

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,679 of 9th JULY, 1992.

I ASSENT,
ANDREW CARTER,
ACTING GOVERNOR.

9th July, 1992.



GIBRALTAR.
No. 7 of 1992.

AN ORDINANCE to amend the Companies Ordinance.

ENACTED by the Legislature of Gibraltar.

Title and Commencement.

1. This Ordinance may be cited as the Companies (Amendment) Ordinance, 1992 and shall come into operation on such day as the Governor may by notice in the Gazette appoint, and different days may be so appointed for different purposes.

Amendment to Section 2.

2. Section 2 of the Companies Ordinance (hereinafter called "the principal Ordinance") is amended in sub-section (1) by-

Companies (Amendment) Ordinance, 1992.

- (a) inserting in the definition of "articles" after the expression "Schedule 1" the words "and the provisions of any other Table of that Schedule";
- (b) inserting in the definition of "company" after the word "registered" the words "or in case of a company formed outside Gibraltar, registered";
- (c) inserting in the definition of "the court" after the words "Supreme Court" the words "'and Registrar of the Court" means Registrar of the Supreme Court";
- (d) inserting in the definition of "memorandum" after the word "enactment" the words "or so far as it applies the relevant Table in Schedule 1".

Amendment to section 3.

3. Section 3 of the principal Ordinance is amended in sub-section (1) by omitting the comma after the word "persons" where that word appears for the first time together with the words, "or, where the company to be formed will be a private company, any two" and inserting after the words "associated for any lawful purpose" the words "or, where the company to be formed will be a private company, any one".

Amendment to section 4.

4. Section 4 of the principal Ordinance is amended in sub-section (1)(d) by inserting after the words "objects of the company" the words "which requirement shall be satisfied by a statement that the company may do all such things as are lawful to be done by a company registered under this Ordinance subject only to any specified restriction on that power contained in the memorandum."

Amendment to section 7.

5. Section 7 of the principal Ordinance is amended-

- (a) by omitting sub-section (1) and substituting therefor the following sub-section-

Companies (Amendment) Ordinance, 1992.

(1) A company may by special resolution alter its memorandum with respect to the statement of the company's objects:

Provided that if an application is made under sub-section (2), the alteration does not have effect except in so far as it is confirmed by the court.":

(b) in sub-section (10)-

(i) by omitting in paragraph (a) the words "registrar of companies" and substituting therefor the word "Registrar";

(ii) in paragraph (b) by omitting the word "registrar" in the two places where it occurs and substituting therefor the word "Registrar";

(c) in sub-section (11) by omitting the word "registrar" and substituting therefor the word "Registrar";

(d) in sub-section (12) by omitting the words "registrar of companies" and substituting therefor the word "Registrar".

Amendment to section 13.

6. Section 13 of the principal Ordinance is amended by omitting the words "Tables B, C, D and E" and substituting therefor the words "the appropriate Tables".

Amendment to section 14.

7. Section 14 of the principal Ordinance is amended-

(a) by inserting after the figure "14" the figure "(1)";

(b) by inserting the following new sub-section;

"(2) With the memorandum there shall be delivered a statement in the form prescribed in Schedule 5 containing the information so prescribed and in particular the name, address and nationality of any

person or persons, or where any such person is a company, the name of the company and the address of the company's registered office, who are to be the first director or directors of the company".

Amendment to section 16.

8. Section 16 of the Principal Ordinance is amended in sub-section (2) by omitting the words "may accept" and substituting therefor the words "shall be entitled to rely on".

Amendment to section 17.

9. Section 17 of the principal Ordinance is amended-

- (a) in paragraphs (c), (d) and (e) of sub-section (1) by omitting the word "registrar" and substituting therefor the word "Registrar";
- (b) in sub-section (6) by omitting the words "registrar of companies" in the two places where those words appear and substituting therefor the word "Registrar".

Amendment to section 19A.

10. Section 19A of the principal Ordinance is amended-

- (a) in sub-section (1)-
 - (i) by omitting the word "registrar" in each of the three places where that word appears and substituting therefor the word "Registrar";
 - (ii) by omitting the word "registrar's" and substituting therefor the word "Registrar's";
- (b) in sub-sections (2) and (3) by omitting the word "registrar" and substituting therefor the word "Registrar".

Amendment to section 19B.

