loans or assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *And provided further*, That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

#### FOREIGN BRANCHES [as amended 1919].

**210. Sec. 25.**—Any national banking association possessing a capital and surplus of \$1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

Act Dec. 23,  
1913, sec. 25;  
38 Stat. L.,  
273.  
Act Sept. 7,  
1916, 39 Stat.  
L., 755.  
Act Sept. 17,  
1919.

First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions. Until January 1, 1921, any national banking association, without regard to the amount of its capital and surplus, may file application with the Federal Reserve Board for permission, upon such conditions and under such regulations as may be prescribed by said board, to invest an amount not exceeding in the aggregate 5 per centum of its paid-in capital and surplus in the stock of one or more corporations chartered or incorporated under the laws of the United States or of any State thereof and, regardless of its location, principally engaged in such phases of international or foreign financial operations as may be necessary to facilitate the export of goods, wares, or merchandise from the United States or any of its dependencies or insular possessions to any foreign country: *Provided, however,* That in no event shall the total investments authorized by this section by any one national bank exceed 10 per centum of its capital and surplus.

Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking or financial operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

Every national banking association operating foreign branches shall be required to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and every member bank investing in the capital stock of banks or corporations described above shall be required to furnish information concerning the condition of such banks or corporations to the Federal Reserve Board upon demand, and the Federal Reserve Board may order special examinations of the said branches, banks, or corporations at such time or times as it may deem best.

Before any national bank shall be permitted to purchase stock in any such corporation the said corporation shall enter into an agreement or undertaking with the Federal Reserve Board to restrict its operations or conduct its business in such manner or under such limita-

tions and restrictions as the said board may prescribe for the place or places wherein such business is to be conducted. If at any time the Federal Reserve Board shall ascertain that the regulations prescribed by it are not being complied with, said board is hereby authorized and empowered to institute an investigation of the matter and to send for persons and papers, subpoena witnesses, and administer oaths in order to satisfy itself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or of the national bank or banks which may be stockholders therein, to comply with the regulations laid down by the said Federal Reserve Board, such national banks may be required to dispose of stock holdings in the said corporation upon reasonable notice.

Every such national banking association shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accrued at each branch as a separate item.

Any director or other officer, agent, or employee of any member bank may, with the approval of the Federal Reserve Board, be a director or other officer, agent, or employee of any such bank or corporation above mentioned in the capital stock of which such member bank shall have invested as hereinbefore provided, without being subject to the provisions of section eight of the Act approved October fifteenth, nineteen hundred and fourteen, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

#### **CHANGE OF NAME AND LOCATION OF BANK. ACT MAY 1, 1886.**

**211. Sec. 2.**—That any national banking association may change its name or the place where its operations of dis-<sup>Act May 1, 1886, c. 73; sec. 2; 24 Stat. L., 18.</sup>count and deposit are to be carried on, to any other place within the same State, not more than thirty miles distant, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the office of the Comptroller of the Currency; but no change of name or location shall be valid until the Comptroller shall have issued his certificate of approval of the same.

#### **DEBTS NOT AFFECTED BY CHANGE. ACT MAY 1, 1886.**

**212. Sec. 3.**—That all debts, liabilities, rights, provisions, and powers of the association under its old name shall devolve upon and inure to the association under<sup>Act May 1, 1886, c. 73, sec. 3; 24 Stat. L., 19.</sup>its new name.





BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Supervisory Statement | SS1/18

# International banks: the Prudential Regulation Authority's approach to branch authorisation and supervision

March 2018

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in relation to EEA firms, these firms will have to apply for authorisation in order to carry on PRA regulated activities in the UK after the UK withdraws from the EU. They would then be treated in the same way as other international bank branches.

## 2 International banks in the United Kingdom

2.1 Banking is an international industry and the UK is a significant international financial centre. International banks can operate in the UK either as subsidiaries or branches, once authorised by the PRA. A subsidiary is a legal entity incorporated in the UK, and as such must comply with all regulatory requirements, including those relating to governance, risk management, capital and liquidity in its own right. By contrast, a branch forms part of a legal entity incorporated and authorised abroad,<sup>1</sup> and therefore in principle does not have a separate capital base, and would not necessarily have its own board. A number of factors determine whether an international bank operates abroad through a branch or a subsidiary, including its business model, and its legal, regulatory and taxation arrangements across different jurisdictions.

