

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4197 of 17th September, 2015

B. 32/15

BILL

FOR

AN ACT to amend the Friendly Societies Act.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Friendly Societies (Amendment) Act 2015 and comes into operation on the day of publication.

Amendment of the Friendly Societies Act.

2.(1) The Friendly Societies Act is amended in accordance with this section.

(2) In section 2(1) insert the following definition after the definition of “collector”-

“insurance business” has the meaning given in section 2(1) of the Financial Services (Insurance Companies) Act;”.

(3) After section 67 insert-

“Transfer of engagements by a registered society.

67A. (1) Subject to subsection (8), a registered society may, in accordance with this section and sections 67B and 67E, transfer any or all of its engagements to any extent to a company registered under the Companies Act 2014.

(2) A registered society, in order to transfer any of its engagements, must—

(a) comply with the applicable requirements of Part I of Schedule 5;

(b) resolve to transfer the engagements by special resolution;

(c) record the extent of the transfer as so resolved in an instrument of transfer of engagements; and

(d) obtain the confirmation of the Registrar to the transfer,

and, on obtaining that confirmation, the instrument of transfer of engagements may be registered under subsection (3) below.

(3) Where the Registrar confirms a transfer of engagements, he shall, on the application of the society proposing to transfer them and the proposed transferee—

(a) register a copy of the instrument of transfer of engagements; and

(b) issue a registration certificate to the transferee,

and a registration certificate shall specify a date as the transfer date for that transfer.

(4) On the transfer date—

(a) the property, rights and liabilities of the society transferring its engagements shall by virtue of this subsection become, to the extent provided in the instrument of transfer of engagements, the property, rights and liabilities of the transferee; and

(b) if the transfer is of all the society's engagements, the society shall be dissolved;

but the transfer shall be deemed to have been effected immediately before any such dissolution.

- (5) The Registrar shall keep a copy of the instrument and of the registration certificate issued under subsection (3) above.
- (6) Where a registered society is dissolved by subsection (4)(b) above, its registration under this Act shall be cancelled by the Registrar.
- (7) Schedule 5 has effect for supplementing this section.
- (8) This section shall not apply to engagements the fulfilment of which will constitute the carrying on of insurance business.

Power of Registrar to alter requirements for transfer by registered society.

67B.(1) If the Registrar is satisfied that it is expedient to do so in the interests of the members or potential members of a registered society, it may give a direction under this section (“a direction”)—

(a) modifying the requirements of subsection (2)(b) of section 67A above; and

(b) modifying or disapplying the requirements of Part I of Schedule 5,

in relation to a particular proposed transfer or to all transfers made by the society after the making of the direction.

- (2) A direction may not modify the requirements of section 67A(2) above so as to permit a society to resolve to make a transfer by a resolution passed by less than a majority, or to require more than a three-quarters majority, of those voting on the resolution.
- (3) The Registrar shall not give a direction unless—
 - (a) an application has been made to it by not less than 10 per cent. of the members of the society concerned;

(b) not less than one month before giving the direction the Registrar has served on the society concerned a notice stating that it proposes to make a direction and specifying the considerations which have led it to conclude that it would be expedient to give it;

(c) the Registrar has considered any representations made by the society with respect to the notice mentioned in paragraph (b) above within such period (not being less than one month) from the date on which the society was served with the notice as the Registrar may allow; and

(d) if the society so requests, the Registrar has afforded to it an opportunity of being heard by it within that period.

- (4) If the Registrar considers it expedient to do so in the interests of the members or potential members of the society concerned, it may vary or revoke a direction by a further direction.
- (5) On giving a direction in relation to a society, the Registrar shall serve on the society a copy of the direction, specifying the considerations which have led it to conclude that it is expedient to give the direction; but the Registrar may not give a direction unless all the considerations so specified were those, or among those, which were specified in the notice served on the society under subsection (3) above.
- (6) Notice of a direction shall be published by the Registrar in the Gazette and in such other ways as appear to the Registrar expedient for informing the public.
- (7) The Registrar shall keep a copy of any direction given under this section.

