

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,964 of 20th February, 1997



I ASSENT,

M.J. ROBINSON,

ACTING GOVERNOR.

20th February, 1997



GIBRALTAR

No. 9 of 1997

AN ORDINANCE to transpose into the law of Gibraltar Council Directive 89/666/EEC on the disclosure requirements in respect of branches opened in a member State by certain types of company governed by the law of another member State.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Ordinance may be cited as the Companies Ordinance (Amendment) Ordinance 1997 and shall come into operation on such day as the Governor may, by notice in the Gazette, appoint.

New Part XII of the Companies Ordinance

2. After Part XI of the Companies Ordinance (Miscellaneous), the following Parts shall be inserted -

“PART XII

BRANCH DISCLOSURE

Application of Part XII.

316. This Part shall apply to any limited company which -

- (a) is incorporated outside the United Kingdom and Gibraltar; and
- (b) has a branch in Gibraltar.

Registration of branches of companies.

317. (1) For each company to which this Part applies, the registrar shall keep, in such form as he thinks fit, a register of branches registered by the company under section 318.

(2) The registrar shall allocate to every branch registered by him under this section a number, which shall be known as the branch's registered number.

(3) Branches' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.

(4) The registrar may, upon adopting a new form of registered number, make such changes of existing registered numbers as appear to him necessary.

(5) A change of a branch's registered number has effect from the date on which the company is notified by the registrar of the change, but for a period of three years beginning with the date on which that notification is sent by the registrar the

requirement of section 329(1) as to the use of the branch's registered number on business letters and order forms is satisfied by the use of either the old number or the new.

(6) Where a company to which this Part applies files particulars, in any circumstances permitted by or under the Ordinance, by -

(a) adopting particulars already filed in respect of another branch; or

(b) including in one document particulars which relate to two or more branches,

the registrar shall ensure that the particulars concerned become part of the registered particulars of each branch concerned.

Duty to register.

318. (1) A company shall, within one month of having opened a branch in Gibraltar, deliver to the registrar for registration a return containing -

(a) such particulars about the company as are specified in section 319;

(b) such particulars about the branch as are specified in section 320;

(c) if the company is one to which section 333 applies, such particulars in relation to the registration of documents under Schedule 12 as are specified in section 321.

(2) The return shall, except where sub-section (3) applies, be accompanied by the documents specified in section 322 and, if the company is one to which Part I of Schedule 12 applies, the documents specified in section 323.

(3) This section applies where -

- (a) at the time the return is delivered, the company has another branch in the United Kingdom or Gibraltar;
 - (b) the return contains a statement to the effect that the documents specified in section 322 and, if the company is one to which Part I of Schedule 12 applies, section 323, are included in the material registered in respect of the other branch; and
 - (c) the return states where the other branch is registered and what its registered number is.
- (4) In sub-section (1), the reference to having opened a branch in Gibraltar includes a reference to a branch having become situated there on ceasing to be situated elsewhere.
- (5) If at the date on which the company opens a branch in Gibraltar the company is subject to any proceedings referred to in section 334(1) (winding up) or 335(1) (insolvency proceedings etc), the company shall deliver a return under section 334(1) or (as the case may be) 335(1) within one month of that date.
- (6) If on or before that date a person has been appointed to be liquidator of the company and continues in that office at that date, section 334(3) and (4) (liquidator to make return within 14 days of appointment) shall have effect as if it required a return to be made under that section within one month of the date of the branch being opened.

Particulars required.

319. (1) The particulars referred to in section 318(1)(a) are -

- (a) the corporate name of the company;
- (b) its legal form;
- (c) if it is registered in the country of its incorporation, the identity of the register in which it is registered and the number with which it is so registered;

(d) a list of the company's directors and secretary, containing -

(i) with respect to each director, the particulars specified in sub-section (3), and

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

(e) the extent of the powers of the directors to represent the company in dealings with third parties and in legal proceedings, together with a statement as to whether they may act alone or must act jointly and, if jointly, the name of any other person concerned; and

(f) whether the company is an institution to which Schedule 11 applies.

