

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,385 of 19th NOVEMBER 1987



I ASSENT,
PETER TERRY,
GOVERNOR.
19th November, 1987.



GIBRALTAR.

No. 30 of 1987.

AN ORDINANCE to amend the Companies Ordinance.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Ordinance may be cited as the Companies (Amendment) Ordinance, 1987.

Companies (Amendment) Ordinance, 1987.

(2) This Ordinance shall come into operation on such date as the Governor may by notice in the Gazette appoint and different data may be so appointed for different provisions of this Ordinance.

Amendment of section 7.

2. Section 7 of the Companies Ordinance (hereinafter called "the principal Ordinance") is amended-

- (i) in subsection (1) thereof by adding immediately after paragraph (g) thereof the following words "but if an application is made under subsections (2) to (9) of this section, the alteration does not have effect except in so far as it is confirmed by the court";
- (ii) by repealing subsections (2) to (7) thereof and substituting therefor the following new subsections-

"(2) Where a company's memorandum has been altered by special resolution under subsection (1) of this section, application may be made to the court for the alteration to be cancelled.

(3) Such an application may be made-

(a) by the holders of not less in the aggregate than 15 per cent in nominal value of the company's issued share capital or any class of it or, if the company is not limited by shares, not less than 15 per cent of the company's members;
or

(b) by the holders of not less than 15 per cent of the company's debentures entitling the holders to object to an alteration of its objects;

but an application shall not be made by any person who has consented to or voted in favour of the alteration.

(4) The application must be made within 21 days after the date on which the resolution altering the

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company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(5) The court may on such an application make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may-

(a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and

(b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(6) The court's order may (if the court thinks fit) provide for the purchase by the company of the shares of any members of the company, and for the reduction accordingly of its capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(7) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company does not then have power without the leave of the court to make any such alteration in breach of that requirement.

(8) An alteration in the memorandum or articles of a company made by virtue of an order under this section, other than one made by resolution of the company, is of the same effect as if duly made by resolution; and this Ordinance applies accordingly to the memorandum or articles as so altered.

(9) The debentures entitling the holders to object to an alteration of a company's objects are any

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debentures secured by a floating charge which were issued or first issued before the date of the coming into force of this section or form part of the same series as any debentures so issued; and a special resolution altering a company's objects requires the same notice to the holders of any such debentures as to members of the company.

In the absence of provisions regulation the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members apply.

(10) Where a company passes a resolution altering its objects, then-

(a) if with respect to the resolution no application is made under this section, the company shall within 15 days from the end of the period for making such an application deliver to the registrar of companies a printed copy of its memorandum as altered; and

(b) if such an application is made, the company shall-

(i) forthwith give notice of that fact to the registrar, and

(ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

(11) The court may by order at any time extend the time for the delivery of documents to the registrar under subsection (10)(b) above for such period as the court may think proper.

(12) If a company makes default in giving notice or delivering any document to the registrar of companies

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as required by subsection (10), the company and every officer of it who is in default is liable on summary conviction to a fine of £200 and, for continued contravention, to a daily penalty of £10.

(13) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) of this section, except in proceedings taken for the purpose (whether under subsections (2) to (9) or otherwise) before the expiration of 21 days after the date of the resolution in that behalf.

(14) Where such proceedings are taken otherwise than under subsections (2) to (9), subsections (10) to (12) above apply in relation to the proceedings as if they had been taken under those subsections, and as if an order declaring the alteration invalid were an order cancelling it, and as if an order dismissing the proceedings were an order confirming the alteration.

Amendment of section 17.

3. Section 17 of the principal Ordinance is amended by repealing subsection (1) thereof and substituting therefor the following new subsection-

“(1) No company shall be registered by a name-

(a) which includes, otherwise than at the end of the name, the word “limited”;

(b) which includes, otherwise than at the end of the name, an abbreviation of the word “limited”;

(c) which is the same as the name appearing in the registrar's index of company names, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires;

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(d) the use of which by the company would in the opinion of the registrar constitute a criminal offence; or

(e) which in the opinion of the registrar is offensive;

(f) which contains the words "Chamber of Commerce", unless the company is a company which is to be registered under a licence granted in pursuance of section 18 without the addition of the word "Limited" to its name; or

(g) which contains the words "Building Society".

