

CHAPTER 5: SECTION 3 - SOLE REPRESENTATIVES OF OVERSEAS FIRMS

ANNEX J: GUIDANCE - GENERAL

1. THE PARENT COMPANY

The parent company must be a genuine commercial enterprise. This is to be judged in the round, taking into account the length of time that the company has been established, its turnover, profitability, the number of employees, etc. It must be the intention that the business remains **centred** abroad. This does **not** mean, however, that we must refuse an otherwise sound application because of evidence of an intention to make the branch here flourish so vigorously that it might, at some time in the longer term, overshadow its parent company. Companies which have been trading for less than 12 months should be required to justify the need to establish an overseas branch here.

1.1. Intention to set up a commercial presence in the United Kingdom

The parent company must be sending the sole representative to the United Kingdom in order that he establishes a commercial presence for the company here in the form either of a registered branch or of a wholly owned subsidiary.

A "branch" is a part of a company which is organised so as to conduct business on behalf of the company. This means that a person will be able to deal direct with the branch here, instead of the company in its home state. **Every overseas company setting up a branch in the United Kingdom must apply to register with Companies House within one month of having opened the branch.**

A wholly-owned subsidiary will be a separate corporate body and is **not** subject to these registration requirements, being treated in the same way as any other company incorporated in the United Kingdom.

2. ABOUT SOLE REPRESENTATIVES

- The sole representative must have been recruited outside the United Kingdom and joined the parent company abroad. He is likely to be someone who has been employed by the parent company for some time and holds a senior position there.
- If the sole representative is not an existing employee, or has been employed for a short time only, then he must be able to demonstrate a **good track record** in the same or in a closely related field, in order to show that the reasons for his appointment are compelling.
- Sole representatives must, in the first instance, be employed by the overseas firm direct (although they may later be employed by the United Kingdom subsidiary). Agents who are hired to market the company's product here are normally self-employed and provide their services for a fee. Such people cannot therefore qualify as sole representatives. Nor can sales representatives or others such as buyers who fulfil a single function only. However senior sales staff who have other responsibilities such as marketing and distribution are not debarred from qualifying as sole representatives.
- Sole representatives may be offered a remuneration package consisting of a basic salary and commission. This is acceptable as long as the salary element is sufficient to support the applicant and his family without recourse to public funds.

2.1. The sole representative arrangement

- The applicant is required to provide a document detailing the terms and conditions of the employment. The importance of the position should be reflected in the salary and other benefits.
- We would expect a sole representative to be vested with the authority to take the majority of decisions locally, but it would be unreasonable to expect him to take unilateral decisions on all matters.
- Sole representatives are required to work full-time as such but it is not necessary to link this to a set number of hours per week. The main consideration is that the parent firm should be paying a "full-time" salary (i.e sufficient for the sole representative to support and accommodate himself and any dependants without taking other work or resorting to public funds).

- Sole representatives are expected to base themselves in the United Kingdom and to spend a minimum of 9 months a year here. However it is possible to approve applications from those who intend to spend less time here provided that the additional absences are essential to the running of the United Kingdom business, for example if the United Kingdom office is to be the centre of European operations (see also the "**less than 9 months in first year**" concession at **paragraph 3**. below).
- Applicants who intend to spend less than 4 months of the year in the United Kingdom are unlikely to satisfy us that they are making genuine efforts to establish a commercial presence here. Such persons should be advised to apply instead as business visitors and their applications considered under the relevant paragraph of the Rules.
- Under the **previous** Rules, a sole representative could seek Home Office approval to take other work in addition to his sole representative duties, including acting as representative of another overseas firm. Under the **present** Rules this is **not** permissible and could be allowed only outside the Rules on a discretionary basis in exceptional circumstances.

2.2. Sole representatives as shareholders

Majority shareholders in the parent company are **not** eligible for entry as sole representatives.

When the sole representative is a major shareholder in the parent company, care must be taken to establish that the arrangement is not one devised simply to circumvent the more rigorous requirements of the business rules. As a rule of thumb, shareholdings **in excess of 30%** should attract detailed scrutiny. If it is evident that the applicant, as well as being a major shareholder, is also the driving force behind the parent company such that his presence in the United Kingdom is likely to mean that the centre of operations has shifted to this country, the application should be refused.

The factors to be weighed in deciding this include:

- the size of the applicant's shareholding;
- his position within the firm;
- the number of senior employees who will remain abroad; and
- the extent to which the company's success seems linked to the applicant's specific talents and performance.

2.3. Substitutes

Where a sole representative arrangement is terminated by either party, replacements should normally be advised to obtain work permits. Applications can be made either by the outgoing sole representative or by a solicitor on the company's behalf.

However, discretion may be used in individual cases and care should be taken not to treat as ineligible for consideration a "substitute" sole representative application where it is clear that Work Permits (UK) is unlikely to be able to accept a work permit application.

If the sole representative arrangement ends at an early stage, (e.g. before the United Kingdom company has found premises or started to trade) a replacement sole representative may be agreed.

It may also be appropriate to agree to a sole representative as a successor to the type of representative described in the "**less than 9 months in first year**" concession in **paragraph 3** (below) because the latter has not been able at the time of the handover to establish a fully operating branch in the United Kingdom.

2.4. Change of circumstances

A sole representative given leave to complete 5 years here in the category may remain here as such even if the overseas company appoints a superior, and will qualify for indefinite leave to remain as long as he continues to fill a genuine vacancy and the company wishes to retain his services. However, a sole representative here with less leave should be refused an extension as such if a superior has been appointed. In such circumstances a work permit will be required.

3. CONCESSION FOR CERTAIN SOLE REPRESENTATIVES WHO INTEND SPENDING LESS THAN 9 MONTHS HERE IN THE FIRST YEAR

Exceptionally, entry clearance may be granted to applicants who **in all other respects** meet the qualifying criteria for sole representatives **except** that they expect to spend considerably less than 9 months here in the first year and that they and their families will remain based abroad.

Typically, such applicants will be established, full-time senior employees of the parent company who will continue to work overseas on other projects but who have also been given responsibility for setting up a limited operation in the United Kingdom to test the market. Such applicants should be considered as sole representatives **only** if they do not qualify as business visitors (eg; because they intend to spend more than 6 months here or engage in productive work such as consultancy). The maximum period allowed in this category is 12 months (see also *paragraph 2.3. "Substitutes"* above).

4. SECRETARIES/PERSONAL ASSISTANTS OF SOLE REPRESENTATIVES

In the past a sole representative could be accompanied by his secretary or a personal assistant. This rarely used concession has been withdrawn, but any secretaries/personal assistants admitted permit-free might continue to be treated on that basis.