Power of Registrar to effect transfer of engagements.

67C.(1) Subject to the following provisions of this section the Registrar may give a direction under this section (“a direction”) providing for the transfer of such of the engagements of a registered society (“the society”) as are

specified in the direction to a company so specified (“the transferee”).

(2) The Registrar may give a direction if—

(a) it considers that—

(i) the society is unable to manage its affairs satisfactorily in relation to the engagements specified in the direction; and

(ii) a transfer of those engagements would be expedient to protect the interests of the members of the society; and

(b) the proposed transferee has complied with paragraph 1 of Schedule 5 and has resolved to undertake to fulfil the engagements by special resolution;

but the Registrar may direct that paragraph (b) above shall be modified in relation to a particular proposed transfer (but not to permit a society to resolve to undertake to fulfil the engagements by less than a majority or more than a three-quarters majority of those voting).

(3) The Registrar shall publish a notice of the proposed direction in the Gazette, and, if he thinks appropriate, in one or more newspapers.

(4) A notice published in pursuance of subsection (3) above shall—

(a) state that any interested party has the right to make representations to the Registrar with respect to the proposed direction;

(b) specify a date determined by the Registrar before which any written representations or notice of a person’s intention to make oral representations must be received by the Registrar; and

- (c) specify a date determined by the Registrar as the day on which it intends to hear any oral representations.
- (5) After the date specified in pursuance of subsection (4)(b) above, the Registrar shall—
 - (a) determine the time and place at which oral representations may be made;
 - (b) give notice of that determination to the society and the proposed transferee and to any persons who have given notice of their intention to make oral representations; and
 - (c) send copies of the written representations received by the Registrar to the society concerned and the proposed transferee.
- (6) Before the Registrar gives a direction in accordance with subsection (2) the Registrar shall allow the society and the proposed transferee an opportunity to comment on the written representations, whether at a hearing or in writing, before the expiration of such period as the Registrar specifies in a notice to it.
- (7) If the Registrar gives a direction it shall keep a copy of that direction and shall—
 - (a) register that copy; and
 - (b) issue a registration certificate to the transferee;and the registration certificate shall specify a date as the transfer date for the transfer.
- (8) On the transfer date—
 - (a) the property, rights and liabilities of the society shall by virtue of this subsection become, to the extent provided in the direction, the property, rights and liabilities of the transferee; and

(b) if the transfer is of all the society's engagements, the society shall be dissolved;

but the transfer shall be deemed to have been effected before any such dissolution.

- (9) The Registrar shall keep a copy of a direction and of the registration certificate.
- (10) Where a registered society is dissolved by subsection (8)(b) above, its registration under this Act shall be cancelled by the Registrar.
- (11) This section shall not apply to engagements the fulfilment of which will constitute the carrying on of insurance business.

Conversion of registered society into company.

67D. (1) Subject to subsection (10) below, a registered society may, in accordance with this section and section 67E, convert itself into a company registered under the Companies Act 2014 ("a company").

(2) In order to convert itself into a company a registered society must—

(a) comply with the applicable requirements of Part I of Schedule 5;

(b) approve the proposed conversion, the terms on which it is to take place and the proposed memorandum and articles of association for the company by special resolution; and

(c) obtain the confirmation of the Registrar to the conversion,

and, on obtaining that confirmation, the society may apply for registration as a company.

(3) The terms on which the conversion of a registered society into a company is to take place may include provision for part of the

funds of the society or the company to be distributed among, or for other rights in relation to shares in the company to be conferred on, members of the society.