Amendment of section 17(2).

4. Section 17(2) of the principal Ordinance is amended by repealing paragraph (d) thereof and substituting therefor the following new paragraph-

"(d) contains the word "co-operative"; or

(e) includes any word or expression for the time being specified in regulations made under subsection (4) of this section."

Further amendments to section 17.

5. Section 17 of the principal Ordinance is further amended by adding the following new subsections:-

"(3) In determining for the purposes of subsection (1)(c) whether one name is the same as another, there are to be disregarded-

(a) the definite article, where it is the first word of the name;

(b) the following words and expressions where they appear at the end of the name, that is to say-

"company" or "and company"

"company limited" or "and company limited"
"limited";

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(c) abbreviations of any of those words or expressions where they appear at the end of the name; and

(d) type and case of letters, accents, spaces between letters and punctuation marks;

and "and" and "&" are to be taken as the same.

(4) The Governor may by regulations specify words or expressions for the registration of which as or as part of a company's corporate name his approval is required under subsection (2) of this section.

(5) Regulations made under subsection (4) may contain such transitional provisions and savings as the Governor thinks appropriate and may make different provisions for different cases or classes of case.

(6) The registrar of companies shall keep an index of the names of the following bodies-

- (a) companies as defined by this Ordinance;
- (b) companies incorporated outside Gibraltar which have complied with Part IX of this Ordinance, and which do not appear to the registrar of companies not to have a place of business in Gibraltar;
- (c) incorporated and unincorporated bodies to which any provision of this Ordinance applies;
- (d) limited partnerships registered under the Limited Partnerships Ordinance;
- (e) societies registered under the Co-operative Societies Ordinance, the Friendly Societies Ordinance and the Building Societies Ordinance."

Amendment of Section 19.

6. Section 19 of the principal Ordinance is amended-

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- (a) in subsection (1) thereof by deleting the expression "and with the approval of the Governor signified in writing,";
- (b) by repealing subsection (2) thereof;
- (c) by renumbering the existing subsections (3) to (5) as subsections (2) to (4) respectively.

Amendment of Section 19A.

7. The principal Ordinance is further amended by repealing Section 19A thereof and substituting therefor the following new sections:-

"19A. (1) Where a company has been registered by a name which-

- (a) is the same as or, in the opinion of the registrar, too like a name appearing at the time of registration in the registrar's index of companies names; or
- (b) is the same as or, in the opinion of the registrar too like the name which should have appeared in that index at that time;

the registrar may within 12 months of the time of registration, in writing, direct the company to change its name within such period as he may specify.

Section 17(3) applies in determining under this subsection whether the name is the same as or too like another.

- (2) If it appears to the registrar that misleading information has been given for the purpose of a company's registration with a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, he may within 5 years of the date of its registration with that name in writing direct the company to change its name within such period as he may specify.
- (3) Where a direction has been given under subsections (1) or (2) the registrar may by a further direction in writing extend the period within which the company has to change its name at any time before the end of that period.

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(4) A company which fails to comply with a direction under this section, and any officer of it who is in default is liable on summary conviction to a fine of £200, and for continued contravention, to a daily penalty of £10.

(5) Subsections (3) and (4) of Section 19 shall apply to any change of name under this section.

19B.(1) If in the registrar's opinion the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public he may direct it to change its name.

(2) The direction must, if not duly made the subject of an application to the court under the following subsection, be complied with within a period of 6 weeks from the date of the direction or such longer period as the registrar may see fit to allow.

(3) The company may within a period of 3 weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction shall specify the period within which it must be complied with.

(4) If a company defaults in complying with the direction under this Section, it is liable on summary conviction to a fine of £200 and, for continued contravention, to a daily penalty of £10.