11. Section 19B of the principal Ordinance is amended-

- (a) in sub-section (1) by omitting the word "registrar's" and substituting therefor the word "Registrar's";
- (b) in sub-section (2) by omitting the word "registrar" and substituting therefor the word "Registrar".

Amendment to section 27.

12. Section 27 of the principal Ordinance is amended in sub-section (3) by inserting after the figure "28" the figure "(1)".

Repeal and Replacement of section 28.

13. Section 28 of the principal Ordinance including the marginal note thereto is repealed and replaced by the following new section-

"Prohibition on carrying on business with fewer than the required number of members.

28(1). If at any time the numbers of members of the company which is a private company is reduced to none and it carries on business while the number is so reduced every officer of the company during that time it so carries on business who is cognisant of the fact that it is carrying on business with fewer than one member shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefor.

(2) If at any time the number of members of a company which is a public company is reduced below seven and it carries on business for more than 6 months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than seven members shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefor. "

Amendment to section 28A.

14. Section 28A of the principal Ordinance is amended-

- (a) in the marginal note thereto by inserting after the word "Contracts" the words "or transactions";
- (b) by inserting after the figure "28A" the figure "(1)";
- (c) by inserting the following new sub-section-

"(2) If a company enters into transactions before a certificate of incorporation has been issued by the Registrar and fails to fulfil its obligations in connection therewith within 21 days from being called upon to do so, the directors of the company shall personally be jointly and severally liable to the other party to the transaction in respect of any loss or damage suffered by him by reason of the failure of the company to fulfil those obligations. "

New sections 28B, 28C and 28D.

15. The principal Ordinance is amended by inserting after section 28A the following new sections-

"A company's capacity not limited by its memorandum.

- 28B. (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.
- (2) A member of the company may bring proceedings to restrain the doing of an act which but for sub-section (1) would be beyond the company's capacity save that no such proceedings shall be in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum and action by the directors which but for sub-section (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

- (4) A resolution ratifying an action by the directors beyond the company's capacity shall not affect any liability incurred by the directors or any other person and relief from any such liability must be agreed to separately by special resolution.

Power of directors to bind the company.

28C.(1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitations under the company's constitution.

(2) For this purpose-

(a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party;

(b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and

(c) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The reference above to limitations on the directors' powers under the company's constitution includes limitations deriving-

(a) from the resolution of the company in general meeting or a meeting of any class of shareholders, or

(b) from any agreement between the members of the company or any class of shareholders.

(4) Sub-section (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors:

Provided that no such proceedings shall be in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

- (5) Sub-section (1) does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding of their powers.

No duty to enquire as to capacity of company or authority of directors.

28D. A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or to authorise others to do so."

Amendment to section 31.

16. Section 31 of the principal Ordinance is amended in sub-section (2) by omitting the word "behold" and substituting therefor the word "behalf".

Amendment to section 32.

17. Section 32 of the principal Ordinance is amended in sub-section (1)-

- (a) by omitting the words "require or comprise" and substituting therefor the words "do not preclude";
- (b) by omitting the words "if authorised" and substituting therefor the words "unless precluded".

Amendment to section 35.

18. Section 35 of the principal Ordinance is amended in sub-section (1) by omitting the word "part" and substituting therefor the word "Part".

Amendment to section 42.

19. Section 42 of the principal Ordinance is amended in sub-section (2) by omitting the expression "section 14" and substituting therefor the words "the relevant provisions".

New section 45A.

20. The principal Ordinance is amended by inserting after section 45 the following new section 45A-

"Power of Company to purchase own shares.

45A.(1) Subject to the provision of this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).

(2) A company may exercise the power contained in sub-section (1) only if it does so in accordance with the provisions of Schedule 11 as to-

(a) the conditions to be met by the company and its directors in respect of any such purchase of its own shares, and

(b) the application to any such purchase of the provisions of this Ordinance.

(3) A failure to comply with the requirements of Schedule 11 shall have the effect specified in that respect by the Schedule including, where so specified, the liability on summary conviction to a fine at level 3 on the standard scale."

Amendment to section 47.

21. Section 47 of the principal ordinance is amended-

(a) in sub-section (1) by inserting before the word "court" in the two places where that word appears the words "Registrar of the";

(b) in sub-section (2)-

(i) by inserting before the word "court" the words "Registrar of the";

(ii) by omitting the word "it" where that word appears for the second and third times and substituting therefor the word "he".

Amendment to section 54.