(4) Where—

(a) a special resolution of a society contains the particulars required by the Companies Act 2014 to be contained in—

(i) the memorandum of association of a company; or

(ii) the articles of association of a company; and

(b) a copy of the resolution has been registered by the Registrar,

a copy of that resolution under the seal and stamp of the Registrar shall have the same effect as a memorandum of association or, as the case may be, as articles of association, which have been duly signed under the Companies Act 2014.

(5) On the registration of a registered society as a company the registration of the society under this Act shall be cancelled by the Registrar.

(6) Where a registered society converts into a company the terms approved by the society and confirmed by the Registrar shall, in so far as they provide for the conferral of rights on members or officers of the society, be enforceable as if they had been the subject of an agreement between the society and those members and officers.

(7) Registration of a registered society as a company shall not affect any right or claim subsisting against the society or any penalty incurred by the society; and for the purpose of enforcing any such right, claim or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company.

(8) The Minister responsible for financial services may make rules providing for the regulation of the conversion of registered

societies into companies; and such rules may, in particular make provision—

(a) for and in connection with the transition from regulation by and under this Act to regulation by and under any other enactments on a society's ceasing to be registered under this Act; and

(b) for the treatment, in the hands of the company into which a registered society has converted, of the property, rights and liabilities of the society immediately before its conversion and for the modification of any enactment in its application to any such property, rights and liabilities.

(9) Schedule 5 to this Act has effect for supplementing this section.

(10) This section shall not apply to a registered society whose activities (or any of them) constitute the carrying on of insurance business.

Compensation for loss of office.

67E. (1) Subject to subsection (3) below, the terms of—

(a) a transfer of engagements of a registered society under section 67A above; or

(b) a conversion under section 67D above,

may include provision for compensation for loss of office or diminution of emoluments attributable to the transfer or conversion to be paid by a participating society to or in respect of any of the persons mentioned in subsection (2) below.

(2) Those persons are—

(a) the officers of the society which is to pay the compensation; and

(b) in the case of a transfer, the officers of the company participating in the transfer.

- (3) Any such provision as is mentioned in subsection (1) above must be approved by the society which is to pay the compensation by a special resolution separate from any resolution approving the other terms of the transfer or conversion.
- (4) If compensation which has not been authorised in accordance with subsection (3) above is received by an officer, it shall be repaid.
- (5) In this section –
- (i) “compensation” includes the provision of benefits in kind; and
 - (ii) “participating society” in relation to a transfer means the registered society participating in the transfer and, in relation to the conversion of a registered society, that society.”.
- (4) In section 68(1) after paragraph (a) insert-
- “(aa) in accordance with section 67A(4)(b) or 67C(8)(b);”.
- (5) After Section 71 insert-
- “Dissolution under section 67A(4)(b) and 67C(8)(b).**
- 71A. Sections 69, 70 and 71 shall not apply in the case of a dissolution of a registered society under section 67A(4)(b) or section 67C(8)(b).”.
- (6) After Schedule 4 insert -

“SCHEDULE 5

Sections 67A – 67E

**TRANSFERS OF ENGAGEMENTS AND CONVERSION:
SUPPLEMENTARY**

**PART I
PROVISION OF INFORMATION TO MEMBERS**

Statements relating to conversions and transfers

1. (1) A registered society which desires to transfer its engagements under section 67A above shall send a statement concerning the matters specified in paragraph 2 below to every member entitled (when the statements are sent) to vote on any resolution required by section 67A.
- (2) The statement referred to in sub-paragraph (1) above shall be sent so as to arrive no later than 14 days (or such longer period as the rules may require for notice of any resolution required by section 67A above) before—
 - (a) the meeting at which any such resolution is to be moved; or
 - (b) where proxy voting is permitted, such earlier date as may be specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting.
2. (1) The matters of which a statement required by paragraph 1 above is to give particulars are the following, namely—
 - (a) the financial position of the society and that of the company participating in the transfer;
 - (b) any interest of the members of the committee of management of the society in the transfer;
 - (c) the compensation or other consideration (if any) proposed to be paid to or in respect of—
 - (i) the members of the committee of management or other officers of the society; and
 - (ii) the officers of the company participating in the transfer;
 - (d) any other matter which the Registrar requires in the case of the particular transfer.