(2) In the case of a company which is not incorporated in a member State, those particulars also include -

(a) the law under which the company is incorporated;

3 (b) (in the case of a company to which paragraphs 2 and of Part I of Schedule 12 applies) the period for which the company is required by the law under which it is incorporated to prepare accounts, together with the period allowed for the preparation and public disclosure of accounts for such a period; and

(c) unless disclosed by the documents specified in section 322 -

(i) the address of its principal place of business,

(ii) its objects, and

(iii) the amount of its issued share capital.

(3) The particulars referred to in sub-section (1)(d)(i) are-

(a) in the case of an individual -

(i) his name,

(ii) any former name,

(iii) his usual residential address,

(iv) his nationality,

(v) his business occupation (if any),

(vi) particulars of any other directorships held by him,
and

(vii) his date of birth;

(b) in the case of a corporation or Scottish firm, its
corporate or firm name and registered or principal
office.

(4) The particulars referred to in sub-section (1)(d)(ii) are -

(a) in the case of an individual, his name, any former
name and his usual residential address;

(b) in the case of a corporation or Scottish firm, its
corporate or firm name and registered or principal
office;

provided that where all the partners in a firm are joint
secretaries of the company, the name and principal office of
the firm may be stated instead of the particulars required by
paragraph (a).

(5) In sub-sections 3(a) and (4)(a) -

(a) "name" means a person's forename and surname,
except that in the case of a peer, or an individual
usually known by a title, the title may be stated instead

of his forename and surname, or in addition to either
or both of them; and

(b) the reference to a former name does not include -

(i) in the case of a peer, or an individual normally known by a title, the name by which he was known previous to the adoption of or succession to the title;

(ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more;

(iii) in the case of a married woman, the name by which she was known previous to the marriage.

(6) Where -

(a) at the time a return is delivered under section 318(1) the company has another branch in Gibraltar; and

(b) the company has delivered the particulars required by sub-sections (1)(b) to (f) and (2) to (5) to the registrar with respect to that branch (or to the extent it is required to do so by virtue of section 327 or 328) and has no outstanding obligation to make a return to the registrar in respect of that branch under section 324 in relation to any alteration to those particulars,

the company may adopt the particulars so delivered as particulars which the registrar is to treat as having been filed by the return by referring in the return to the fact that the particulars have been filed in respect of that other branch and giving the number with which the other branch is registered.

Further particulars.

320. The particulars referred to in section 318(1)(b) are -

- (a) the address of the branch,
- (b) the date on which it was opened,
- (c) the business carried on at it,
- (d) if different from the name of the company, the name in which that business is carried on,
- (e) a list of the names and addresses of all persons resident in Gibraltar authorised to accept on the company's behalf service of process in respect of the business of the branch and of any notices required to be served on the company in respect of the business of the branch,
- (f) a list of the names and usual residential addresses of all persons authorised to represent the company as permanent representatives of the company for the business of the branch,
- (g) the extent of the authority of any person falling within sub-paragraph (f), including whether that person is authorised to act alone or jointly, and
- (h) if a person falling within sub-paragraph (f) is not authorised to act alone, the name of any person with whom he is authorised to act.

Further particulars.

321. The particulars referred to in section 318(1)(c) are -

- (a) whether it is intended to register documents under section 319(2) or, as the case may be, paragraph 9(1) of Schedule 12 in respect of the branch or in respect of some other branch in Gibraltar or the United Kingdom, and
- (b) if it is, where that other branch is registered and what is its registered number.

Documents required.

322. The first documents referred to in section 318(2) are-

- (a) a certified copy of the charter, statutes or memorandum and articles of the company (or other instrument constituting or defining the company's constitution), and
- (b) if any of the documents mentioned in sub-paragraph (a) is not written in the English language, a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

Further documents required.

323. (1) The second documents referred to in section 318(2) are -

- (a) copies of the latest accounting documents prepared in relation to a financial period of the company to have been publicly disclosed in accordance with the law of the country in which it is incorporated before the end of the period allowed for compliance with section 318 in respect of the branch or, if earlier, the date on which the company complies with section 318 in respect of the branch, and
- (b) if any of the documents mentioned in paragraph (a) is not written in the English language, a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(2) In sub-section (1)(a) "financial period" and "accounting documents" shall be construed in accordance with paragraph 6 of Schedule 12.

Alterations.

