

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No.2,462 of November, 1988.**

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I ASSENT,

PETER TERRY,

GOVERNOR.

24<sup>TH</sup> November, 1988.



**GIBRALTAR**

**No. 22 of 1988.**

**AN ORDINANCE** to amend the Companies Ordinance.

**ENACTED** by the Legislature of Gibraltar.

**Title.**

1. This Ordinance may be cited as the Companies (Amendment) Ordinance, 1988.

**Repeal and replacement of section 127.**

2. Section 127 of the Companies Ordinance (hereinafter called "the principal Ordinance" is repealed and the following section is substituted therefor-

**"Investigation of companies and their affairs, etc.**

127. Schedule 10 shall have effect with respect to the investigation of companies and their affairs, requisition of documents and other matters provided therein."

**Repeal and replacement of section 125.**

3. Section 128 of the principal Ordinance is repealed and the following section is substituted therefor-

**"Proceedings on report by Inspectors.**

128. If from any report made under the provisions of Schedule 10, it appears to the Attorney-General that any person has been guilty of any offence in relation to the company or any other body corporate whose affairs have been investigated by virtue of those provisions and that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other body corporate past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

For the purposes of this section, the expression "agents" in relation to a company or other body corporate- is deemed to include its bankers and solicitors and any persons employed by it as auditors, whether those persons are or are not officers of the company or other body corporate."

**Amendment to section 129.**

4. Section 129(2) of the principal Ordinance is amended by inserting after the words "reporting to" the words "him or".

**Consequential amendments.**

5. Section 14 of the Companies (Taxation and Concessions) Ordinance is amended in subsections (2) and (3) by inserting after the words "Exchange Control Ordinance" where they appear in either sub-section, the following expression "or the provisions of Schedule 10 of the Companies Ordinance".

**SCHEDULE 10.**

6. After Schedule 9 of the principal Ordinance there is inserted the following Schedule-

**"SCHEDULE 10.**

**INVESTIGATION OF COMPANIES AND THEIR AFFAIRS;  
REQUISITION OF DOCUMENTS**

*Appointment and functions of inspectors*

**Investigation of a company on its own application or that of its members.**

1.(1) The Governor may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.

(2) The appointment may be made-

(a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued;

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and

(c) in any case, on application of the company.

(3) The application shall be supported by such evidence as the Governor may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(4) The Governor may, before appointing inspectors, require the applicant or applicants to give security, to such amount as he may by order specify, for payment of the costs of the investigation.

**Other company investigations.**

2.(1) The Governor shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as he directs, if the court by order declares that its affairs ought to be so investigated.

(2) The Governor may make such an appointment if it appears to him that there are circumstances suggesting-

(a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or

(b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or

(c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or

(d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect, or

(e) that the company's affairs are being or have been conducted in a manner detrimental to the reputation of Gibraltar as a financial centre or otherwise contrary to the public interest.

(3) Subparagraphs (1) and (2) are without prejudice to the powers of the Governor under paragraph 1; and the power conferred by subparagraph (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

(4) The reference in subparagraph (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

**Inspectors' powers during investigation.**

3.(1) If inspectors appointed under paragraph 1 or 2 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

(2) Inspectors appointed under either paragraph may at any time in the course of their investigation, without the necessity of making an interim report, inform the Governor of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

**Production of documents and evidence to inspectors.**

4. (1) When inspectors are appointed under paragraph 1 or 2, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under paragraph 3(1)-

(a) to produce to the inspectors all books and documents of or relating to the company or, as the

case may be, the other body corporate which are in their custody or power,

(b) to attend before the inspectors when required to do so, and

(c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) If the inspectors consider that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, they may require that person to produce to them any books or documents in his custody or power relating to the company or other body corporate, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in subparagraph (2), in relation to the affairs of the company or other body, and may administer an oath accordingly.

(4) In this paragraph a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and "agents", in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this paragraph (whether as it has effect in relation to an investigation under any of paragraphs 1 to 3, or as applied by any other paragraph in this Schedule) may be used in evidence against him.