(2) No statement shall be sent unless its contents, so far as they concern the matters specified in this paragraph, have been approved by the Registrar.

3. (1) A registered society which desires to convert into a company under section 67D above shall send a statement concerning—

(a) such matters as may be prescribed in rules made by the Minister responsible for financial services; and

(b) such other matters as may be required by the Registrar in the case of the particular conversion;

to every member entitled (when the statements are sent) to vote on any resolution required by subsection (2) of that section.

(2) Rules under sub-paragraph (1) above may include among the prescribed matters any alternatives to a proposed conversion which may be available.

4. The statement referred to in paragraph 3 above shall be sent so as to arrive no later than 14 days (or such longer period as the rules may require for notice of any resolution required by section 67D above) before—

(a) the meeting at which any such resolution is to be moved; or

(b) where proxy voting is permitted, such earlier date as may be specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting;

but no such statement may be sent unless its contents, so far as they concern the matters mentioned in that paragraph, have been approved by the Registrar.

PART II
CONFIRMATION BY REGISTRAR

Applications for confirmation

5.(1) An application by a registered society for confirmation by the Registrar—

(a) of a transfer of engagements of a registered society under section 67A above; or

(b) of the conversion of a registered society into a company under section 67D above,

shall be made in such manner as the Registrar may direct.

(2) The Registrar may, on the application or with the consent of a registered society, direct in relation to any provision of rules made for the purposes of sub-paragraph (1) above that the provisions shall not apply to the society, or shall apply to it with such modifications as may be specified in the direction.

(3) A direction under sub-paragraph (2) above may be subject to conditions.

(4) A direction under sub-paragraph (2) above may be revoked by the Registrar at any time; and the Registrar may at any time vary any such direction on the application or with the consent of the society to which it applies.

(5) Where the Registrar—

(a) makes a direction under subparagraph (2) above;
or

(b) revokes or varies such a direction,

it shall cause the direction, variation or revocation to be entered on a register kept by it for the purposes of this subparagraph.

- (6) The register kept for the purposes of subparagraph (5) above shall be available for inspection on reasonable notice by members of the public.
 - (7) The Registrar shall keep a copy of—
 - (a) any direction made by it under subparagraph (2) above; and
 - (b) any revocation or variation of any such direction.
6. (1) Where a registered society applies for confirmation of a transfer or conversion, it shall publish a notice of the application—
- (a) in the Gazette; and
 - (b) if the Registrar so directs, in one or more newspapers.
- (2) The notice shall—
- (a) state that any interested party has the right to make representations to the Registrar with respect to the application;
 - (b) specify a date determined by the Registrar before which any written representations or notice of a person's intention to make oral representation must be received by the Registrar; and
 - (c) specify a date determined by the Registrar as the day on which it intends to hear any oral representations.
7. After the date specified in the notice in pursuance of paragraph 6(2)(b) above, the Registrar shall—
- (a) determine the time and place at which oral representations may be made;

(b) give notice of that determination to the registered society applying for confirmation and to any persons who have given notice of their intention to make oral representations; and

(c) send copies of any written representations received by the Registrar to that society;

and the Registrar shall allow that society an opportunity to comment on the written representations (whether at a hearing or in writing) before the expiration of such period as the Registrar specifies in a notice to the society.

8. (1) Where an application is duly made for confirmation by the Registrar of a transfer of engagements or conversion, the Registrar shall confirm the transfer or conversion unless it is precluded from doing so by any of the following provisions of this Schedule.

(2) If it appears to the Registrar, in relation to any transfer of engagements, that there is a substantial risk that the company taking the transfer will not be able lawfully to carry out the engagements to be transferred to it under section 67A(4) above, the Registrar—

(a) shall not confirm the transfer; and

(b) where it has confirmed the transfer, shall withdraw its confirmation;

but it may not withdraw its confirmation on or after the transfer date for the transfer.

