

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3840 of 17 March, 2011

LEGAL NOTICE NO. 26 OF 2011.

INTERPRETATION AND GENERAL CLAUSES ACT

COMPANIES ACT (AMENDMENT) REGULATIONS 2011

In exercise of the powers conferred on it by regulation 23(g)(ii) of the Interpretation and General Clauses Act and all other enabling powers, and in order to transpose into the law of Gibraltar Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EC, as regards disclosure requirements in respect of certain types of companies; Article 1(9) of Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EC, as regards the formation of public limited companies and the maintenance and alteration of their capital; and Directive 2007/63/EC of the European Parliament and Council of 13 November 2007 which amends Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Companies Act (Amendment) Regulations 2011 and come into operation on the day of publication.

Amendment to the Companies Act.

2. The Companies Act is amended in accordance with regulations 3 to 10.

Amendment of section 105 of the Companies Act.

3. Section 105(2) of the Companies Act is amended—
 - (a) by substituting the following for paragraph (a)—
 - “(a) every creditor of the company who—

- (i) at the date fixed by the Registrar of the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, and
- (ii) can show that there is a real likelihood that the reduction would result in the company being unable to discharge his debt or claim when it fell due,

is entitled to object to the reduction of capital ;”and

- (b) by inserting the following subsection after subsection (3)–

“(4) Where an application for an order under this section is made prior to 17 March 2011, that application shall be considered as though regulation 3(a) of the Companies Act (Amendment) Regulations 2011 had not come into operation.”.

Amendment of section 142.

4. In section 142 of the Companies Act–

- (a) in subsection (1) the following paragraph is inserted after paragraph (d)–
 - “(e) where appropriate, that the company is being wound up.”;
- (b) the following subsection is inserted after subsection (1)–
 - “(1A) Company websites shall state clearly on their homepage all the information referred to in subsection (1).”; and
- (c) subsection (2) is amended by substituting “subsections (1) and (1A)” for “subsection (1)”.

Insertion of section 345A.

5. The following section is inserted after section 345 of the Companies Act–

“Delivery of documents in different languages.

345A.(1) The documents referred to in sections 344 and 345 as being documents that have to be delivered to the Registrar under any provision of this Act shall be drawn up in the English language.

(2) Without prejudice to subsection (1), the Registrar shall, additionally, also allow any document referred to in that subsection to be delivered voluntarily in–

- (a) any other official language of the European Union;
- (b) any other language,

provided, in each case, that it is accompanied by a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(3) Where a certified translation has been voluntarily provided pursuant to subsection (2) and there is a discrepancy between a document required to be delivered to the Registrar pursuant to subsection (1) and the certified translation accompanying it, the certified translation–

- (a) may not be relied upon by the company as against any person dealing with the company; but
- (b) may be relied upon by a person dealing with the company as against that company, unless the company proves that the person dealing with the company had knowledge of the document whose delivery was mandatory pursuant to subsection (1)”.

Amendment of section 346.

6. In section 346(1) of the Companies Act after the word “printed” insert the words “or electronic”.

Amendment of section 348.

7. In section 348(7) of the Companies Act after the words “Schedule 5” insert the words “, in section 348A”.

Insertion of section 348A.

8. The following section is inserted after section 348 of the Companies Act—

“Certification of electronic copies by Registrar.

348A.(1) Where—

- (a) a person requires a copy of material on the register under section 348;
- (b) that person expressly requests that the copy be certified as a true copy; and
- (c) the Registrar provides the copy in electronic form,

the Registrar’s certificate that the copy is an accurate record of the contents of the original document shall be provided in accordance with subsections (2) and (3).

(2) The certificate shall be authenticated by means of an electronic signature which-

- (a) is uniquely linked to the Registrar;
- (b) indicates that the Registrar has caused it to be applied;
- (c) is created using means that the Registrar can maintain under his sole control; and
- (d) is linked to the certificate and to the copy provided under section 348 in such a manner that any subsequent change of the data comprised in either is detectable.

- (3) For the purposes of this section, an “electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.”.

Amendment of section 350.

9. Section 350(1)(dd) of the Companies Act is substituted by the following paragraph–

- “(dd) any balance sheet or profit and loss account of a company and other annual returns and accounting documents which are required to be delivered to the Registrar under this Act or any other enactment;”.

Amendment of Schedule 16.

10.(1) Paragraph 2 of Schedule 16 to the Companies Act is amended by inserting the following sub-paragraphs after sub-paragraph (3)–

- “(4) If all members holding shares, and all persons holding other securities, in each transferor company and each pre-existing transferee company, being shares or securities that carry a right to vote in general meetings of those companies, so agree, the requirement of this paragraph shall not apply.

(5) For the purposes of sub-paragraph (4)–

- (a) the members of, or holders of other securities in, a company; and
- (b) whether shares or other securities carry a right to vote in general meetings of the company,

shall be determined as at the date of the application to the court under section 205.”.

(2) Paragraph 5 of Schedule 16 to the Companies Act is amended by inserting the following sub-paragraphs after sub-paragraph (8)–

- “(9) If all members holding shares, and all persons holding other securities, in each transferor company and each pre-existing

transferee company, being shares or securities that carry a right to vote in general meetings of those companies, so agree, the requirement of this paragraph shall not apply.

(10) For the purposes of sub-paragraph (9)–

- (a) the members of, or holders of other securities in, a company; and
- (b) whether shares or other securities carry a right to vote in general meetings of the company,

shall be determined as at the date of the application to the court under section 205.”.

(3) Paragraph 6(1)(a) of Schedule 16 to the Companies Act is amended by inserting the words “unless inapplicable by virtue of paragraph 2(4)” after “terms”.

(4) Paragraph 6(1)(c) of Schedule 16 to the Companies Act is amended by inserting the words “unless inapplicable by virtue of paragraph 5(9)” after “report”.

(5) Paragraph 7 of Schedule 16 to the Companies Act is substituted by the following paragraph–

“No allotment of shares to transferor company or transferee company.

7. The court shall not sanction under section 205(2) a compromise or arrangement under which the shares in the transferee company are to be allotted to–

- (a) a transferor company or its nominee in respect of shares in the transferor company held by the transferor company itself (or its nominee); or
- (b) the transferee company or its nominee in respect of shares in a transferor company held by the transferee company or its nominee.”.

Dated 17th March, 2011.

P R CARUANA,
Chief Minister,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose the following three directives into the laws of Gibraltar:

- Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EC, as regards disclosure requirements in respect of certain types of companies, which is transposed in Regulations 4 to 9 ;
- Article 1 (9) of Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EC, as regards the formation of public limited companies and the maintenance and alteration of their capital, which is transposed in Regulation 3; and
- Directive 2007/63/EC of the European Parliament and Council of 13 November 2007 which amends Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies, which is transposed in Regulation 10.