**Power of inspector to call for directors' bank accounts.**

5. If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Gibraltar or elsewhere), into or out of which there has been paid-

(a) the emoluments or part of the emoluments of his office as such director particulars of which have not been disclosed to the shareholders of the company or other body corporate, or

(b) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement, entered into by the company or other body corporate and which has not been recorded in the annual accounts, or

(c) any money which has been in any way connected with an act or omission, or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

**Obstruction of inspectors treated as contempt of court.**

6. (1) When inspectors are appointed under paragraph 1 or 2 to investigate the affairs of a company, the following applies in the case of-

(a) any officer or agent of the company,

(b) any officer or agent of another body corporate whose affairs are investigated under paragraph 3,

(c) any such person as is mentioned in paragraph 4(2).

Paragraph 4(4) applies with regard to references in this subparagraph to an officer or agent.

(2) If that person-

(a) refuses to produce any book or document which it is his duty under paragraph 4 or 5 to produce, or

(b) refuses to attend before the inspectors when required to do so, or

(c) refuses to answer any question put to him by the inspectors with respect to the affairs of the company or other body corporate (as the case may be),

the inspectors may certify the refusal in writing to the court.

(3) The court may thereupon enquire into the case; and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

**Inspectors' reports.**

7.(1) The inspectors may, and if so directed by the Governor shall, make interim reports to the Governor, and on the conclusion of their investigation shall make a final report to him, and shall forward a copy of every such report to the Attorney-General.

Any such report shall be written or printed, as the Governor directs.



(2) If the inspectors were appointed under paragraph 2 in pursuance of an order of the court, the Governor shall furnish a copy of any report of theirs to the court.

(3) In any case the Governor may, if he thinks fit-

(a) forward a copy of any report made by the inspectors to the company's registered office,

(b) furnish a copy on request and on payment of the prescribed fee to-

(i) any member of the company or other body corporate which is the subject of the report,

(ii) any person whose conduct is referred to in the report,

(iii) the auditor; of that company or body corporate,

(iv) the applicants for the investigation,

(v) any other person whose financial interests appear to the Governor to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and

(c) cause any such report to be printed and published. Power to bring civil proceedings on company's behalf.

8. (1) If, from any report made under paragraph 7 or from information or documents obtained under paragraph 15 or 16 below, it appears to the Attorney General that any civil proceedings ought in the public interest: to be brought by any body corporate, he may himself bring such proceedings in the name and on behalf of the body corporate.

(2) The Attorney-General shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this paragraph.

**Expenses of investigating a company's affairs.**

9.(1) The expenses of and incidental to an investigation by inspectors appointed by the Governor shall, in the first instance, be a charge to the Consolidated Fund; but shall be recoverable from the persons mentioned in the following four subparagraphs, to the extent there specified.

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under paragraph 8, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A body corporate in whose name proceedings are brought under that paragraph is liable to repay to the Consolidated Fund the amount or value of any sums or property recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this subparagraph is a first charge on the sums or property recovered.

(4) A body corporate dealt with by the inspectors' report, where the inspectors were appointed otherwise than of the Governor's own motion, is liable except where it was the applicant for the investigation to repay to the Consolidated Fund the full amount of those expenses except so far as the Governor otherwise directs.

(5) The applicant or applicants for the investigation, where the inspectors were appointed under paragraph 1, is or are liable to repay to the Consolidated Fund the full amount of those expenses except so far as the Governor otherwise directs.

(6) The report of inspectors appointed otherwise than of the Governor's own motion may, if they think fit, and shall if the Governor so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of

their investigation, to be given under subparagraph (4) or (5) above.

(7) For purposes of this paragraph, any costs or expenses charged to the Consolidated Fund in or in connection with proceedings brought under paragraph 8 (including expenses incurred under subparagraph (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(8) Any liability to repay to the Consolidated Fund imposed by subparagraphs (2) and (3) above is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under subparagraphs (4) and (5); and any such liability imposed by subparagraph (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subparagraph (3).

(9) A person liable under any one of those subparagraphs is entitled to contribution from any other person liable under the same subparagraph, according to the amount of their respective liabilities under it.

**Power of Governor to present winding-up petition.**

10. If in the case of a body corporate liable to be wound up under this Ordinance it appears to the Governor from a report made by inspectors under paragraph 7, or from information or documents obtained under paragraphs 15 or 16 below, that it is expedient in the public interest that the body should be wound up, he may (unless the body is already being wound up by the court) present a petition for it to be so wound up if the court thinks it just and equitable for it to be so.

**Inspectors' report to be evidence.**

11.(1) A copy of any report of inspectors appointed under paragraph 1 or 2, certified by the Governor to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

(2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

*Other powers of investigation available to the Governor.*

**Power to Investigate company ownership.**

12.(1) Where it appears to the Governor that there is good reason to do so, he may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financial interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

(2) The appointment of inspectors under this paragraph may define the scope of their investigation (whether as respects the matter or the period to which it is to extend or otherwise) and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) If application for an investigation under this paragraph with respect to particular shares or debentures of a company is made to the Governor by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of inspectors under paragraph 1(2)(a) and (b)-

(a) the Governor shall appoint inspectors to conduct the investigation (unless he is satisfied that the application is vexatious), and

(b) the inspectors' appointment shall not exclude from the scope of their investigation any matter which the application seeks to have included, except in so far as the Governor is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances

suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

**Provisions applicable on investigation under paragraph 12.**

13.(1) For purposes of an investigation under paragraph 12, paragraphs 3(1), 4, 6 and 7 apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to the following subparagraphs.

(2) Those paragraphs apply to-

(a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others), and

(b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation,

as they apply in relation to officers and agents of the company or the other body corporate (as the case may be).

(3) If the Governor is of opinion that there is good reason for not divulging any part of a report made by virtue of paragraph 12 and this paragraph, he may under paragraph 7 disclose the report with the omission of that part; and he may cause to be kept by the Registrar of Companies a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

(4) The expenses of an investigation under paragraph 12 shall be defrayed by the Consolidated Fund.

**Power to obtain information as to those interested in shares, etc.**

14.(1) If it appears to the Governor that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Governor.

(2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who fails to give information required of him under this paragraph, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is liable to imprisonment for 5 years and fine.

*Requisition and seizure of books and papers.*

**Governor's power to require production of documents.**

15.(1) The powers of this paragraph are exercisable in relation to the following bodies-

- (a) a company, formed and registered under this Ordinance;

(b) an unregistered company as defined in section 282 having its principal place of business in Gibraltar; and

(c) a body corporate, whether or not registered under Part IX of this Ordinance which is carrying on business in Gibraltar or has at any time carried on business in Gibraltar.

(2) The Governor may at any time, if he thinks there is good reason to do so, give directions to any such body requiring it, at such time and place as may be specified in the directions, to produce such books or papers as may be so specified.

(3) The Governor may at any time, if he thinks there is good reason to do so, authorise a public officer to require any such body to produce to him (the officer) forthwith any books or papers which the officer may specify, provided that such officer shall, if required by such a body, produce evidence of his authority.

(4) Where by virtue of subparagraph (2) or (3) the Governor or public officer has power to require the production of books or papers from any body, he or the officer has the like power to require production of those books or papers from any person who appears to him or the officer to be in possession of them; but where any such person claims a lien on books or papers produced by him, the production is without prejudice to the lien,

(5) The power under this paragraph to require a body or other person to produce books or papers includes power-

(a) if the books or papers are produced-

(i) to take copies of them or extracts from them, and

(ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, the body in question, to provide an explanation of any of them;

(b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If the requirement to produce books or papers or provide an explanation or make a statement is not complied with, the body or other person on whom the requirement was so imposed is guilty of an offence and liable to a fine.

(7) However, where a person is charged with an offence under subparagraph (6) in respect of a requirement to produce any books or papers, it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) A statement made by a person in compliance with such a requirement may be used in evidence against him.

**Entry and search of premises.**

16.(1) The following applies if a justice of the peace is satisfied on information on oath laid by a public officer authorised under paragraph 15(3), that there are reasonable grounds for suspecting that there are on any premises any books or papers of which production has been required under paragraph 15 and which have not been produced in compliance with that requirement.