(3) For the purposes of sub-paragraph (2) above, the Registrar may have regard to any requirements of the law of a country or territory outside Gibraltar which appear to the Registrar to be relevant.

9. (1) Subject to sub-paragraph (3) below, the Registrar shall not confirm a transfer if it considers that—

- (a) some information material to the members' decision about the transfer was not made available to all the members eligible to vote;
 - (b) the vote on any resolution approving the transfer does not represent the views of the members eligible to vote; or
 - (c) some relevant requirement of this Act or the rules of any registered society participating in the transfer was not fulfilled or not fulfilled as regards that society.
- (2) Subject to sub-paragraph (3) below, the Registrar shall not confirm the conversion of a society if it considers that—
 - (a) some information material to the members' decision about the conversion was not made available to all the members eligible to vote;
 - (b) the vote on any resolution approving the conversion does not represent the views of the members eligible to vote; or
 - (c) some relevant requirement of this Act or the rules of the society was not fulfilled.
- (3) The Registrar shall not be precluded from confirming a transfer or conversion by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules of a registered society if it appears to the Registrar that it could not have been material to the members' decision about the transfer or conversion and the Registrar gives a direction that the failure is to be disregarded for the purposes of this paragraph.

10. (1) Where the Registrar would be precluded—

- (a) from confirming a transfer by reason of any of the defects specified in paragraph 9(1) above; or
- (b) from confirming a conversion by reason of any of the defects specified in paragraph 9(2) above,

it may give to any registered society participating in the transfer or, as the case may be, to the society proposing to convert a direction under sub-paragraph (2) below.

- (2) A direction under this sub-paragraph is a direction requiring a registered society—
- (a) to take such steps to remedy the defect or defects, including the calling of a further meeting, as are specified in the direction; and
 - (b) to furnish the Registrar with evidence that those steps have been taken,

and if the Registrar is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied, or (as the case may be) that the risk has been removed, the Registrar shall confirm the transfer or conversion.

Confirmation of transfers of engagements

11. The Registrar shall not confirm a transfer unless it is satisfied—
- (a) that all the engagements included in the transfer may be transferred under section 67A above to the transferee; and
 - (b) that the transfer is in the interests of the members of the registered society participating in the transfer.

Effect of failure to comply with relevant requirements

12. Failure to comply with a relevant requirement of this Act or any rules of a registered society shall not invalidate any transfer of engagements or conversion; but a society which—
- (a) participates in a transfer or converts into a company; and
 - (b) fails without reasonable excuse to comply with such a requirement;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Interpretation

13. In this Part of this Schedule “relevant requirement”, with reference to this Act or the rules of a registered society, means a requirement of this Schedule or of Sections 67A to 67E of this Act or of any rules prescribing the procedure to be followed by the society in approving or effecting a transfer of engagements or its conversion into a company.”.

Explanatory Memorandum

This Bill amends the Friendly Societies Act by inserting new Sections 67A, 67B, 67C, 67D, 67E, 71A and Schedule 5. This Bill also amends section 68(1).

Rule 67A allows for the transfer of any or all of the engagements of a registered society to a company.

Rule 67B allows the Registrar of Friendly Societies to alter or dispense with some of the requirements of section 67A in relation to a transfer of engagements from a registered society to a company.

Rule 67C confers on the Registrar of Friendly Societies the power to effect a transfer of engagements from a registered society to a company.

Rule 67D provides for the conversion of a registered society into a company.

Rule 67E provides for compensation for loss of office suffered by the officers of a registered society participating in a transfer of engagements under section 67A or converting into a company under section 67D.

Lastly, Schedule 5 contains supplementary provisions regarding the rules surrounding transfers of engagements under section 67A and conversions under section 67D.

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