324. (1) If, after a company has delivered a return under section 318(1), any alteration is made in -

- (a) its charter, statutes or memorandum and articles (or other instrument constituting or defining its constitution), or
- (b) any of the particulars referred to in section 318(1),

the company shall, within the time specified in sub-section (2), deliver to the registrar for registration a return containing particulars of the alteration: provided that in the case of an alteration to any of the documents referred to in paragraph (a), the return shall be accompanied by a certified copy of the document as altered, together with, if the document is not written in the English language, a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(2) The time for the delivery of the return required by sub-section (1) is -

- (a) in the case of an alteration in any of the particulars specified in section 320, 21 days after the alteration is made; or
- (b) in the case of any other alteration, 21 days after the date on which notice of the alteration in question could have been received in Gibraltar in due course of post (if despatched with due diligence).

(3) Where -

- (a) a company has more than one branch in Gibraltar, and
- (b) an alteration relates to more than one of those branches,

sub-section (1) shall have effect to require the company to deliver a return in respect of each of the branches to which the alteration relates.

(4) For the purposes of sub-section (3) -

- (a) an alteration in any of the particulars specified in section 319 shall be treated as relating to every branch

of the company (though where the company has more than one branch in Gibraltar a return in respect of an alteration in any of those particulars which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given) but

- (b) an alteration in the company's charter, statutes or memorandum and articles (or other instrument constituting or defining its constitution) shall only be treated as relating to a branch if the document altered is included in the material registered in respect of it.

Time periods

325. (1) Sub-section (2) applies where -

- (a) a company's return under section 318(1) includes a statement to the effect mentioned in section 318(3)(b), and
- (b) the statement ceases to be true so far as concerns the documents specified in section 322.

(2) The company shall, within the time specified in sub-section (3), deliver to the registrar for registration in respect of the branch to which the return relates -

- (a) the documents specified in section 322, or
- (b) a return -
 - (i) containing a statement to the effect that those documents are included in the material which is registered in respect of another branch of the company in Gibraltar or the United Kingdom, and
 - (ii) stating where the other branch is registered and what is its registered number.

(3) The time for complying with sub-section (2) is 21 days after the date on which notice of the fact that the statement in the earlier return has ceased to be true could have been received in Gibraltar in due course of post (if despatched with due diligence).

(4) Sub-section (2) shall also apply where, after a company has made a return under sub-section (2)(b), the statement to the effect mentioned in sub-section (2)(b)(i) ceases to be true.

(5) For the purposes of sub-section (2)(b), where the company has more than one branch in Gibraltar a return which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given.

PART XIII

CHANGE IN REGISTRATION REGIME

Change in registration regime.

326. (1) Where a company ceases to be a company to which Part XII applies and, immediately after ceasing to be such a company continues to have in Gibraltar a place of business which it had immediately before ceasing to be such a company, it shall be treated for the purposes of Part IX of the Ordinance as having established the place of business on the date when it ceased to be a company to which Part XII applies.

(2) Where a limited company incorporated outside the United Kingdom and Gibraltar -

(a) ceases to have a branch in the United Kingdom, and

(b) both immediately before and immediately after ceasing to do so, has a place of business, but not a branch, in Gibraltar,

it shall be treated for the purposes of Part IX of the Ordinance as having established the place of business on the date when it ceased to have a branch in the United Kingdom.

(3) Section 327 and 328 (transitional provisions in relation to change in registration regime) shall have effect.

Change in registration regime: transitional provisions.

327. (1) This section applies where a company which becomes a company to which Part XII applies was, immediately before becoming such a company (referred to in this section as the relevant time), a company to which Part IX of the Ordinance applies.

(2) The company need not include the particulars specified in section 319(1)(d) in the first return to be delivered under section 318(1) to the registrar if at the relevant time -

(a) it had an established place of business in Gibraltar,

(b) it had complied with its obligations under section 289(b) of the Ordinance, and

(c) it had no outstanding obligation to make a return to the registrar under section 290 of the Ordinance, so far as concerns any alteration of the kind mentioned in paragraph (b) of that section,

and if it states in the return that the particulars have been previously filed in respect of a place of business of the company, giving the company's registered number.