22. Section 54 of the principal Ordinance is amended in sub-section (1)-

- (a) by omitting in paragraph (b) the words "sanction of the Governor" and substituting therefor the words "consent of the Registrar of the court";
- (b) by omitting in paragraph (c) the word "Governor" and substituting therefor the words "Registrar of the court";
- (c) by omitting in paragraph (d) the word "Governor" and substituting therefor the words "Registrar of the court";
- (d) by omitting in paragraph (e) the word "four" and substituting therefor the word "five".

Amendment to section 55.

23. Section 55 of the principal Ordinance is amended in sub-section (1) by inserting before the word "court" the words "Registrar of the".

Amendment to section 56.

24. Section 56 of the principal Ordinance is amended by inserting before the word "court" in the nine places where that word appears the words "Registrar of the".

Amendment to section 57.

25. Section 57 of the principal Ordinance is amended-

- (a) in sub-section (1) by inserting before the word "court" the words "Registrar of the";
- (b) in sub-section (2) by-
 - (i) inserting before the word "court" in the four places where that word occurs the words "Registrar of the";

- (ii) omitting the word "it" in the two places where that word occurs and substituting therefor the word "he".

Amendment to section 58.

26. Section 58 of the principal Ordinance is amended-

- (a) in sub-section (1) by inserting before the word "court" in the two places where that word appears the words "Registrar of the";
- (b) in sub-section (3) by inserting before the word "court" the words "Registrar of the".

Amendment to section 89.

27. Section 89 of the principal Ordinance is amended-

- (a) in sub-section (1) by inserting after the word "office" the words "in Gibraltar";
- (b) in sub-section (2) by inserting after the word "sub-section" the words "unless that return shall have been due and made within 28 days of the change".

Amendment to section 100.

28. Section 100 of the principal Ordinance is amended-

- (a) by omitting sub-section (1) and substituting therefor the following sub-sections-

"(1) Every company having a share capital shall deliver to the Registrar successive annual returns each of which is made up to a date not later than the date which is from-time to time the company's "return date", that is-

- (a) the anniversary of the company's incorporation, or

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(b) if the company's last return delivered in accordance with this Ordinance was made up to a different date, the anniversary of that date.

(IA) Each return shall-

(a) be in the form prescribed in Schedule 5;

(b) contain the information required by or under this Ordinance; and

(c) be signed by a director or officer of the company,

and shall be delivered to the Registrar within 28 days after the date to which it is made up.";

(b) by omitting sub-section (4) and substituting therefor the following new sub-section-

"(4) The references in this section to a return being delivered "in accordance with this Ordinance" are-

(a) in relation to a return made on or after the 1st day of August 1992, to a return with respect to which all of the requirements of sub-section (1A) are complied with;

(b) in relation to a return made before the 1st day of August 1992, to a return with respect to which the formal and substantive requirements of this Ordinance as it then had effect were complied with, whether or not the return was delivered in time."

Amendment to section 101.

29. Section 101 of the principal Ordinance is amended-

(a) by omitting sub-section (1) and substituting therefor the following sub-section-

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"(1) Every company not having a share capital shall deliver to the Registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's "return date", that is, the anniversary of the company's incorporation, and each return shall be in the prescribed form and shall state-

(a) the address of the registered office of the company;

(b) such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Ordinance required to be contained with respect to directors in the register of directors of a company, and

it shall be delivered to the Registrar within 28 days after the date to which it is made up."

Amendment to section 102.

30. Section 102 of the principal Ordinance is amended-

(a) in sub-section (1) by omitting all the words after the word "members" and substituting therefor a fullstop;

(b) in sub-section (4) by omitting the comma after the figure "101" together with all the words thereafter and substituting therefor a dash and the following-

"(a) the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to a fine at level 3 on the standard scale and for continued contravention, to a daily fine of an amount of one half of the amount at level 3 on the standard scale;

(b) in the case of a failure to comply with section 100 or 101, the Registrar may regard that failure as reasonable cause to believe that the company is not carrying on business or in operation."

Amendment to section 103.

31. Section 103 of the principal Ordinance is amended by inserting after the word "certificate" where it appears for the first time the words "in the form prescribed in Schedule 5".

Repeal and replacement of section 104.

