

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4540 of 30 January, 2019

B. 02/19

BILL

FOR

AN ACT to amend the Companies Act 2014.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Companies (Amendment) Act 2019.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment of Part XII of the Companies Act 2014.

3.(1) Part XII of the Companies Act 2014 is amended in accordance with this section.

(2) For “company” and “companies” substitute “body corporate” and “bodies corporate” respectively in every instance that those words appear, save as otherwise provided for in this section.

(3) In section 432-

(a) at the beginning of paragraph (b) insert “in the case of companies only,”;

(b) after paragraph (b) insert-

“(ba) in the case of bodies corporate other than companies, a list of the officers of the body corporate equivalent to the directors of a company, including full name, address (or registered office) and nationality (or country of incorporation);”.

(4) In section 433-

(a) at the beginning of paragraph (b) insert “in the case of companies only,”;

(b) after paragraph (b) insert-

“(ba) in the case of bodies corporate other than companies, a list of the officers of the body corporate equivalent to the directors of a company, or the particulars contained in the list of said officers;”.

(5) For section 434(b) substitute-

“(b) has registered a branch under Part XIV of this Act.”.

(6) In section 435(d) insert “or equivalent” after “if the liability of the members”.

(7) Remove the word “Company” from the title of section 436.

(8) In section 441-

(a) insert the following definition of “body corporate”-

““body corporate” means any entity having a legal personality;”;

(b) delete the definition of “branch” in its entirety;

(c) for the definition of “director” substitute-

““director”, in the case of companies only, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.”;

(d) after the definition of “director” insert-

““incorporated” shall include establishment or constitution by any means;”.

Amendment of Part XIV of the Companies Act 2014.

4.(1) Part XIV of the Companies Act 2014 is amended in accordance with this section.

(2) For “company” or “limited company” and “companies” substitute “body corporate” and “bodies corporate” respectively in every instance that those words appear, save as otherwise provided for in this section.

(3) After section 443 insert-

“443A. In this Part-

“body corporate” means any entity having a legal personality; and

“incorporated” shall include establishment or constitution by any means.”.

(4) In section 446-

(a) for subsection (1)(d) substitute-

“(d) in the case of companies only, a list of the company’s directors and secretary, or in the case of bodies corporate other than companies, a list of the officers of the body corporate equivalent to the directors of the company, containing-

(i) with respect to each director or equivalent officer, the particulars specified in subsection (3), and

(ii) with respect to the secretary (or where there are joint secretaries, with respect to each of them), the particulars specified in subsection (4);”;

(b) in subsection (1)(e), insert “or equivalent officers” after “the extent of the powers of the directors”;

(c) in subsection (2)(c)(iii), insert “in the case of companies only”, prior to “the amount of its issued share capital”;

(d) in subsection (3), insert “or equivalent officer” after “with respect to a director”.

Amendment of Part XV of the Companies Act 2014.

5.(1) Part XV of the Companies Act 2014 is amended in accordance with this section.

(2) For “company” or “limited company” and “companies” substitute “body corporate” and “bodies corporate” respectively in every instance that those words appear, save as otherwise provided for in this section.

(3) After section 453 insert-

“453A. In this Part-

“body corporate” means any entity having a legal personality; and

“incorporated” shall include establishment or constitution by any means.”.

(4) In section 454(2)-

- (a) in paragraph (b) insert “or (ba) (as applicable)” after “it had complied with its obligations under section 432(b)”;
- (b) in paragraph (c) insert “or (ba) (as applicable)” after “any alteration of the kind mentioned in paragraph (b)”.

(5) In section 455-

- (a) in subsection (3) insert “or (ba) (as applicable)” after “need not include the particulars mentioned in section 432(b)”;
- (b) for subsection (4) substitute-

“(4) Where subsection (3) applies, the reference in section 433(b) to the list of the directors or 433(ba) (as applicable) to the list of the officers of a body corporate equivalent to the directors of a company, shall be construed as a reference to the list contained in the return under section 445(1) with any alterations in respect of which a return under section 451(1) has been made.”.

(6) For the title of section 460, substitute–

“Delivery of accounts and reports: general.” .

Amendment of Part XVI of the Companies Act 2014.

6.(1) Part XVI of the Companies Act 2014 is amended in accordance with this section.

(2) For “company” and “companies” substitute “body corporate” and “bodies corporate” respectively in every instance that those words appear, save as otherwise provided for in this section.

(3) For the title of section 461, substitute-

“Particulars to be delivered to the Registrar: winding up or dissolution.”

(4) In section 461-

- (a) insert “or dissolved” after “wound up” in each instance that those words appear;
- (b) insert “or dissolution” after “winding up” in each instance that those words appear;
- (c) in subsection (1)(d)(i), substitute-

“(i) in the case of companies only, the company’s members, or in the case of bodies corporate other than companies, those equivalent to the members of a company,”.

(5) In section 462-

- (a) insert “or dissolved” after “wound up” in each instance that those words appear;
- (b) insert “or dissolution” after “winding up” in each instance that those words appear;
- (c) in subsection (1)(d)(i), substitute-

“(i) in the case of companies only, the company’s members, or in the case of bodies corporate other than companies, those equivalent to the members of a company,”.

(6) In section 463(1), insert “or equivalent officer” after “every person who immediately before the end of that period was a director”.

Amendment of Schedule 26 of the Companies Act 2014.

7.(1) Schedule 26 of the Companies Act 2014 is amended in accordance with this section.

(2) For the title substitute-

“Delivery of reports and accounts: general.”

(3) For “company” and “companies” substitute “body corporate” and “bodies corporate” respectively in every instance that those words appear, save as otherwise provided for in this section.

(4) In Part 1, paragraph 1 -

- (a) for sub-paragraph (2)(a) substitute-

“(a) is required by its parent law to prepare and disclose accounts but, by virtue of Article 34(1) of the Directive 2013/34/EU, is not required by that law to have those accounts audited; or”;

- (b) in sub-paragraph (2)(b)(ii), substitute “Article 57” with “Article 37”.

(5) In Part 1, paragraph 5(1) insert “or equivalent officer” after “every person who immediately before the end of that period was a director”.

(6) In Part 1, paragraph 6(1) for the definition of “the Fourth Council Directive” substitute-

““Directive 2013/34/EU” means Directive 2013/34/EU of the European Parliament and of the Council on 26 June 2013 on the annual financial statements, consolidated financial statement and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, as amended from time to time;”.

(7) In Part 1, paragraph 6(2)(b) insert “or equivalent officers” after “any annual report of the directors”.

(8) In Part II, paragraph 12(1), insert “or equivalent officer” after “every person who immediately before the end of that period was a director”.

EXPLANATORY MEMORANDUM

This Act amends Parts XII, XIV, XV, XVI, and Schedule 26 of the Companies Act 2014. The amendments extend the provisions relating to the registration or establishment in Gibraltar of a branch or place of business by overseas companies, to overseas entities having a legal personality other than companies.

Consequential amendments relating to the particulars to be filed to the Registrar by an overseas body corporate other than a company have been included. These provide for the registration of particulars of officers equivalent to the office of director of a company in other types of bodies corporate.

The definition of “Fourth Council Directive” has been amended as a consequence of the repeal of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, by Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

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