### Branches

2.2 UK authorities, including the PRA, are open to hosting branches of international banks where possible, recognising the efficiency benefits this brings. The PRA's view is that the ability for financial services firms to branch into other countries is, if done safely, an important component of an open world economy, which in turn benefits the UK economy. International banks operating in the UK must, however, meet the same prudential standards as domestically headquartered firms. An important element of this is that they must be capable of effective supervision by the PRA.

2.3 A branch of an international bank forms part of a legal entity incorporated outside the UK. It follows that its operations are necessarily dependent on those of the legal entity as a whole ('the firm'). PRA authorisation applies to the whole firm. More broadly, the wholesale activities that are frequently conducted in branches often involve close interconnections across locations and legal entities within the wider banking group. Accordingly, it is necessary for the PRA to have an appropriate degree of cooperation with the home state supervisor<sup>2</sup> in order to ensure that the PRA's objectives are achieved. The more important to UK financial stability an international bank is, the higher the degree of supervisory cooperation that the PRA expects. Without these, it could be necessary for the PRA to gain more supervisory control, if necessary by requiring the firm to operate as a UK subsidiary.

2.4 The prudential supervision of a bank which operates in the UK through a branch is within the remit of both the home state supervisor and the PRA.

2.5 Where firms operate in the UK with both a subsidiary and a branch (or one or more of each), the PRA expects appropriate governance to oversee and manage the linkages between the entities.<sup>3</sup> In supervising these firms the PRA will delineate its supervision between the entities and expect the firm to have a clear booking arrangement in place setting out what it will book in each entity and how its application will be verified (see Chapter 5).

1 An entity undertaking relevant activities such as deposit taking or dealing on own account – this could be a bank (deposit-taker) or investment firm.

2 Home state supervisors refer to the supervisors of the international firm which the UK branch is part of. In cases where the international firm branches into the UK via an intermediate subsidiary in a third country (a 'disintermediated branch'), home state supervisors refer to both the supervisors of the intermediate subsidiary and of the whole group.

3 See Supervisory Statement 4/16 'Internal governance of third country branches', February 2016: [www.bankofengland.co.uk/prudential-regulation/publication/2016/internal-governance-of-third-country-branches-ss](http://www.bankofengland.co.uk/prudential-regulation/publication/2016/internal-governance-of-third-country-branches-ss).

*This Statutory Instrument has been printed in substitution of the SI of the same number and is being issued free of charge to all known recipients of that Statutory Instrument.*

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## STATUTORY INSTRUMENTS

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**2009 No. 1801**

### **COMPANIES**

#### **The Overseas Companies Regulations 2009**

*Made* - - - -

*8th July 2009*

*Coming into force* - -

*1st October 2009*

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13. Return of alteration in registered particulars
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15. Return of alteration as regards filing of certified copy of constitution
16. Return of alteration of manner of compliance with accounting requirements
17. Penalty for non-compliance

In accordance with sections 1046(8), 1051(5), 1053(6), 1290, 1292(4) and 1294(6) of that Act, a draft of this instrument was laid before Parliament and approved by each House of Parliament.

## PART 1

### INTRODUCTION

#### Citation and commencement

- 1.—(1) These Regulations may be cited as the Overseas Companies Regulations 2009.
- (2) These Regulations come into force on 1st October 2009.

#### Interpretation

##### 2. In these Regulations—

“accounting documents”—

- (a) in relation to an overseas company to which Chapter 2 of Part 5 applies (companies required to prepare and disclose accounts under parent law), has the meaning given by regulation 31(2), and
- (b) in relation to a credit or financial institution to which Chapter 2 of Part 6 applies (institutions required to prepare accounts under parent law), has the meaning given by regulation 44(2);

“certified copy” means a copy certified as a correct copy;

“constitution”, in relation to an overseas company, means the charter, statutes, memorandum and articles of association or other instrument constituting or defining the company’s constitution;

“credit or financial institution” means a credit or financial institution to which section 1050 of the Companies Act 2006 applies;

“disclosure”, in relation to a credit or financial institution to which Chapter 2 of Part 6 applies, has the meaning given by regulation 44(2);

“establishment” means—

- (a) a branch within the meaning of the Eleventh Company Law Directive (89/666/EEC)(a), or

- (b) a place of business that is not such a branch,

and “UK establishment” means an establishment in the United Kingdom;

“financial period”—

- (a) in relation to an overseas company to which Chapter 2 of Part 5 applies (companies required to prepare and disclose accounts under parent law), has the meaning given by regulation 31(2), and
- (b) in relation to a credit or financial institution to which Chapter 2 of Part 6 applies (institutions required to prepare accounts under parent law), has the meaning given by regulation 44(2);

“First Company Law Directive” means the First Council Directive on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the

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(a) OJ L 395, 30.12.1989, p. 36.