(2) The justice may issue a warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books or papers appearing to be such books or papers as are mentioned above, or to take, in relation to any books or papers so appearing, any other steps which may



appear to be necessary for preserving them and preventing interference with them.

(3) A warrant so issued continues in force until the end of one month after the date on which it is issued.

(4) Any books or papers of which possession is taken under this paragraph may be retained-

(a) for a period of 3 months, or

(b) if within that period there are commenced any such criminal proceedings as are mentioned in paragraph 17 (7)(a) or (b) (being proceedings to which the books or papers are relevant), until the conclusion of those proceedings.

(5) A person who obstructs the exercise of a right of entry or search conferred by a warrant issued under this paragraph, or who obstructs the exercise of a right so conferred to take possession of any books or papers, is guilty of an offence and liable to a fine.

**Provision for security of information obtained.**

17.(1) No information or document relating to a body which has been obtained under paragraph 15 or 16 shall, without the previous consent in writing of that body, be published or disclosed, except to a competent authority, unless the publication or disclosure is required-

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings for an offence entailing misconduct in connection with the management of the body's affairs or misapplication or wrongful retainer of its property;

(b) for the purposes of the examination of any person by inspectors appointed under paragraph 1, 2 or 12 in the course of their investigation,

(c) for the purpose of enabling the Governor or any other public officer to exercise, in relation to that or any other body, any of his functions under this Ordinance or any other law,

(d) for the purposes of proceedings under paragraph 16.

(2) A person who publishes or discloses any information or document in contravention of this paragraph is guilty of an offence and liable to imprisonment for 2 years and a fine.

(3) For purposes of this paragraph in relation to information or a document relating to a body, each of the following is a competent authority-

(a) an inspector appointed by the Governor under this Schedule,

(b) the Attorney-General,

(c) the Financial and Development Secretary and any officer authorised by him,

(d) the Commissioner of Banking and the Banking Supervisor,

(e) the Commissioner of Insurance and the Insurance Supervisor,

(f) the Registrar of Companies, and

(g) any police officer.

**Punishment for destroying, mutilating etc., company documents.**

18.(1) A person, being an officer of any such body as is mentioned in sub-paragraphs (a) to (c) of paragraph 15(1) who-

(a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the body's property or affairs, or

(b) makes, or is privy to the making of, a false entry in such a document,

is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of the body or to defeat the law.

(2) Such a person as above mentioned who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, is guilty of an offence.

(3) A person guilty of an offence under this paragraph is liable to imprisonment for 10 years and a fine.

**Punishment for furnishing false information.**

19. A person who, in purported compliance with a requirement imposed under paragraph 15 to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false, is guilty of an offence and liable to imprisonment for 10 years and a fine.

*Supplementary.*

**Privileged information.**

20.(1) Nothing in paragraphs 1 to 14 requires the disclosure to the Governor or to an inspector appointed by him-

(a) by any person of information which he would in an action in the Supreme Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client,

(b) by a company's bankers (as such) of information as to the affairs of any of their customers other than the company.

(2) Nothing in paragraphs 15 to 19 compels the production by any person of a document which he would in an action in the Supreme Court be entitled to refuse to produce on grounds of legal professional privilege, or authorises the taking of possession of any such document which is in the person's possession.

(3) The Governor shall not under paragraph 15 require, or authorise a public officer to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to the Governor that it is necessary to do so for the purpose of investigating the affairs of the first-mentioned person, or the customer is a person on whom a requirement has been imposed under that section, or under section 98 of the Insurance Companies Ordinance, 1987.

**Investigation of overseas companies.**

21. Paragraphs 2 to 7, 9, 11 and 20(1) apply to all bodies corporate incorporated outside Gibraltar which are carrying on business in Gibraltar or have at any time carried on business there as if they were companies under this Ordinance, but subject to such (if any) adaptations and modifications as may be specified by regulations made by the Governor."

Passed by the Gibraltar House of Assembly on the 16th day of November, 1988.

C. M. COOM,  
Clerk to the Assembly.