(5) Subsections (3) and (4) of Section 19 shall apply to any change of name under this Section.

19C. If any person trades or carries on business under a name or title of which "Limited" or any contraction or imitation of that word, is the last word, that person unless duly incorporated with limited liability, is liable on summary conviction to a fine of £200 and, for continued default to a daily penalty of £10."

Repeal and replacement of section 46.

8. The principal Ordinance is further amended by repealing section 46 and substituting therefor the following sections-

"Power to issue redeemable shares.

46.(1) Subject to the provisions of this section, a company limited by shares or limited by guarantee and having a share capital, may, if so authorised by its articles, issue preference shares which are, or are liable, to be redeemed at the option of the company or the shareholder:

Provided that-

(i) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(ii) no such shares shall be redeemed unless they are fully paid, and the terms of redemption must provide for payment on redemption;

(iii) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Ordinance relating to the reduction of the share capital of a company, shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company;

(iv) the premium, if any, payable on redemption, shall have been provided for out of the profits of the company, which would otherwise have been available for dividend, or out of the company's share premium account, before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company

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consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provision of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine of £200.

- (3) Subject to the provisions of this section, the redemption of preference shares may be effected on such terms and in such manner as may be provided by the company's articles.
- (4) Shares redeemed under this section shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.
- (5) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where the new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

- (6) Where new shares have been issued in pursuance of subsection (5) of this section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

Application of premiums received on issue of shares.

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46A.(1) Where a company on or after the commencement of this section issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called "the share premium account", and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything in the foregoing subsection, be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares, in writing off-

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has before the commencement of this section issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this section:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this section form an identifiable part of the company's reserves shall be disregarded in determining the sum to be included in the share premium account."

Amendments to Schedule 3.

9. Schedule 3 to the principal Ordinance is amended in Part I-

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- (a) by inserting at the beginning of paragraph 6 the words "Subject to sub-paragraphs (2) to (4) inclusive", and
- (b) by inserting after that paragraph the following sub-paragraphs, the existing paragraph 6 thereby becoming sub-paragraph (1) of that paragraph-

"(2) The requirements of sub-paragraph (1) shall not apply to a prospectus issued by an open-ended investment company inviting the public to subscribe for the company's redeemable preference shares.

(3) The prospectus of an open-ended investment company inviting the public to subscribe for the company's redeemable preference shares shall-

(a) in the case of the first such prospectus issued by the company state-

(i) the period during which the subscription lists for the shares being offered shall remain open ("the initial subscription period"); and

(ii) the amounts payable on application and allotment on each share offered during the initial subscription period; and

(b) in the case of any subsequent prospectus issued by the company state-

(i) the number of shares offered for subscription on each previous issue made within the two preceding years; and

(ii) the number of shares of the company remaining unallotted or unredeemed on a date not earlier than 14 days prior to the date on which such prospectus was published; and

(c) in either case shall specify the method by which the amount payable on the redemption of the company's shares will be determined.

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(4) For the purpose of sub-paragraphs (2) and (3) an open-ended investment company means a company-

(a) the sole object of which is to invest its funds in property of any description, including money, with the aim of spreading investment risk and giving its shareholders the benefit of the results of the management of those funds by, or on behalf of, the company; and

(b) which gives to the holders of redeemable preference shares in the company the right to have such shares redeemed by or out of the funds of the company at a price related to the net asset value of the company, for the purposes of which it has established regular dealing days."

Amendment to section 241.

10. Section 241(1) of the principal Ordinance is amended as follows-

- (a) by deleting the expression "f200" from paragraphs (b) and (c) of the section and inserting therefor the expression "800"; and
- (b) by deleting from paragraph (c) of the section the words "during two months" and inserting therefor the words "during four months."

Passed by the Gibraltar House of Assembly on the 11th day of November, 1987.

P. A. GARBARINO
Clerk to the Assembly.