- (iii) in the case of an EEA company to which the First Company Law Directive applies, particulars of—
    - (aa) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
    - (bb) the registration number in that register,
  - (iv) in any other case, particulars of—
    - (aa) the legal form of the company or firm and the law by which it is governed, and
    - (bb) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.
- (4) The particulars referred to in paragraph (1)(d)(ii) (secretary) are—
- (a) in the case of an individual—
    - (i) name,
    - (ii) any former name, and
    - (iii) a service address;
  - (b) in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—
    - (i) corporate or firm name,
    - (ii) registered or principal office,
  - (iii) in the case of an EEA company to which the First Company Law Directive applies, particulars of—
    - (aa) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
    - (bb) the registration number in that register,
  - (iv) in any other case, particulars of—
    - (aa) the legal form of the company or firm and the law by which it is governed, and
    - (bb) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

But if all the partners in a firm are joint secretaries of the company it is sufficient to state the particulars that would be required if the firm were a legal person and the firm had been appointed secretary.

(5) For the purposes of paragraphs (3)(a)(ii) and (4)(a)(ii), where a person is or was formerly known by more than one former name, each of them must be stated.

(6) It is not necessary to include in the return particulars of a former name in the following cases—

- (a) in the case of a peer or an individual normally known by a title, where the name is one by which the person was known previous to the adoption of or succession to the title,
- (b) in the case of any person, where the former name—
  - (i) was changed or disused before the person attained the age of 16 years, or
  - (ii) has been changed or disused for 20 years or more.

(7) For the purposes of paragraph (3)(a)(iv) if the person's usual residential address is the same as the person's service address the return need only contain a statement to that effect.

### **Particulars of the establishment**

7.—(1) The particulars of the establishment to be included in the return are—

- (a) address of the establishment,

- (b) date on which it was opened,
- (c) business carried on at it,
- (d) name of the establishment if different from the name of the company,
- (e) name and service address of every person resident in the United Kingdom authorised to accept service of documents on behalf of the company in respect of the establishment, or a statement that there is no such person,
- (f) a list of every person authorised to represent the company as a permanent representative of the company in respect of the establishment, containing the following particulars with respect to each such person—
  - (i) name,
  - (ii) any former name,
  - (iii) service address, and
  - (iv) usual residential address,
- (g) extent of the authority of any person falling within sub-paragraph (f), including whether that person is authorised to act alone or jointly, and
- (h) if a person falling within sub-paragraph (f) is not authorised to act alone, the name of any person with whom they are authorised to act.

(2) For the purpose of paragraph (1)(f)(iv) if the person's usual residential address is the same as the person's service address the return need only contain a statement to that effect.

#### **Documents to be delivered with the return: copy of company's constitution**

**8.—**(1) A certified copy of the company's constitution must be delivered to the registrar with the return.

(2) If at the time the return is delivered the company—

- (a) has another UK establishment,
- (b) has delivered a certified copy of the company's constitution with a return relating to that establishment, and
- (c) has no outstanding obligation under Part 3 in respect of an alteration to its constitution,

the company may instead state in the return that a certified copy of the company's constitution has been delivered in respect of another UK establishment (giving the registered number of that establishment).

#### **Documents to be delivered with the return: copies of accounting documents**

**9.—**(1) If the company is one to which Chapter 2 of Part 5 applies (companies required to prepare and disclose accounts under parent law), copies of the company's latest accounting documents must be delivered to the registrar with the return.

(2) The company's latest accounting documents means the accounting documents, prepared for a financial period of the company, last disclosed in accordance with its parent law before the end of the period allowed for delivery of the return or, if earlier, the date on which the company delivers the return.

(3) If at the time the return is delivered the company—

- (a) has another UK establishment, and
- (b) has delivered the documents required by paragraph (1) in connection with a return relating to that establishment,

the company may instead state in the return that the documents are included in the material delivered in respect of another UK establishment (giving the registered number of that establishment).



# Záznam o ověření elektronického podání doručeného na elektronickou podatelnu: Vrchní soud v Olomouci

dle vyhlášky 259/2012 Sb.

Pořadové číslo zprávy: 5413 / 2020 Ev. číslo: 29409793-88e8-4b73-9d03-50ce583aefe5  
Druh podání: Datová zpráva z ISDS ID zprávy: 820585476  
Věc: podání

## Odesílatel:

ID schránky: jsufv4u Typ datové schránky: PFO  
Osoba: Tomáš Zagar - Zagar Tomáš, JUDr. Adresa: 28. října 767/12, 11000 Praha 1, CZ

**Dodáno do DS dne:** 10.09.2020 22:51:15 **Odesláno do DS dne:** 10.09.2020 22:51:15

Č.j. příjemce: Č.j. odesílatele:  
Sp.zn. příjemce: 13 VSOL 133/2020 Sp.zn. odesílatele:  
Lhůta končí: K rukám: Ne  
Číslo zákona: Paragraf v zákoně: Odstavec paragrafu: Písmeno v paragrafu:

## Ověření obálky:

Podpis je platný  
Podepsal: Informační systém datových schránek - produkční prostředí Vystavil: PostSignum Qualified CA 4  
Sériové číslo certifikátu: 0152a467 Platnost: 21.08.2020 - 10.09.2021  
Antivirový test: Proběhl v systému ISDS Obsah podání: OK  
Elektronický podpis: Platný Časové razítko: Platné (připojeno 10.09.2020 22:51:15)  
Certifikát: Ověřeno na základě CRL z 10.09.2020 21:25:08  
Datum a čas autom. ověření: 10.09.2020 22:55:07

## Počet podaných příloh:5

Číslo přílohy	Výsledek	Název příl. CRL	Identifikace podepisující osoby	Identifikace vystavitele certifikátu	T	U	K	P	R	A	C	V
1		200909_OKD_Citibank_nedostatek podmínky řízení replika.pdf										
	<b>Podpis není připojen (žádný podpis).</b>				A	N	N					
2		Příloha č. 1_žádost o registraci_výběr stran.pdf										
	<b>Podpis není připojen (žádný podpis).</b>				A	N	N					
3		Příloha č. 2_National Bank Act_výběr stran.pdf										
	<b>Podpis není připojen (žádný podpis).</b>				A	N	N					
4		Příloha č. 3_ss118_výběr stran.pdf										
	<b>Podpis není připojen (žádný podpis).</b>				A	N	N					
5		Příloha č. 4_Regulace 2009_výběr stran.pdf										
	<b>Podpis není připojen (žádný podpis).</b>				A	N	N					

Čas ověření příloh: 10.09.2020 22:55:07 Ověření příloh: ověřováno automaticky

Vysvětlení stavů při ověření příloh (vztaheno vždy k datu a času dodání):

Stav "?" znamená, že systém tuto operaci ještě neprovedl, ale provedena bude

Stav "-" znamená, že systém tuto operaci neprovádí

Stav "!" znamená, že systém tuto operaci nemůže provést

Stav "\*" znamená, že bylo ověřeno proti CRL z uvedeného data.

T	Technické parametry <sup>1</sup> :	A=splňuje	N=nesplňuje
U	Uznávaný elektronický podpis / značka:	A=připojen	N=nepřipojen
K	Kvalifikované časové razítko:	A=připojeno	N=nepřipojeno
P	Uznáv. el. podpis kvalif. certifikát (platnost):	A=platný	N=neplatný
R	Kvalifikované časové razítko (platnost):	A=platné	N=neplatné
A	Akreditovaný poskytovatel certifik. služeb <sup>2</sup> :	A=ano	N=ne
C	Kvalifikované časové razítko:	A=platné	N=neplatné
V	Vytvořeno před zneplatněním certifikátu:	A=ano	N=ne

<sup>1</sup> Technické parametry - velikost, formát, škodlivý kód.

<sup>2</sup> Stav "Z"(Zahraniční) = certifikát není od české certifikační autority

Kontrola podpisů a razítek byla provedena na základě CRL seznamů platných k datu a času ověření datové zprávy.