32. Section 104 of the principal Ordinance is repealed and replaced by the following new section-

- "104. (1) Every company shall, subject to the provisions of subsection (5), in each year, hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.
- (2) So long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.
- (3) Not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.
- (4) If default is made in holding a meeting in accordance with this section, the company and every officer of it who is in default is liable on summary conviction to a fine, in the case of the company, at level 5 on the standard scale, and in the case of an officer of the company, at level 3 on the standard scale.
- (5) A private company may, by special resolution dispense with the holding of annual general meetings.
- (6) A special resolution dispensing with the holding of annual general meetings, shall have effect for the year in which it is made and subsequent years, but shall not affect any liability already incurred by reason of default in holding an annual general meeting.
- (7) In any year in which an annual general meeting would be required to be held but for the special resolution and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months

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before the end of the year, require the holding of an annual general meeting in that year.

- (8) If a notice provided for in sub-section (?) is given, the provisions of sub-sections (1) and (4) shall apply with respect to the calling of the meeting and the consequences of default.
- (9) If the effect of the special resolution ceases, the company is not obliged under the provisions of this section to hold an annual general meeting in that year if when the special resolution ceases to have effect, less than three months of the year remains:

Provided that this does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under sub-section (7)."

Amendment to section 107.

33. Section 107 of the principal Ordinance is amended-

- (a) in sub-section (1) by omitting in paragraph (d) the word "two" and substituting therefor the word "one";
- (b) in sub-section (2)-
 - (i) by inserting before the word "court" in the two places where that word appears the words "Registrar of the";
 - (ii) by omitting the word "it" and substituting therefor the word "he".

Amendment to section 156.

34. Section 156 is amended in paragraph (d) by omitting the word "two" and substituting therefor the word "one".

Amendment to section 158.

35. Section 158 of the principal Ordinance is amended in subsection (1)(a)(i) by omitting the word "two" and substituting the word "one".

Amendment to section 241.

36. Section 241 of the principal Ordinance is amended in paragraphs (b) and (c) of sub-section (1) by omitting the word "four" where it appears in each paragraph and substituting therefor the word "twelve".

Amendment to section 266.

37. Section 266 of the principal Ordinance is amended in subsections (1) and (2) by inserting before the word "court" wherever that word appears the words "Registrar of the".

Amendment to section 267.

38. Section 267 of the principal Ordinance is amended-

- (a) in sub-section (1) by omitting all the words after "post" and substituting therefor the words "a registered letter enquiring whether the company is carrying on business or in operation and stating that if an answer is not received to the letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register. ";
- (b) by omitting sub-section (2);
- (c) by omitting sub-section (3) and replacing it with the following sub-section-

"(3) If the Registrar either-

(a) receives an answer to the effect that the company is not carrying on business or in operation; or

(b) does not, within one month after spending the letter, receive any documents in respect of the deposit of which with the Registrar, a company is in default,

he may publish in the Gazette, and send to the company by post, a notice that at the expiration of

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three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.";

(d) in sub-section (6)-

(i) by inserting before the word "court" in the two places where that word appears the words "Registrar of the";

(ii) by omitting the word "twenty" and substituting therefor the word "ten";

(iii) by omitting the word "aforesaid" and substituting therefor the expression "provided for in sub-section (5)".

New sections 278A, 278B and 278C.

39. The principal Ordinance is further amended by inserting after section 278 the following new sections-

"Delivery to the Registrar of documents in printed form.

278A.(1) This section applies to the delivery to the Registrar under any provision of this Ordinance of documents in printed form.

(2) The document must-

(a) state in a prominent position the name and the registered number of the company to which it relates;

(b) satisfy any requirements prescribed by Schedule 5 for the purposes of this section; and

(c) conform to such requirements as the Registrar may specify for the purpose of enabling him to copy the document.

(3) If a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on

the person by whom the document was delivered (or if there are two or more such persons, on any of them), a notice indicating the respect in which the document does not comply.

- (4) Where the Registrar serves such a notice as is specified in subsection (3), then, unless a replacement document-
- (a) is delivered to him within 14 days after the service, of the notice; and
 - (b) complies with the requirements of this section (or section 27813) or is not rejected by him for failure to comply with those requirements,'

the original document shall be deemed not to have been delivered to him:

Provided that for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the Registrar's notice.

- (5) The provisions in Schedule 5 made for the purposes of this section may make different provision with respect to different descriptions of document.

Delivery to the Registrar of documents otherwise than in printed form.

278B.(1) This section applies to the delivery to the Registrar under any provision of this Ordinance of documents other than in printed form.