(3) The company shall not be required to deliver the documents mentioned in section 322 with the first return to be delivered under section 318(1) to the registrar if at the relevant time -

(a) it had an established place of business in Gibraltar,

(b) it had delivered the documents mentioned in section 289(a) of the Ordinance to the registrar, and

- (c) it had no outstanding obligation to make a return to the registrar under section 290 of the Ordinance so far as concerns any alteration in any of the documents mentioned in paragraph (a) of that section,

and if it states in the return that the documents have been previously filed in respect of a place of business of the company, giving the company's registered number.

Change in registration regime; further transitional provisions

328.(1) This section applies where a company which becomes a company to which Part IX of the Ordinance applies was, immediately before becoming such a company (referred to in this section as the relevant time), a company to which Part XII applies.

(2) The company shall not be required to deliver the documents mentioned in section 289(a) of the Ordinance to the registrar if at the relevant time -

- (a) it had a branch in Gibraltar,
- (b) the documents mentioned in section 321 were included in the material registered in respect of the branch, and
- (c) it had no outstanding obligation to make a return to the registrar under section 324, so far as concerns any alteration in any of the documents mentioned in subsection (1)(a) of that section,

and if it states in the return that the documents have previously been filed in respect of a branch of the company, giving the branch's registered number.

(3) The company need not include the particulars mentioned in section 289(b) of the Ordinance in the return to be delivered under that section to the registrar if at the relevant time -

- (a) it had a branch in Gibraltar,

(b) it had complied with its obligations under section 318(1)(a) in respect of the branch, so far as the particulars required by section 319(1)(d) are concerned, and

(c) it had no outstanding obligation to make a return to the registrar under section 324, so far as concerns any alteration in any of the particulars required by section 319(1)(d),

and if it states in the return that the particulars have been previously filed in respect of a branch of the company, giving the branch's registered number.

(4) Where sub-section (3) applies, the reference in section 290(b) of the Ordinance to the list of the directors shall be construed as a reference to the list contained in the return under section 318(1) with any alterations in respect of which a return under section 324(1) has been made.

Duty to state name etc.

329. (1) Every company to which Part XII applies shall, in the case of each branch of the company registered under section 318, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch -

(a) the place of registration of the branch, and

(b) the registered number of the branch.

(2) Every company to which Part XII applies, which is not incorporated in a member State and which is required by the law of the country in which it is incorporated to be registered under section 318, shall, in the case of each branch of the company, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch -

(a) the identity of the registry in which the company is registered in its country of incorporation, and

(b) the number with which it is registered.

(3) Every company to which Part XII applies and which is not incorporated in a member State shall, in the case of each branch of the company registered under section 318, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch -

(a) the legal form of the company,

(b) the location of its head office, and

(c) if applicable, the fact that it is being wound up.

Service of documents: companies to which Part XII applies.

330. (1) This section applies to any company to which Part XII applies.

(2) Any process or notice required to be served on a company to which this section applies in respect of the carrying on of the business of a branch registered by it under section 318 is sufficiently served if -

(a) addressed to any person whose name has, in respect of the branch, been delivered to the registrar as a person falling within section 320(e), and

(b) left at or sent by post to the address for that person which has been so delivered.

(3) Where -

(a) a company to which this section applies makes default, in respect of a branch, in delivering to the registrar the particulars mentioned in section 320(e), or

(b) all the persons whose names have, in respect of a branch, been delivered to the registrar under section 318 as persons falling within section 320(e) are dead or have ceased to reside in Gibraltar, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company in respect of the carrying on of the business of the branch by leaving it at, or sending it by post to, any place of business established by the company in Gibraltar.

(4) Where a company to which this section applies has more than one branch in Gibraltar, any notice or process required to be served on the company which is not required to be served in respect of the carrying on of the business of one branch rather than another shall be treated for the purposes of this section as required to be served in respect of the carrying on of the business of each of its branches.

Documents to be filed on cessation of business: companies to which Part XII applies.

331. If a company to which Part XII applies closes a branch in Gibraltar, it shall forthwith give notice of that fact to the registrar; and from the date on which notice is so given it is no longer obliged to deliver documents to the registrar in respect of that branch.

Penalties for non-compliance.

332. If a company fails to comply with sections 318 to 326 or section 331, the company and every officer or agent of the company who knowingly and wilfully authorises or permits the default is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and in the case of a continuing offence, to a daily default fine not exceeding level 1 on the standard scale for continued contravention.

Delivery of accounts and reports: companies to which the Eleventh Company Law Directive applies.

333. (1) This section applies to any limited company which -

- (a) is incorporated outside the United Kingdom and Gibraltar,
- (b) has a branch in Gibraltar, and
- (c) is not an institution to which Schedule 11 applies.

(2) Schedule 12 (delivery of accounts and reports) shall have effect in relation to any company to which this section applies.

PART XIV

PARTICULARS TO BE DELIVERED TO REGISTRAR

WINDING UP, ETC

Particulars to be delivered to the registrar: winding up.

334. (1) Subject to sub-section (8), where a company to which Part XII applies is being wound up, it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars -

- (a) the name of the company;
- (b) whether the company is being wound up by an order of a court and, if so, the name and address of the court and the date of the order;
- (c) if the company is not being so wound up, as a result of what action the winding up has commenced;
- (d) whether the winding up has been instigated by -
 - (i) the company's members;

(ii) the company's creditors; or

(iii) some other person or persons,

and, in the case of (iii) the identity of that person or those persons shall be given; and

(e) the date on which the winding up became or will become effective.

(2) The period allowed for delivery of a return under sub-section (1) is 14 days from the date on which the winding up begins.

(3) Subject to sub-section (8), a person appointed to be the liquidator of a company to which Part XII applies, shall deliver to the registrar for registration a return in the prescribed form containing the following particulars -

(a) his name and address,

(b) the date of his appointment, and

(c) a description of such of his powers, if any, as are derived otherwise than from the general law or the company's constitution.

(4) The period allowed for delivery of a return under sub-section (3) is 14 days from the date of the liquidator's appointment.

(5) Subject to sub-section (8), the liquidator of a company to which Part XII applies, shall deliver to the registrar for registration a return in the prescribed form upon the occurrence of the following events -

(a) the termination of the winding up of the company, and

(b) the company ceasing to be registered, in circumstances where ceasing to be registered is an event of legal significance:

provided that the following particulars shall be given-

- (i) in the case of sub-paragraph (a), the name of the company and the date on which the winding up terminated; and
- (ii) in the case of sub-paragraph (b), the name of the company and the date on which the company ceased to be registered.

(6) The period allowed for delivery of a return under sub-section (5) is 14 days from the date of the event concerned.

(7) The obligation to delivery a return under sub-sections (1), (3) or (5) shall apply in respect of each branch which the company has in Gibraltar, (though where the company has more than one branch in Gibraltar, a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

(8) No return is required under sub-sections (1), (3) or (5) in respect of a winding up under Part VIII of the Ordinance.

Particulars to be delivered to the registrar: insolvency proceedings etc.

335. (1) Where a company to which Part XII applies becomes subject to any of the following proceedings (other than proceedings for the winding up of the company), that is to say, insolvency proceedings or an arrangement or composition or any analogous proceedings, it shall deliver to the registrar for registration in the prescribed form, a return containing the following particulars -

- (a) the name of the company;
- (b) whether the proceedings are by order of a court and, if so, the name and address of the court and the date of the order;

(c) if the proceedings are not by order of a court, as a result of what action the proceedings have been commenced;

(d) whether the proceedings have been instigated by-

- (i) the company's members;
- (ii) the company's creditors; or
- (iii) some other person or persons,

and in the case of (iii), the identity of that person or those persons shall be given; and

(e) the date on which the proceedings became or will become effective.

(2) Where a company to which Part XII applies ceases to be subject to any of the proceedings mentioned in sub-section (1), it shall deliver to the registrar for registration a return containing the following particulars -

(a) the name of the company; and

(b) the date on which it ceased to be subject to the proceedings.

(3) The period allowed for delivery of a return under sub-section (1) or (2) is 14 days from the date on which the company becomes subject or, as the case may be, ceases to be subject to the proceedings concerned.

(4) The obligation to deliver a return under this section shall apply in respect of each branch which the company has in Gibraltar (though where the company has more than one branch in Gibraltar, a return which gives the branch number of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

Penalty for non-compliance.

336. (1) If a company fails to comply with section 334(1) or 335(1) or (2) within the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, for continued contravention, to a daily default fine not exceeding level 1 on the standard scale.

(2) If a liquidator fails to comply with section 334(3) or (5) within the period allowed for compliance, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, for continued contravention, to a daily default fine not exceeding level 1 on the standard scale.

(3) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps for securing compliance with the requirements concerned.

Disclosure of branches.

337. (1) A director's report prepared in accordance with regulation 10 of the Companies (Accounts) Regulations 1995 shall contain an indication of the existence of branches of the company outside Gibraltar.

(2) Sub-section (1) shall not apply in relation to an unlimited company.

(3) The directors of a company need not comply with this section in preparing a director's report for a financial year of the company commencing before the 1st day of July, 1997.

Transitional provisions.

338. Schedule 13 (Transitional provisions) shall have effect.

Consequential amendments.

339. The provisions of Schedule 14 (Consequential amendments) shall have effect.”.

New Schedules of the Companies Ordinance.

3. The following Schedules shall be inserted after Schedule 10 of the Companies Ordinance -

“SCHEDULE 11

Section 319(1) and 333(1)

CREDIT AND FINANCIAL INSTITUTIONS TO WHICH THE BANK BRANCHES DIRECTIVE (89/117/EEC) APPLIES

1. This Schedule applies to any credit or financial institution -

- (a) which is incorporated or otherwise formed outside the United Kingdom and Gibraltar,
- (b) whose head office is outside the United Kingdom and Gibraltar, and
- (c) which has a branch in Gibraltar.

2. In this Schedule -

“branch”, in relation to a credit or financial institution, means a place of business which forms a legally dependent part of the institution and which conducts directly all or some of the operations inherent in its business;

“credit institution” means a credit institution as defined in Article 1 of the First Council Directive on the coordination of laws, sections and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC), that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; and

“financial institution” means a financial institution within the meaning of Article 1 of the Council Directive on the obligations of branches established in a member State of credit and financial institutions having their head offices outside that member State regarding the publication of annual accounting documents (the Bank Branches Directive 89/117/EEC).

SCHEDULE 12

Section 333(2)

DELIVERY OF REPORTS AND ACCOUNTS: COMPANIES TO WHICH THE ELEVENTH COMPANY LAW DIRECTIVE APPLIES

PART I

COMPANIES REQUIRED TO MAKE DISCLOSURE UNDER PARENT LAW

Scope of Part.

1.(1) This Part applies to any company to which section 333 applies which is required by its parent law to prepare, have audited and disclose accounts.

(2) This Part of this Schedule also applies to any company to which section 316 applies which is incorporated in a member State and -

- (a) is required by its parent law to prepare and disclose accounts but, by virtue of Article 51 of the Fourth Council Directive, is not required by that law to have those accounts audited; or
- (b) is not required by its parent law to prepare, have audited and disclose accounts if -
 - (i) its parent undertaking prepares, had audited and discloses consolidated accounts; and
 - (ii) in pursuance of Article 57 of that Directive, its accounts are included in those consolidated accounts.

Duty to deliver copies in Gibraltar.

2.(1) This paragraph applies in respect of each branch which a company to which this Part applies has in Gibraltar.

(2) The company shall deliver to the registrar for registration in respect of the branch copies of all the accounting documents prepared in relation to a financial period of the company which are disclosed in accordance with its parent law on or after the end of the period allowed for compliance in

respect of the branch with section 318 or, if earlier, the date on which the company complies with that section in respect of the branch.

(3) Where the company's parent law permits it to discharge its obligation with respect to the disclosure of accounting documents by disclosing documents in a modified form, it may discharge its obligation under sub-paragraph (2) by delivering copies of documents modified as permitted by that law.

(4) If any document, a copy of which is delivered under sub-paragraph (2), is in a language other than English, the company shall annex to the copy delivered a translation of it into English, certified in accordance with rule 5 of the Companies Rules to be a correct translation.

3. Paragraph 2 shall not require documents to be delivered in respect of a branch if -

- (a) before the end of the period allowed for compliance with that paragraph, they are delivered in respect of another branch in the United Kingdom, and
- (b) the particulars registered under sections 318 to 326 in respect of the branch indicate an intention that they are to be registered in respect of that other branch and include the details of that other branch mentioned in section 321(b).

Time for delivery.

4. The period allowed for delivery, in relation to a document required to be delivered under paragraph 2, is 3 months from the date on which the document is first disclosed in accordance with the company's parent law.

Penalty for non-compliance.

5.(1) If a company fails to comply with paragraph 2 before the end of the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and for continued contravention, to a daily default fine not exceeding level 1 on the standard scale.

(2) It is a defence for a person charged with an offence under this paragraph to prove that he took all reasonable steps for securing compliance with paragraph 2.

Interpretation.

6.(1) In this Part -

“financial period” -

- (a) in relation to a company falling within paragraph (2)(a) above, means a period for which the company is required or permitted by its parent law to prepare accounts; and
- (b) in relation to a company falling within paragraph (2)(b) above, means a period for which its parent undertaking is required or permitted by the undertaking’s parent law to prepare consolidated accounts;

“the Fourth Council Directive” means the Fourth Council Directive of 25th July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC);”.

“parent law”, in relation to a company, means the law of the country in which the company is incorporated;

and references to disclosure are to public disclosure.

(2) For the purposes of this Part of this Schedule, the following are accounting documents in relation to a financial period of a company falling within paragraph (1) above -

- (a) the accounts of the company for the period, including, if it has one or more subsidiaries, any consolidated accounts of the group;
- (b) any annual report of the directors for the period; and
- (c) in the case of a company falling within paragraph 1 above -
 - (i) any report of the auditors on the accounts mentioned in paragraph (a) above; and
 - (ii) any report of the auditors on the report mentioned in paragraph (b) above.

(3) For the purposes of this Part of this Schedule, the accounting documents in relation to a financial period of a company falling within paragraph (2)(b) above are the consolidated accounts of its parent undertaking.

PART II

COMPANIES NOT REQUIRED TO MAKE DISCLOSURE UNDER PARENT LAW

Scope of Part.

7.(1) This Part of this Schedule applies to any company to which section 333 applies which does not fall within paragraph (1) above.”

(2). This Part applies to any company to which section 333 applies which is not required by the law of the country in which it is incorporated to prepare, have audited and to disclose publicly accounts.

Preparation of accounts and reports.

8.A company to which this Part applies shall in respect of each financial year of the company prepare the like accounts and directors’ report, and cause to be prepared such an auditor’s report as would be required if the company were a company to which regulation 16 of the Companies (Accounts) Regulations 1995 applied.

Duty to deliver accounts and reports.

9.(1) A company to which this Part applies shall, in respect of each financial year of the company, deliver to the registrar copies of the accounts and reports prepared in accordance with paragraph 8.

(2) If any document comprised in those accounts or reports is in a language other than English, the company shall annex to the copy delivered a translation of it into English, certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(3) A company required to deliver documents under this paragraph in respect of a financial year shall deliver them in respect of each branch which it has in Gibraltar at the end of that year.

(4) Sub-paragraph (3) is without prejudice to section 331.

10. Paragraph 9 shall not require documents to be delivered in respect of a branch if -

- (a) before the end of the period allowed for compliance with that paragraph, they are delivered in respect of another branch in Gibraltar or the United Kingdom, and
- (b) the particulars registered under section 318 in respect of the branch indicate an intention that they are to be registered in respect of that other branch and include the details of that other branch mentioned in section 321(b).

Time for delivery.

11.(1) The period allowed for delivering accounts and reports under paragraph 9 is 13 months after the end of the relevant accounting reference period, subject to the following provisions of this paragraph.

(2) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the company becoming a company to which this Part applies.

(3) In this paragraph "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.

Penalty for non-compliance.

12.(1) If the requirements of paragraph 9 are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements made by or under the Ordinance, the company and every person who immediately before the end of that period was a director of the company is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on

the standard scale and for continued contravention to a daily default fine not exceeding level 1 on the standard scale.

(2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that requirements in question would be complied with.

(3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by or under the Ordinance.

SCHEDULE 13

Section 338

Transitional Provisions

Branch registration.

1.(1) This paragraph applies to any limited company incorporated outside the United Kingdom and Gibraltar which, immediately after [one day before the date of the coming into force of the Ordinance], has a branch in Gibraltar which it had there immediately before the date of coming into force of the Ordinance.

(2) A company to which this paragraph applies shall be treated for the purposes of section 318(1) as having opened on the date of the coming into force of the Ordinance any branch which it has in Gibraltar immediately after and it had there immediately before the date of the coming into force of the Ordinance.

(3) Where a company to which this paragraph applies was a registered company immediately before the date of the coming into force of the Ordinance section 318(1) shall have effect in its application by virtue of sub-section (2), with the substitution for “one month” of “six months”.

(4) For the purposes of sub-paragraph (3), a company is a registered company if it has duly delivered documents to the registrar under section 289 of the Ordinance and has not subsequently given notice to him that it has ceased to have an established place of business in Gibraltar.

(5) Subject to sub-paragraph (c) hereof, sections 289 and 290 of the Ordinance shall continue to apply to a company to which this paragraph applies until such time as it has -

- (a) complied with section 317 in respect of a branch, or
- (b) ceased to have a branch in Gibraltar,
- (c) sections 289 and 290 of the Ordinance shall not however apply to any company to which this paragraph applies,

if the company had no place of business in Gibraltar immediately prior to one month before the date of the coming into force of the Ordinance.

2.(1) This paragraph applies to any limited company incorporated outside the United Kingdom and Gibraltar which -

- (a) has an established place of business in Gibraltar both immediately before the date of the coming into force of the Ordinance and immediately after,
- (b) does not have a branch there immediately after the date of the coming into force of the Ordinance.

(2) Where, immediately after the date of the coming into force of the Ordinance, a company to which this paragraph applies has a branch in Gibraltar, sections 289 and 290 of the Ordinance shall continue to apply to the company until such time as it gives the registrar notice of the fact that it is a company to which Part XII applies.

3.(1) Where -

- (a) a company to which paragraph 1 applies delivers a return under section 318(1) in respect of a branch,
- (b) the return is the first which the company has delivered under that provision in respect of a branch in Gibraltar,
- (c) immediately before delivering the return, the company was a registered company, and

- (d) the company states in the return that the particulars have previously been delivered in respect of a place of business of the company, giving the company's registered number,

the documents previously registered under section 289(a) of the Ordinance shall be treated as registered under section 317 in respect of the branch to which the return relates.

(2) For the purposes of this paragraph, a company is a registered company if -

- (a) it has duly delivered documents to the registrar under section 289 of the Ordinance,
- (b) it has duly complied with any obligation to make a return to the registrar under section 290 of the Ordinance, and
- (c) it has not subsequently given notice to the registrar that it has ceased to have an established place of business in Gibraltar.

Delivery of accounts and reports.

4.(1) This paragraph applies to any company which immediately after [one day before (date)] is a company to which Part II of Schedule 12 applies.

(2) Paragraphs 8 and 9(1) of that Schedule shall have effect in relation to a company to which the paragraph applies, with the insertion after "each financial year of the company" of "ending after [one day before the date of the coming into force of the Ordinance]".

(3) In its application to a company to which this paragraph applies, paragraph 11(2) of Schedule 12 shall have effect with the substitution for "becoming a company to which this Part applies" of "establishing a place of business in Gibraltar".

5.(1) This paragraph applies to a company to which Part I of Schedule 12 applies.

(2) Section 318(2) and the provisions of Schedule 12 shall only have effect to require a company to which this paragraph applies to deliver accounting documents for registration if they have been prepared with

reference to a period commencing on or after the date of the coming into force of the Ordinance.

SCHEDULE 14

Section 339

CONSEQUENTIAL AMENDMENTS

New section 290A of the Ordinance.

1. Sections 289 and 290 shall not apply to any limited company which -

- (a) is incorporated outside the United Kingdom and Gibraltar; and
- (b) has a branch in Gibraltar.

Amendment to section 295 of the Ordinance.

2. In section 295 of the Ordinance, there shall be inserted in the appropriate place the following definition -

““branch” means a branch within the meaning of Council Directive 89/666/EEC on the disclosure requirements in respect of branches opened in a member State by certain types of company governed by the law of another member State”.”

Companies Ordinance(Amendment)Ordinance, 1997 [No.9 of 1997]

Passed by the Gibraltar House of Assembly on the 14th day of February,
1997.

D. J. REYES,

Clerk to the Assembly.