

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,059 of 13th August, 1998**

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I ASSENT,  
M J ROBINSON,  
ACTING GOVERNOR.

13th August, 1998.



**GIBRALTAR**

**No. 31 of 1998**

**AN ORDINANCE** to amend the Companies Ordinance in order to transpose into law Council Directive No. 89/667/EEC on single-member private limited-liability companies; and to amend the Companies Ordinance (Amendment) Ordinance 1997.

**ENACTED** by the Legislature of Gibraltar.

**Title and commencement.**

1. This Ordinance may be cited as the Companies Ordinance (Amendment) Ordinance 1998.

**Amendments to the Companies Ordinance pursuant to the transposition of Council Directive 89/667/EEC.**

2.(1) The Companies Ordinance shall be amended in accordance with the provisions of this section.

(2) Section 26 (Meaning of “private company”) shall be amended in subsection (1) by substituting for the words -

“For the purposes of this Ordinance, the expression “private company” means a company which by its articles -”

the words -

“For the purposes of this Ordinance a “private company” means a company limited by shares or limited by guarantee (whether or not having a share capital), being a company which by its articles -”;

(3) After section 92 (Prohibition of carrying on business with fewer than seven or, in the case of a private company, one member) there shall be inserted the following section -

**“Changes in membership of private company.**

92A.(1) If the number of members of a private company limited by shares or by guarantee falls to one there shall upon the occurrence of that event be entered in the company's register of members -

- (a) the name and address of the sole member,
- (b) a statement that the company has only one member, and
- (c) the date on which the company became a company having only one member.

(2) If the membership of the private company limited by shares or by guarantee increases from one to two or more members there shall upon the occurrence of that event be

entered in the company's register of members, with the name and address of the person who was formerly the sole member, a statement that the company has ceased to have only one member together with the date on which that event occurred.

(3) If a company makes default in complying with this section the company and every officer of it who is in default is liable on summary conviction to a fine not exceeding level 2 on the standard scale and, for continued contravention, to a daily fine not exceeding one-tenth of level 2 on the standard scale.”.

(4) After section 107 (Provisions as to meetings and votes) there shall be inserted the following section -

**“Quorum at meetings of sole member.**

107A. Notwithstanding any provision to the contrary in the articles of a private company limited by shares or by guarantee having only one member, one member present in person or by proxy shall be a quorum.”.

(5) After section 112 (Minutes of proceedings of meetings and Directors) the following section shall be inserted -

**“Recording of decisions by the sole member.**

112A.(1) Where a private company limited by shares or by guarantee has only one member and he takes any decision which may be taken by the company in general meeting and which has effect as if agreed by the company in general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision.

(2) If the sole member fails to comply with subsection (1) he shall be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.

(3) Any failure by the sole member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.”.

*Companies Ordinance (Amendment) Ordinance, 1998* [No. 31 of 1998]

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(6) After section 141 (Disclosure by directors on interests in contracts) there shall be inserted the following section -

**“Contracts with sole members who are directors.**

141A.(1) Subject to the provisions of subsection (2) below, where a private company limited by shares or by guarantee having only one member enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) Subsection (1) shall not apply to contracts entered into in the ordinary course of the company's business.

(3) Subject to subsection (4) below, nothing in this section shall be construed as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.

(4) Any failure to comply with subsection (1) with respect to a contract shall not affect the validity of that contract.

(5) If a company fails to comply with subsection (1), the company and every officer of it who is in default shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.”.

**Amendments to the Companies Ordinance (Amendment) Ordinance 1997.**

3.(1) The Companies Ordinance (Amendment) Ordinance 1997 shall be amended in section 3 in accordance with the provisions of this section.

(2) Schedule 12 shall be amended as follows -

- (a) in paragraph 7(1), for the words “paragraph (1) above” there shall be substituted the words “Part I above”;
- (b) in paragraph 8, for the words “Companies (Accounts) Regulations 1995” there shall be substituted the words “Companies (Accounts Directive) Regulations 1997”.



(3) Schedule 13 shall be amended as follows -

- (a) in paragraph 1(1), for the words and punctuation marks “[one day before the date of the coming into force of the Ordinance]” there shall be substituted the words “one day before the date of the coming into force of the Ordinance”;
- (b) in paragraph 4(1), by substituting, for the words and punctuation marks “[one day before (date)]” the words “one day before the date of the coming into force of this Ordinance”;
- (c) in paragraph 4(2), for the words and punctuation marks “[one day before the date of coming into force of the Ordinance]” there shall be substituted the words “one day before the date of the coming into force of the Ordinance”.

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Passed by the Gibraltar House of Assembly on the 3rd day of July, 1998.

D J REYES,

Clerk to the Assembly.