- (2) Any requirement to deliver a document to the Registrar, or to deliver document in the prescribed form, is satisfied by the communication to the Registrar of the requisite information in any non-printed form prescribed for the purposes of this section by the provisions of Schedule 5 or approved by the Registrar.

- (3) Where the document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed by the provisions of Schedule 5 or approved by the Registrar.
- (4) A document must-
- (a) contain in a prominent position the registered number of the company to which it relates;
 - (b) satisfy any requirements prescribed in Schedule 5 for the purposes of this section; and
 - (c) be furnished in such manner, and conform to such requirements, as the Registrar may specify for the purpose of enabling him to read and copy the document.
- (5) If a document is delivered to the Registrar which does comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there were two or more such persons, on any of them), a notice indicating the respect in which the document does not comply.
- (6) Where the Registrar serves such a notice, then, unless a replacement document-
- (a) is delivered to him within 14 days after service of the notice; and
 - (b) complies with the requirements of this section (or section 278A) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him:

Provided that for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the Registrar's notice.

- (7) Provisions made in Schedule 5 for the purposes of this section, may make different provision with respect to different descriptions of document and different forms of communication.

Keeping of company records by the Registrar.

278C.(1) The information contained in a document delivered to the Registrar under this Ordinance, may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in printed form and this shall be sufficient compliance with any duty of his to keep, file or register the document.

- (2) The originals of documents delivered to the Registrar in printed form shall be kept by him for 10 years, after which they may be destroyed."

Amendment to section 279.

40. Section 279 of the principal Ordinance is amended-

- (a) by inserting after the figure "279" the figure "(1)";
- (b) by inserting after the word "specified" the words "and without prejudice to the generality of the foregoing a fee may be so specified in respect of the performance by the Registrar of any function under this Ordinance including the receipt by him of any notice or other document which under this Ordinance is required to be given, delivered sent or forwarded to him.";
- (c) by inserting the following new sub-sections-

"(2) Provision may be made in the Table set out in Schedule 8 in respect of supplementary fees payable where any notice or document which, under this Ordinance, is required to be given, delivered, sent or forwarded to the Registrar within a specified time, is given, delivered, sent or forwarded to him outside of the specified time.

(3) The Registrar may charge a fee for any services provided by him otherwise than in pursuance of an obligation imposed on him by law."

Repeal and replacement of section 280.

41. Section 280 of the principal Ordinance is repealed and replaced by the following section-

"280 (1) Any person may inspect any records kept by the Registrar for the purposes of this Ordinance and may require-

(a) a copy in such form as the Registrar considers appropriate of any information contained in those records; or

(b) a certified copy of, or extract from any such record.

(2) The right of inspection extends to the originals of documents delivered to the Registrar in printed form only where the record kept by the Registrar of the contents of the document is illegible or unavailable.

(3) A copy of an extract from a record certified in writing by the Registrar (whose official position it is unnecessary to prove), to be an accurate record of the contents of any document delivered to him under this Ordinance, is in all legal proceedings, admissible in evidence as of equal validity with the original document and as evidence of any facts stated therein, of which direct or al evidence would be admissible.

(4) Copies of or extracts from records furnished by the Registrar may, instead of being certified by him in writing to be an accurate record, be sealed with his official seal.

(5) Any person may require a certificate of the incorporation of a company, signed by the registrar or authenticated by his official seal.

(6) Any requirement of the Ordinance as to the supply by the Registrar of a document may, if the Registrar thinks fit, be satisfied by the communication by the Registrar of the

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requisite information in any non-printed form prescribed for this purpose by Schedule 5 or approved by him.

- (7) Where the document is required to be signed by him or sealed with his official seal and is a communication in a non-printed form, it shall instead be authenticated in such manner as may be prescribed by Schedule 5 or approved by the Registrar.
- (8) No process for compelling the production of a record by the Registrar shall issue from any court except with the leave of the court, and any such process shall bear on it a statement that it is issued with the leave of the court."

Amendment to section 313.

42. Section 313 of the principal Ordinance is amended in subsection (1) by omitting everything after the expression "Schedule 1" and substituting therefor the words "and prescribed matters contained in other Schedules."

Repeal of section 20A.

43. Section 20A is hereby repealed.

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Passed by the Gibraltar House of Assembly on the 30th day of June, 1992.

C. M. COOM
Clerk to the Assembly: